BEFORE THE ARBITRATOR

In the Matter of a Dispute Between

MANITOWOC CRANES, INC.

and

TEAMSTERS GENERAL LOCAL UNION NO. 662

Case 4
No. 72872
A-6569

AWARD NO. 7899

Appearances:

Mr. Joel S. Aziere, Attorney, Buelow Vetter Buikema Olson & Vliet, LLC, 20855 Watertown Road, Suite 200, Waukesha, WI 53186, appearing on behalf of Manitowoc Cranes, Inc.

Mr. Scott D. Soldon, Attorney, Soldon Law Firm, LLC, 3541 N. Summit Avenue, Shorewood, WI 53211, appearing on behalf of Teamsters General Local Union No. 662.

ARBITRATION AWARD

On February 12, 2014 Manitowoc Cranes and Teamsters General Local Union No. 662 requested a panel of Arbitrators from the Wisconsin Employment Relations Commission, and subsequently selected William C. Houlihan from that panel, to hear and decide a grievance pending between the parties. A hearing was conducted on May 21, 2014 in Manitowoc, Wisconsin. A transcript of the proceedings was taken and distributed on June 2, 2014. The parties submitted post hearing briefs. Additionally the Company submitted a reply brief, which was received on July 16, 2014.

This Award addresses the 3 day suspension of employee Norbert Smidel.

BACKGROUND AND FACTS

The Company and Union are signatories to a collective bargaining agreement, the relevant portions of which are set forth below. Additionally, the Company maintains a set of written work rules, titled “Work and Attendance Guidelines”. The relevant provisions of the Work and Attendance Guidelines are also set forth below.

Norbert Smidel is employed by the Company as a materials handler. Smidel has been with the Company for 25 years. Smidels' primary job is to load and unload trucks. He operates a side loader, which is a very large side loading fork lift. The vehicle Smidel operates is approximately ten feet wide, eighteen feet long, and has five foot tires. It has an operator cab, equipped with two large mirrors and a camera mounted to the rear. The vehicle weighs 32,000 lbs. Smidel operates the side loader both outside and inside the Company's warehouse.

On November 26, 2013 Mr. Smidel brought the side loader into the warehouse as he took a 20 minute break. Following his break, Smidel climbed into the cab of his side loader, used the remote door opener to open the garage door, looked over his right shoulder to see if there was any impediment to his right and slowly backed out. A few feet out of the warehouse, he hit a van, which was improperly parked in front of the garage door. The van was operated by AQS, an air quality vendor responsible for maintaining the building filters. AQS is a subcontractor, whose employees are on site daily.

Smidel went to his supervisor, Heather De Vooght, and advised her to come with him and to bring a camera. Smidel indicated he did not look as he was backing up. The record indicates that Smidel looked over his right shoulder before he began to move. He indicated that there is commonly a company truck parked just outside the door in the direction he looked. He did not look to his left, nor did he use either of the mirrors or the rear loaded camera.

AQS submitted a bill for $1358 for damages to its vehicle. As of the date of the hearing the Company had not paid the bill.

There had been an ongoing concern about vehicles parked near doorways and roadways of the facility. During periodic labor-management meetings material handlers had urged the company to do something about vehicles parked in ways that interfered with the operation of the large side loaders. The Company was aware of the problem and had cautioned the vendors not to park in ways that obstructed the heavy equipment. The Company was in the process of determining where the vendor vehicles should park. Following the accident the Company issued written directions to the vendors about where they are allowed to park. Had the vendor truck not been improperly parked, the accident would not have occurred.

ISSUE

The parties stipulated to the following issue;

Was there just cause for issuing a Group II, Rule 11 discipline for the incident that occurred on November 26, 2013?

If not, what is the appropriate remedy?

RELEVANT PROVISIONS OF THE COLLECTIVE BARGAINING AGREEMENT

MANAGEMENT

Article III.

Section 1. The Company shall have the right to exercise its functions of management, among which shall be the right to hire, promote or transfer employees and to direct the working force, to suspend or discharge for cause, to lay off employees because of lack of work, require employees to observe reasonable Company rules and regulations, to decide the products to be manufactured, the schedules of production, including the means and processes of manufacturing. The Company shall be deemed to possess all the prerogatives, rights and discretions of ownership and management, except insofar and to the extent that the rights defined on behalf of the employees and the duties imposed upon the Company by the terms of this Agreement represent restrictions on such prerogative. Any claim that the Company has exercised such rights and prerogatives contrary to the provisions of this Agreement may be subject to the grievance procedure.

The Company and the Union agree that those subcontracting practices normally used in the past and those that presently exist at Manitowoc Cranes, Inc., the Company may continue for the life of this Agreement. However, the Company and the Union further agree that the Company intends to continue its practice of utilizing Manitowoc Cranes, Inc. personnel whenever the necessary employees and/or facilities are available to perform the work. The Company will inform the Union of its decision to subcontract. Notwithstanding the above, the Company may subcontract as long as its decision is not arbitrary or capricious.

RELEVANT PROVISIONS OF THE WORK AND ATTENDANCE GUIDELINES

Employees who violate the following work guidelines may receive the disciplinary action as indicated for each group. The following list constitutes most, but not necessarily all, of the kinds of conduct that will result in disciplinary action, up to and including termination.

Group I

- 1st Offense --- Verbal/Written
- 2nd Offense --- Written
- 3rd Offense --- 3-Day Suspension
- 4th Offense --- Termination

1. Failure to notify the Company before start of shift when absent from work. Please also refer to the Company Attendance Rules.
2. Soliciting funds or offering anything for sale during work time without permission.
3. Repeated failure to punch time card in or out.
4. Leaving job or department during working hours without permission of your Supervisor.
5. Horse play, scuffling, or practical jokes (where such violation does not result in injury to person or property).
6. Failure to immediately report an accident to your Supervisor.

. . . .

22. Unsatisfactory job performance.

Group II

1st Offense --- Three Day Suspension
2nd Offense --- Termination

1. Defacing Company property or posting and/or removing material from official Company bulletin boards.
2. Operation of machines, tools, or equipment to which an employee has not been specifically assigned by a Supervisor.

. . . .

8. Committing an unsafe act, violating Company safety practices or procedures, carelessness as to personal safety and/or the safety of others, or failure to use safety equipment or clothing (where such violation does not result in injury or damage to person or property).
9. Failure to immediately report or misrepresenting or omitting facts to a Supervisor or Nurse regarding an injury or illness.

. . . .

11. Negligence resulting in the damage or destruction of tools, machinery, or equipment, product or property belonging to the Company or to fellow workers.

. . . .

18. Violations of good order, safety, and discipline too serious to be considered as a Group I violation and not serious enough to be considered a Group III violation.

DISCUSSION

I believe there was just cause for the three day suspension. The grievant is an experienced driver of a very large piece of equipment. It is dangerous to back such a vehicle up without looking. This is all the more so given the size of the side loader. The accident was avoidable. The behavior was negligent.

The Company has a work rule. On its face the rule is reasonable. To be covered by Rule II, No. 11, the employee has to engage in an act of negligence, damage must follow, and the damaged property must be that of the Company or a fellow worker. Negligence did occur. There was damage. The only question left is whether the damage was to property of a fellow worker. The purpose of the work rule is to address negligent conduct which results in property damage. The record indicates that AQS is on site daily. For purposes of applying a rule whose focus is on the negligent destruction of property I think the vendor is appropriately described as a fellow worker.

The Union regards Rule I, 22 as more appropriate. My reading of Rule I, 22 is that it is a catchall provision which addresses an employees' effectiveness at performing his/her job. The Company is not happy with the accident. However, this proceeding is not about a lack of productivity or poor quality work. This proceeding addresses a very specific, discreet event. If Rule II, 11 were deemed not to apply because the contractor was not deemed to be a fellow worker, I think Rule II, 8 has more application than does Rule I, 22.

The Union believes that the Company and the contractor contributed to the accident. The Company knew there was a problem with trucks parked inappropriately, and took insufficient steps to correct it. The vendor parked his truck in front of a garage door which was used by the very large side loaders, which presumably move substantial materials. The material handlers had warned Company officials that the presence of these improperly parked trucks would lead to an accident.

The Union is right. The AQS truck was parked so as to obstruct the entry/exit from the warehouse. The Company had warned the vendor not to block the doors, but the driver did so anyway. The vendor is on site daily, and is thus aware of the size and movement of the side loaders. The truck was parked in a way that created a hazard and obstruction. It also was positioned to create a disruption of production. Had a side loader showed up with material to be moved its movement into the building was blocked.

Had the Company been more aggressive and/or had the vendor not parked so as to impede access to the building this accident might not have happened. Either the Company or the vendor will be saddled with the cost of the truck repair.

Notwithstanding any of the foregoing, the grievant's action was still negligent. The grievant was disciplined for his negligent operation of equipment. His negligence also contributed to the accident. Had he looked and used his mirrors or camera, there would have been no accident. Moving a vehicle of that size without looking is dangerous. It is also predictable that injury or damage could follow from such behavior.

AWARD

The grievance is denied.

Dated at Madison, Wisconsin, this 17th day of November 2014.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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William C. Houlihan, Arbitrator