

IN THE MATTER OF ARBITRATION BETWEEN

WEYERHAEUSER COMPANY)	
)	ARBITRATION
)	AWARD
Employer,)	
)	
and)	PADRON
)	DISCHARGE GRIEVANCE
)	
)	
UNITED FOOD AND COMMERCIAL)	
WORKERS, LOCAL 9)	FMCS Case No. 081012-50361-3
Union.)	
)	

Arbitrator: Stephen F. Befort

Hearing Date: March 20, 2008

Post-hearing briefs received: April 30, 2008

Date of decision: May 21, 2008

APPEARANCES

For the Union: Brendon D. Cummins
Nicole M. Blissenbach

For the Employer: Bruce A. MacPhee

INTRODUCTION

United Food and Commercial Workers, Local 9 (Union) is the exclusive representative of a unit of production and maintenance workers employed by Weyerhaeuser Company (Employer) at its Austin, Minnesota facility. The Union brings this grievance claiming that the Employer violated the parties' collective bargaining agreement by discharging John Padron without just cause. The grievance proceeded to

an arbitration hearing at which the parties were afforded the opportunity to present evidence through the testimony of witnesses and the introduction of exhibits.

ISSUES

Did the Employer discharge the grievant for just cause? If not, what is the appropriate remedy?

RELEVANT CONTRACT LANGUAGE

ARTICLE 4 – RESPONSIBILITIES OF MANAGEMENT

SECTION 1. The Management of the plant, the establishment of the Company rules; the direction of the working forces, including the right to plan, direct and control all productive and other operations; to hire, suspend and discharge employees for cause; to determine skill, ability and other qualifications of employees; to promote, demote and transfer employees; to relieve employees from duty because of lack of work or other legitimate reasons; and to introduce new or improved production methods, as vested exclusively in the Company, except that this will not be used for the purpose of discrimination against any employee because of Union activity or to avoid any of the other provisions of this Agreement.

ARTICLE 17 – ADJUSTMENT OF GRIEVANCES

SECTION 11. Should there be any dispute between the Company and the Union concerning the existence of good and sufficient cause for discharge or discipline, such dispute shall be adjusted as a grievance as in accordance with the procedure established by this ARTICLE.

FACTUAL BACKGROUND

The Employer's facility in Austin, Minnesota produces corrugated shipping containers. The plant has several operating areas including the corrugating, finishing, and shipping departments. In the corrugating department, the corrugator machine combines rolls of linerboard paper into corrugated cardboard sheets. These sheets are then converted into boxes in the finishing department. The shipping department handles

both the in-bound receipt of large paper rolls and the out-bound shipping of the finished containers.

The production process generates a considerable amount of scrap material. Scrap left over from the corrugator and finishing machines is automatically processed to the roof area through a vacuum chute. Larger pieces of scrap are sent through a grinding machine before entering another vacuum chute. The vacuum chutes lead to a large, funnel-shaped machine called the cyclone which is located on the roof of the plant. The cyclone collects the scrap, and directs it in a whirling, descending manner to a baling machine that collects the scrap and compacts it into large bales. The baler produces approximately two to three bales per hour during normal operations.

The grievant, John Padron, has worked for the Employer for six and one-half years. He worked a number of jobs at the plant including a stint as a corrugator machine operator. At the time of the incident in question, Padron worked as a Roll Grab Driver. The Roll Grab Driver operates the roll grab machine which transports rolls of paper to the corrugator machine. The driver provides breaks to employees working on the corrugator machine and shreds waste produced by that machine. The driver also is responsible for monitoring the operation of the baler and transporting the compacted bales of scrap.

On July 24, 2007, Padron worked his normal 10:30 p.m. to 6:30 a.m. schedule on the third shift. Padron testified that Rick Horn, third-shift Corrugator Supervisor, directed him to fill in on the corrugator machine due to the absence of the regular corrugator operator. According to Padron, Horn told him that the shredders would take care of overseeing the baler operation. Three employees from the second shift were held over to shred scrap in preparation for an upcoming inspection visit. One of the shredders,

Victor Ramirez, transported the finished bales until he and the other specially-assigned shredders departed at 2:30 a.m.

Another third-shift employee, Starch Cook Jim Hansen, testified that third shift converting supervisor Jo Kelly instructed Hansen at 2:30 a.m. to take over the tasks of grinding the accumulated scrap and watching the baler. Hansen told Padron that, per Kelly's directive, he would take care of the baler so that Padron could continue working on the corrugator machine. Padron's testimony confirmed that conversation.

Supervisor Rick Horn's testimony differed from that of Padron and Hansen. Horn, who was Padron's direct supervisor, testified that he did not recall assigning Padron to work on the corrugator machine or relieving him of his duties with respect to the baler. When asked on cross-examination whether Kelly had instructed Hansen to take over the baler duties, Horn responded by stating, "Yes, I think she may have told him that."

Sometime around 3:00 a.m., the scrap system lost suction. Maintenance Worker Craig Bell and Hansen went on to the roof and saw that the screen on the cyclone was plugged with paper. Bell shut down the vacuum system so that the scrap would fall from the screen. He then turned the system back on, and both Bell and Hansen observed the system working properly with scrap falling from the cyclone into the baler.

About one hour later, the scrap system again lost suction, and Bell, Hansen, and Padron returned to the roof. This time, they looked inside the cyclone and noticed that it was plugged with scrap. Over the next six hours, approximately eight employees worked at trying to move the plug through the system.

Plant Manager Jeff Linkous described the jam as the worst he had seen in his 22 years of working in corrugated box plants. He testified that the Employer lost production time as a result of the jam, incurring losses of approximately \$20,000. Linkous testified that he quizzed supervisors Horn and Kelly about who was responsible for monitoring the baler, and both identified Roll Grab Driver Padron as the responsible employee.

When Padron arrived at work on the evening of July 25, he was called to meet with Mark Langen, the second shift supervisor. Hansen also attended the meeting as acting Union steward. Langen told Padron that he was suspended indefinitely pending an investigation. When Padron asked why he was being suspended, Langen told him it was because of the plug in the cyclone. At this point, Hansen told Langen that he had been the one taking care of the baler during the shift in question. The Employer terminated Padron in a letter dated July 25 for “willful carelessness and negligence.”

POSITIONS OF THE PARTIES

Employer:

The Employer contends that it had just cause to discharge the grievant for willful carelessness and negligence. Mr. Padron’s assigned work duties included responsibility for overseeing the operation of the baler machine. During his work shift on July 24-25, 2007, Mr. Padron failed to notice that the baler had stopped producing bales of scrap, which is a signal of a jam in the plant’s waste disposal system. As a result of this monitoring neglect, the cyclone experienced an unprecedented jam resulting in a serious loss in productivity. Contrary to the Union’s claim, neither of the third shift supervisors relieved Mr. Padron of his usual monitoring duties for the shift in question. Ultimately,

the Employer maintains that discharge is warranted given the grievant's significant dereliction of duty and the harm such conduct caused.

Union:

The Union argues that the Employer's termination decision lacks just cause since the grievant did not engage in any conduct that reasonably could be seen as willful carelessness and negligence.. The Union asserts that supervisory assignments made during the July 24-25 shift directed Mr. Padron to work on the corrugator machine while other employees were assigned responsibility for overseeing the baler's operation. Accordingly, when the waste disposal system malfunctioned later in the shift, the fault was not the result of any neglect of duty on the part of Mr. Padron. The Employer, however, failed to undertake any investigation, and, instead, rushed to a punitive judgment unaware of the true circumstances. Finally, even if the jam somehow could be deemed attributable to Mr. Padron, such jams are frequent, and the Employer has never previously terminated an employee under similar circumstances.

DISCUSSION AND OPINION

In accordance with the terms of the parties' collective bargaining agreement, the Employer bears the burden of establishing that it had just cause to support its disciplinary decision. This inquiry typically involves two distinct steps. The first step concerns whether the Employer has submitted sufficient proof that the employee actually engaged in the alleged misconduct or other behavior warranting discipline. If that proof is established, the remaining question is whether the level of discipline imposed is appropriate in light of all of the relevant circumstances. *See Elkouri & Elkouri, HOW ARBITRATION WORKS* 948 (6th ed. 2003).

A. The Alleged Misconduct

The Employer terminated Mr. Padron for “willful carelessness and negligence.” More specifically, the Employer asserts that: 1) Mr. Padron was responsible for oversight of the baler machine at the terminal end of the Employer’s waste disposal process, and 2) that a significant jam in the waste disposal process system occurred during Mr. Padron’s shift on July 24-25, 2007.

Much of the evidence in support of the Employer’s two propositions is undisputed. The job description for the roll grab operator position includes the following job functions:

10. To be able to understand the baler and keep it clean and efficient.
11. To be able to operate the baler and transport and weigh scrap bales.

Mr. Padron’s testimony at the hearing acknowledged that his normal job duties include taking care of the baler. Although the Union argues that no employee is specifically responsible for overseeing the cyclone, the operation of the two waste disposal machines are so intertwined that responsibility for overseeing one of the machines effectively includes oversight over the other.

The evidence also establishes that a significant jam occurred in the cyclone during the July 24-25 third shift. It is not clear when the jam first began. Plant Manger Linkous estimated that the jam likely developed throughout the third shift. Supervisor Rick Horn suggested that a jam of the size discovered probably took two or three hours to accumulate. Hansen testified that he moved a few bales after taking over that responsibility at 2:30 a.m., suggesting that the jam began only after that time.

In any event, it is clear that the jam was of a substantial proportion. Linkous described it as the largest he had ever seen, filling three-quarters of the cyclone’s volume.

Padron and Hansen described the cyclone as about half full of scrap. As a result of the jam, the Employer was forced to curtail operations for six hours while about eight employees worked to expel the jam. Linkous testified that the Employer suffered an economic loss in the realm of \$20,000 due to the jam. He also testified that the clean-up posed serious safety issues, requiring employees to use long poles while standing on the roof in order to move the scrap through the system.

The Union claims that the scenario painted by the Employer has one fatal flaw: Mr. Padron was not responsible for overseeing the baler during the shift in question. Padron testified that since the regular operator of the corrugator machine - Steve Lang - was absent for the July 24-25 shift, Corrugator Supervisor Horn asked Padron to fill in on the corrugator machine for that shift. According to Padron, when he asked Horn about who would handle the baler, Horn responded that the special shredding crew would watch the baler and move the compacted bales.

The Union's claim in this respect also finds support in the testimony of Starch Cook Jim Hansen. Hansen testified that when the shredding crew left at 2:30 a.m., Converting Supervisor Jo Kelly asked Hansen to take over the work of grinding scrap and overseeing the baler. Hansen testified that he informed Padron of this assignment and that Padron should continue on the corrugator machine.

The Employer, in response, argues that the Union's claim is faulty for two reasons. First, the Employer maintains that neither supervisor expressly relieved Padron of responsibility for overseeing the baler. In this regard, Plant Manager Linkous testified that he spoke with both Horn and Kelly following the incident, and that neither indicated that Padron had been relieved of his regular duties with respect to the baler. The

Employer additionally argues that, in any event, neither Kelly nor Hansen had any supervisory authority over Padron and thus were without authority to alter his work duties.

The Union's position on this issue is more persuasive for several reasons. First, while Padron and Hansen provided quite specific testimony concerning supervisory instructions, the Employer's countervailing evidence was equivocal at best. Corrugator Supervisor Horn initially testified that he could not recall whether he had assigned Padron to the corrugator machine for the July 24-25 shift. Only during the Employer's case on rebuttal did Horn say for the first time that he had not made such an assignment. Meanwhile, the Employer chose not to call Converter Supervisor Jo Kelly to testify. However, when Horn was asked on cross-examination whether Kelly had instructed Hansen to take over the baler duties, Horn responded, "[y]es, I think she may have told him that."

Second, the work actually performed during the July 24-25 shift is more consistent with the version of events urged by the Union. It is uncontroverted that Padron worked the entire shift operating the corrugator machine. Similarly, it is undisputed that the three-person special shredding crew transported bales prior to 2:30 p.m., and that Hansen did the same after 2:30 a.m. It is unlikely that all of these employees would have been working outside of their usual assignments unless directed to do so by the supervisors.

Third, the Employer's argument that neither Kelly nor Hansen had official authority to reassign Padron's normal duties is somewhat beside the point. The pertinent inquiry here is whether Padron engaged in "willful carelessness and negligence." Even if

Kelly and Hansen did not have official authority on the Employer's organizational chart to modify Padron's work assignments, the fact that Padron acted in accordance with their instructions does not necessarily entail willful misconduct. Padron reasonably might have believed that he should follow the instructions of a supervisor even if not in his own direct chain of command. He also might have believed that the instructions provided by Kelly and Hansen were endorsed by Horn. In any event, a good faith misunderstanding concerning a work assignment falls short of "willful carelessness and negligence."

The fundamental miscue in this case is that the Employer imposed discipline without first conducting an investigation. At the time of the grievant's termination, Plant Manager Linkous believed that Padron had committed a conscious and serious breach of his work duties. But, Linkous did not question Padron or any other unit employees about the events in question. Indeed, the Employer failed to investigate even after Hansen told Supervisor Langen that he, rather than Padron, was responsible for overseeing the baler during the July 24-25 shift. A proper investigation would have revealed the lack of Padron's culpability and avoided the necessity of this proceeding.

Based on the foregoing, the Employer has failed to carry its burden of demonstrating that Padron engaged in conduct that fairly could be described as "willful carelessness and negligence."

B. The Appropriate Remedy

Since the Employer has not shown that the grievant engaged in the misconduct alleged as the basis for its termination decision, it is not necessary to consider whether the sanction imposed appropriately matches the misconduct in question. Under the circumstances, the grievant should be reinstated with full back pay.

AWARD

The grievance is sustained. The Employer is directed to reinstate Mr. Padron and to make him whole for any resulting loss in pay or benefits less any compensation that Mr. Padron earned in mitigation. The Employer also is directed to correct Mr. Padron's personnel records to reflect this determination

Dated: May 21, 2008

Stephen F. Befort
Arbitrator