

the grievant, Alexis O. Jimenez. Post-hearing written argument was received by the arbitrator on December 1, 2010.

FACTS

The Employer operates an industrial laundry business at several "plants" located throughout the United States, one of which is in Minneapolis, Minnesota. The Employer furnishes its customers with linens and other materials that require regular washing, drying and preparation for re-use. The Employer picks up and redelivers these materials by truck after they are washed and prepared for re-use at the Minneapolis plant. The Union is the collective bargaining representative of most of the non-supervisory employees of the Employer who work at its Minneapolis plant.

The grievant was hired by the Employer on July 8, 2008, and he was discharged on July 9, 2010, when Anthony Johnson, Production Manager, gave him a written notice of his discharge, parts of which are set out below:

[The grievant] refused to do what Ana Echeverria asked him to do and [the grievant] was sent home . . . What would have been the proper behavior for the situation? Comply with supervisor direction. . . This is gross insubordination. [What will be the consequence?] Termination.

On July 9, 2010, the Union grieved the discharge of the grievant; parts of the grievance are set out below:

[The grievant] was terminated on 7-9-10 for alleged gross insubordination. This is a violation of Art. 11, Sect. 1. The Co. failed to meet the burden of just cause for discharge. The Co. has treated this employee unequally for similar circumstances. Penalty was too harsh.

At the time of the grievant's discharge, he was working in the Rug Department of the Minneapolis plant where rugs used by customers, usually at the entry to stores and other commercial facilities, are washed and made ready for redelivery to customers. The grievant, whose native language is Spanish, understands some English, but is not fluent in that language.

On July 7, 2010, the grievant was working in the Rug Department at the end of a conveyer that carries rugs of varying size that have been washed and dried. As I understand the evidence, the conveyer usually carries the rugs in loads of some size after they emerge from driers in batches.

As the last step in the preparation for their re-use, the rugs must be rolled up, using four rolling machines that are located near the end of the conveyer. Four people work at the end of the conveyer, in teams of two, one team on each side of the conveyer.* Each team of two rolls rugs and stores them for redelivery by the Employer's trucks. In the winter, when

* It appears from the evidence that the two teams process different batches of rugs as they come down the conveyer. As I understand the evidence from some witnesses, the teams work on either side of the conveyer, and differentiate between the batches to be rolled by one team or the other according to the side of the conveyer where each batch of rugs is located. Other witnesses, however, testified that there are not two sides to the conveyer, but that, nevertheless, the two teams differentiate between the rug batches that each team is to roll through some other process. Though the evidence does not clearly establish how this differentiation occurs, the important point is that the teams do differentiate between the batches. Hereafter, for ease of reference, I assume that the differentiation occurs because rugs to be done by each team come down on separate sides of the conveyer.

customers use more rugs because of the weather, the conveyer delivers the loads with greater frequency, about one batch every fifteen minutes, and in the summer, the conveyer delivers the batches about one every twenty-five minutes.

On July 7, 2010, the grievant was working on one side of the conveyer, rolling and storing rugs with his team member, Melvin Alvarado. They worked on the night shift, which begins at 3:00 p.m. In the summer of 2010, night shift workers often worked overtime.

Ana L. Echeverria, who has been employed at the Minneapolis plant for about twelve years, testified that she is the night shift supervisor. She gave the following description of what occurred on July 7, 2010, that led to the grievant's discharge. Her native language is Spanish, but she has some fluency in English. When she spoke to the grievant, she used Spanish. At about 5:00 p.m., she saw the grievant unloading a washer. The Rug Department is located about fifteen to thirty feet from the washers in a large open room where most of the plant's operations occur. Echeverria told the grievant to go back to the Rug Department, and he did so. Echeverria testified that, at about 8:15 p.m., she again saw the grievant away from the Rug Department, this time at a drinking fountain. According to the notes that she wrote later that night, "he saw me and hurried back to his work station."

Echeverria testified that, at about 10:25 p.m., she saw the grievant again, away from the Rug Department and unloading another washer. This time Alvarado, his Rug Department team

member was with him, also unloading a washer. Echeverria asked them if they did not have work to do, and they told her they were done. She testified that, when she told them to go back to the Rug Department and help the two team members who were assigned to the other side of the conveyer, the grievant refused, telling her that he was not "dumb," that he had done his job and that the other two were "too lazy."

The Employer presented in evidence the following notes that Echeverria made that night:

Tonight I caught [the grievant] three times away from his work area. The first time I told him to go back to his work area. The second time he saw me and hurried back to his work station. The third time [the grievant and Alvarado] were both away from their work area. I asked them what they were doing. They told me they did not have work. I told them both to go back and help the other guys. [The grievant] said no but [Alvarado] just stood there. I asked [the grievant] if he was going to do what I asked, and he said no. I told [the grievant] to punch out and leave. [Alvarado] asked if [the grievant] left why cant he. I told him do you want to get sent home too. [Alvarado] went back to his work area.

Echeverria also testified that, after the grievant refused to go back to the Rug Department, she said "are you sure you are not going to do what I am asking?" She testified that the grievant said "yes, I am not going to do it," and that she said, "then punch out and leave." She also testified that she did not tell the grievant that he would be disciplined if he did not return to the Rug Department. The grievant then left the plant.

Later that evening, Echeverria sent to Johnson, the Production Manager, her written account of the incident that I have set out above. The next day, July 8, 2010, when Echeverria came to work just before 3:00 p.m., Johnson asked her to bring

the grievant, a Union steward and a translator-interpreter to a meeting with Echeverria and Johnson. I summarize Johnson's testimony about the meeting, as follows. At the meeting, he told the grievant that Echeverria reported that he refused to go back to the Rug Department because he said he had no work to do. Johnson asked the grievant why he thought he could tell a supervisor "no" when she told him to go back to the Rug Department, and the grievant then said he was sorry. The Steward asked Johnson to give the grievant another chance, and Johnson said that he wanted to review the situation. He decided to discharge the grievant and prepared the notice of discharge dated July 9, 2010, which I have set out above.

The grievant gave testimony that I summarize as follows.** He had no record of discipline before the discharge now at issue. His permanent assignment had been to work with Alvarado as a team, rolling rugs as they came off the conveyer. At times during the shift, when the conveyer was not carrying rugs, they were permitted to help the person who is assigned to fill orders for clean rugs from the rug storage shelves. It was also permitted to leave the area to get a drink of water. Because the fountain nearest to the Rug Department did not work, the grievant would go to the fountain near the washers.

At about 10:25 p.m., on July 7, 2010, the grievant and Alvarado ran out of rugs to roll on their side of the conveyer.

** I note that my summary of the grievant's testimony is a summary of an interpreter's translation of his testimony.

They both went to the area near the washers. The grievant saw that one of the washer operators, Alberto Rivera, was a little behind, and, therefore, the grievant decided to help Rivera unload a washer. Alvarado was helping unload another washer.

Echeverria saw the grievant and asked "what are you doing here?" He responded, "I'm helping Alberto." Echeverria asked, "why aren't you in your work area?" The grievant told her "there's no work." Echeverria said, "okay, I'll go check, and if there is no work, you guys can go home at 11:30." The grievant testified that he was scheduled to work overtime that shift -- until 1:30 a.m. The grievant then told Echeverria that there was work on the other side of the conveyer, but that the other rug rolling team would not speed up because they were lazy. The grievant testified that he told Echeverria "I don't feel I should help them because they don't hurry up." The grievant testified that Alvarado was present during this conversation, but did not say anything. The grievant testified that Echeverria then said, "okay, so you're not going to help them?" and that he said "no." The grievant testified that she then said, "okay, punch out and go home," that he said, "okay," and that he went home because she told him to do so. According to the grievant, Echeverria never gave him an "order" to go help the other rug rolling team, and she did not threaten him with discipline. He testified that, if he had understood that she was ordering him to go help the other team, he would have done so. He left the plant and came to work the next day for his 3:00 p.m. shift.

The grievant testified that a short time after he began that shift, he was called to a meeting with Johnson, Echeverria, a steward and a translator. The grievant testified that Johnson asked him whether he had said "yes" or "no" to Echeverria. The grievant said he wanted to explain, and Johnson said "no, I just want to know if you said 'yes' or 'no'" to Echeverria. According to the grievant, he asked Johnson again to let him explain, but, when Johnson again told him that he just wanted to know if he had said "yes" or "no" to Echeverria, the grievant responded that he had said "no." Johnson then ended the meeting and told the grievant that he could go home and that they would meet with the Union the next day, July 9, 2010. As described above, when they met the next day, Johnson discharged the grievant.

The Employer presented evidence that, when the grievant was hired in July of 2008, he was given the orientation that new employees receive, including an explanation of the Employer's Rules, relevant parts of which are set out below:

Ameripride Linen and Apparel Services is most interested in having harmonious Associate relations at all times. To accomplish this goal and avoid possible misunderstanding, our existing work rules and Company policies are again being posted. It is necessary for us to have these rules in order to insure orderly and efficient operation of our plant and at the same time to make sure that everyone is treated fairly and without discrimination. It is important that you be aware of these rules and policies at all times.

I. Insubordination.

Gross insubordination or refusal to obey instruction given by your Coach, or any other person of proper authority, will result in immediate discharge.

VI. Job Performance.

After proper training, all associates are expected to maintain efficient production. Associates not producing quality work and/or meeting required production standards are subject to dismissal after proper warning. Associates should not leave their workstations without permission or before quitting time.

The parties cite the following provisions of their labor agreement, as relevant:

Article 3. Management Rights.

Section 1. In General. Except as specifically limited by the express provisions of this Agreement, the management of the Company and the direction of the work force shall be vested solely and exclusively in the Employer. This provision shall include, but is not limited to, the right to . . . require observance of lawful employee rules, regulations and other policies; to discipline and discharge employees for cause

Article 25. Health and Safety.

Section 7. Company Rules. All employees shall comply with Company rules.

Article 11. Disciplinary Action.

Section 1. Just Cause. No employee shall be discharged, suspended without pay, or disciplined in any manner except for just cause.

(a) Warning. No employee shall be discharged for cause without first having been given at least one warning notice in writing of management's complaint or grievance against him/her, except that no such warning notice need be given if the cause of discharge is dishonesty, drunkenness while on duty, fighting, failure to report workers compensation claims as soon as possible after discovery that an injury is job-related or the more serious violation of Company rules.

Article 12. Grievance And Arbitration Procedure.

Section 11. Power of Arbitrator. The arbitrator shall decide the grievance in question based upon the written grievance filed pursuant to the grievance procedure. The arbitrator may interpret the agreement and apply it to the particular case presented to him/her, but the arbitrator shall have no authority to add to, subtract from, or in any way modify the terms of this agreement. . . .

DECISION

The parties propose different statements of the primary issue presented:

The Employer: Whether the Company had the right to terminate the grievant under the labor agreement.

The Union: Whether the Employer had just cause to discharge the grievant.

The Employer argues that, under Article 3, Section 1, of the labor agreement, the Employer has the "right to . . . require observance of lawful employee rules," and it argues that the grievant violated Company Rule I ("Rule I"), which provides that "Gross insubordination or refusal to obey instruction given by your Coach, or any other person of proper authority, will result in immediate discharge."

The Employer argues that Rule I is clearly reasonable and that, because the grievant violated the rule by refusing to obey Echeverria's directive to return to his work station, the Employer had a right preserved under Article 3, Section 1, to discharge him. In addition, the Employer argues that, irrespective of its argument that violation of the rule is, itself, sufficient to justify the grievant's discharge, his refusal to obey Echeverria was so serious that it constituted just cause for his discharge.

The Union argues that the Employer must establish just cause for the grievant's discharge, notwithstanding its argument that merely showing violation of Rule I is sufficient to justify his discharge. The Union also argues that, because the notice of discharge alleged that the grievant's conduct was "gross

insubordination" rather than unmodified "insubordination," the Employer has the burden of showing that the degree of his insubordination was extraordinary. According to the Union, because the grievant's refusal to return to his work station was not exhibited with anger or with abusive words directed toward Echeverria, his conduct, even if it is conceded to have been insubordinate, should not be regarded as grossly insubordinate.

I make the following rulings. First, as the Employer argues, Article 3, Section 1, of the labor agreement preserves its authority to make reasonable rules, and Article 25, Section 7, requires employees to comply with those rules. Nevertheless, the Employer's rule-making authority is limited by other contract provisions that express the parties' agreement about discipline and discharge. I rule that, because the Employer cannot use its rule-making authority to negate its contract obligations, it must show just cause for the grievant's discharge -- in accord with Article 11, Section 1, of the agreement. That provision requires that there be "just cause" for discharge and that an employee whose discharge is proposed have at least one written warning notice -- unless the cause alleged is "dishonesty, drunkenness while on duty, fighting, failure to report workers compensation claims as soon as possible after discovery that an injury is job-related or the more serious violation of Company rules."

Second. An integrated reading of Rule I and the relevant provisions of the labor agreement indicates the dispositive issue that appears below. Implicit in this statement of the

issue is my determination that "gross insubordination" is "a more serious violation of Company rules," which, as such, does not require a written warning prior to discharge.

The Employer argues that Rule I prohibits not only "gross insubordination," but the "refusal to obey instruction given by [any person] of proper authority" and warns that such conduct will result in "immediate discharge." The Employer urges that, because Rule I makes either "gross insubordination" or the "refusal to obey instruction" a basis for immediate discharge, the showing of such a refusal should, in itself, be sufficient to justify immediate discharge, even without a showing that the grievant's conduct amounted to gross insubordination.

As I interpret Rule I, however, as limited by Article 11, Section 1, of the labor agreement, a refusal to follow instruction must rise to the level of gross insubordination to constitute "a more serious violation of Company rules," and to be a basis for immediate discharge without a prior written warning.

Thus, I frame the issue as follows:

Whether the grievant's conduct on the evening of July 7, 2010, was "gross insubordination" and, therefore, "a more serious violation of Company rules" that would justify his discharge for just cause without a prior written warning.

The Employer argues that the grievant's refusal to obey Echeverria's order to return to his work station should be regarded as gross insubordination because it had the effect of interfering with the Employer's ability to maintain order in the work place, thereby threatening the efficient operation of the

Employer's enterprise. The Employer argues that the grievant repeatedly abandoned his work station, and repeatedly refused to follow Echeverria's instructions to return. According to the Employer, this conduct, which was exhibited in the presence of other employees, was gross insubordination because it showed disrespect for Echeverria and her authority as a supervisor, to the detriment of the Employer's operations.

The Employer notes that the grievant had knowledge of the Company Rules, which were explained to him when he was hired, and it argues that, even if Echeverria did not threaten the grievant with discipline at the time of his refusal to return to his work station, he knew or should have known that, under Rule I, he could be discharged for gross insubordination.

The Union argues that, in Rule I, the word "gross" appears as a modifier in the phrase "gross insubordination" for a purpose -- to reserve the penalty of immediate discharge for serious cases of insubordination. The Union notes that Black's Law Dictionary 740 (4th Ed. 1979) defines unmodified "insubordination," as "[importing] a wilful and intentional disregard of the lawful and reasonable instructions of the employer." The Union argues that, accordingly, to show that the grievant was grossly insubordinate requires proof that his actions were more egregious than a wilful or intentional disregard of Echeverria's instruction.

According to the Union, gross insubordination requires a showing of blatant disrespect, such as the use of obscene language or insolence toward the supervisor or a refusal to

surrender a badge or to leave the employer's premises when directed to do so.

The Union also argues that, to establish gross insubordination, there must be a showing that the employee "sent home" understood that his refusal of a supervisor's instruction would result in discipline if the employee failed to obey. The Union argues that, here, the grievant was not so informed by Echeverria and, thus, he did not have the opportunity to correct his behavior. The Union also argues that, according to the grievant's testimony, he did not understand that Echeverria was giving him an order and that, if he had so understood, he would have gone to his work station.

For the following reasons, I rule that the grievant's conduct on the evening of July 7, 2010, was insubordination, but not gross insubordination. First, I note that on two of the three occasions that Echeverria found him away from the Rug Department, at 5:00 p.m. and at 10:25 p.m., he was, nevertheless, working, by helping to unload washers. Clearly, the grievant had a duty to work where Echeverria told him to work, but on those two occasions he was not shirking, thus showing an attitude not averse to work. The evidence also shows that the grievant did return to the Rug Department when Echeverria told him to do so at 5:00 p.m. On the other occasion when she saw him away from the Rug Department, which occurred at 8:15 p.m., he was at a water fountain, a permitted activity.

Second, the evidence does not show that egregious conduct accompanied the grievant's insubordination. I accept the

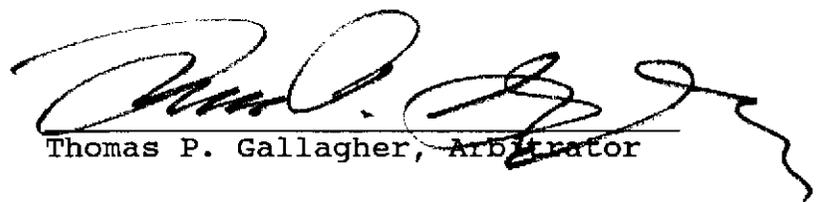
argument that the use of the modifier "gross" implies that the drafters of Rule I intended that a higher degree of insubordination must be shown to justify immediate discharge -- an implication consistent with Article 11, Section 1, which requires just cause for discharge and a prior written warning except when the cause alleged is "more serious."

The award directs the Employer to reinstate the grievant to his employment. Though I rule that the grievant's refusal to return to the Rug Department was not gross insubordination, that refusal was, nevertheless, insubordinate, and, for that reason, I do not award him back pay. Employees who become aware of the disposition of this case should be deterred from similar conduct, despite the grievant's reinstatement, by his loss of employment since July 9, 2010. The time between his discharge, on July 9, 2010, and his return to work shall be considered a long-term disciplinary suspension.

AWARD

The grievance is sustained in part. The Employer shall reinstate the grievant to his employment without loss of seniority and without back pay. The time between his discharge, on July 9, 2010, and his return to work shall be considered a long-term disciplinary suspension.

February 18, 2011


Thomas P. Gallagher, Arbitrator