

IN THE MATTER OF THE ARBITRATION BETWEEN

THE INTERNATIONAL	)	FEDERAL MEDIATION AND
BROTHERHOOD OF	)	CONCILIATION SERVICE
TEAMSTERS,	)	CASE NO. 11-53472
LOCAL 1145,	)	
	)	
	)	
	)	
Union,	)	
	)	
and	)	
	)	
HONEYWELL INTERNATIONAL, INC.,	)	ARBITRATOR'S
	)	DECISION AND RULINGS
	)	RELATING TO
Employer.	)	POST-AWARD MOTION

APPEARANCES

For the Union:

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On November 13, 2011, I issued the following Award in this grievance arbitration proceeding:

AWARD

The grievance is sustained in part. The Employer shall reinstate the grievant to his employment without loss of seniority and without back pay and benefits. The time between his discharge, on September 27, 2010, and his return to work shall be considered a long-term disciplinary suspension.

In addition, the grievant shall be subject to the Follow-up Testing provisions of Paragraph 4.3.2.7 of the Employer's Drug Testing Policy, and he shall comply with the assessment, counseling and other remedial requirements of [the Minnesota Drug and Alcohol Testing in the Workplace Act, Minnesota Statutes, Section 181.953] and of the {Employer's} Drug Testing Policy.

On December 5, 2011, the Union served upon me and upon counsel for the Employer its "Motion to Modify or Correct Award to Clarify Award," made pursuant to Minnesota Statutes, Section 572B.2(a)(3) (the "Statute"). The Motion seeks relief from two actions taken by the Employer in its implementation of the Award, as described in the following paragraphs of a letter issued to the grievant when he returned to work on November 28, 2011 (the "Return to Work Letter"):

. . .

You are being returned to employment on a 4th degree demerit for first offense Drug and Alcohol policy violation. This demerit will remain active for twenty-four (24) months. This letter will serve as written notification of the 4th degree demerit. Per the Factory Rules and Policies, in the event you receive any additional demerits while on the active 4th degree demerit, you will be terminated.

You are subject to random drug and alcohol "Follow-up Testing" as defined in Paragraph 4.3.2.7 of Honeywell's Drug Testing policy. In the event you test positive for drugs or alcohol, you will be terminated.

. . .

You are assigned to a Labor Grade 8, BBP position reporting to Doug Kettler. Your pay will remain at Labor Grade 20 rate until which time you bid into a new position.

The Motion seeks, first, that "the Award be modified to clarify whether Grievant shall be reinstated to his former position as a Group Leader Machinist" (the pay rate for which is at Labor Grade 20), and, second, that "the Award be modified to prohibit the Employer from imposing the 4th degree demerit."

On December 15, 2011, counsel for the Employer served upon me the Employer's Objections to the Union's Motion. The Employer urges that "any clarification of the award which results in a substantive change of the merits of the award constitutes an improper modification of the award," not authorized by the Statute.

In the rulings I make below, it is my intention to clarify ambiguity in the Award and not to make any substantive modification to it. I understand, however -- with respect to the part of the Union's Motion that seeks the return of the grievant to the job he held at the time of his discharge -- that the parties disagree about the meaning of the phrase, "to his employment," which I used in directing his reinstatement. Each party argues that the meaning of that phrase is not ambiguous, but, instead, that the phrase has the unambiguous meaning that each party proposes, though each party proposes a different meaning for the phrase. Regrettably, I find -- confirmed by the fact that each of the parties proposes a different meaning for the phrase -- that it is, in fact, ambiguous, and, for that reason, it is appropriate that I state what I intended by the use of that phrase, not as a modification of the Award, but as a clarification of its ambiguity.

First. The Union interprets the language of the Award that directs the Employer to "reinstate the grievant to his employment" as requiring the Employer to return him to the particular job and classification he held at the time of his discharge, on September 27, 2010 -- that of Group Leader in

Machine Repair. As I understand its argument about the language, the Union reads the use of the possessive pronoun "his," which I wrote as a modifier of "employment," as restrictive -- meaning that the Employer is directed to reinstate the grievant to the particular position he held at the time of discharge.

The Employer argues that "his employment" can and should be interpreted more broadly, reading the modifying possessive pronoun as non-restrictive, i.e., as a word that has no particular significance except to indicate that it directs reinstatement of the grievant to any employment (provided he is qualified by experience or skill to perform it). The Employer argues that, if so interpreted, it has complied with the Award's reinstatement requirement by providing the grievant with the employment described in the Return to Work Letter.

I make the following clarification of the sentence in the Award that directs the grievant's reinstatement. I intended that the grievant be returned to the job and classification he held at the time of his discharge. As I have indicated above, the sentence is ambiguous, and, because the readings of both parties are possible, it is appropriate to clarify it.

Upon a review of some of the past awards I have written that direct reinstatement of a discharged employee, I find that I have sometimes used the phrase, "to his (or her) position," and that I have sometimes used the phrase used in this case, "to his (or her) employment." Notwithstanding this difference in wording, I have always intended that each grievant be returned to the status quo ante -- that the reinstatement be to the

particular job and classification he or she held at the time of discharge. I had the same intention when I wrote the Award in this case.

Second. The other part of the Union's Motion asks that "the Award be modified to prohibit the Employer from imposing the 4th degree demerit," as described thus in the Return to Work Letter:

You are being returned to employment on a 4th degree demerit for first offense Drug and Alcohol policy violation. This demerit will remain active for twenty-four (24) months. This letter will serve as written notification of the 4th degree demerit. Per the Factory Rules and Policies, in the event you receive any additional demerits while on the active 4th degree demerit, you will be terminated.

The Union argues that the imposition of a 4th degree demerit for the grievant's "first offense Drug and Alcohol policy violation" subjects him to "double jeopardy" -- to two disciplines for the same offense. The Union argues that the fourteen-month disciplinary suspension imposed by the Award in lieu of his discharge should be regarded as discipline imposed for all the misconduct described in the Notice of Discharge, including the first offense violation of the Drug Testing Policy, and it argues that imposition of a 4th degree demerit now, after his return to work, is a second discipline for the same misconduct.

As I understand the Union's position, it also argues that, even if imposition of a 4th degree demerit is deemed proper, the active life of the demerit should run from September 27, 2010, rather than from the date of his return to work,

November 28, 2011. The Union urges that, if the original discipline imposed by the Employer had been other than discharge, as required by law, fourteen months of the twenty-four month active life of the 4th degree demerit would have passed by November 28, 2011.

In response to the Union's second request for relief, the Employer makes the following arguments. The addition of a 4th degree demerit to the grievant's record is not discipline. Rather, it merely places the suspension imposed by the Award for the "first offense Drug and Alcohol policy violation" in the proper category under the discipline system established by the Red Book's penalty guidelines.

I agree with the Employer that the inclusion of a 4th degree demerit in the grievant's discipline record is not additional discipline. It classifies the discipline he received for the misconduct established in the discharge notice. Though Minnesota law prohibits discharge for a "first offense Drug and Alcohol policy violation," it does not prohibit either the long-term disciplinary suspension he received or recognition of the serious nature of the misconduct that led to that discipline by appropriate classification in the Red Book's penalty guidelines. Accordingly, I deny the Union's request that the Award be modified to prohibit the Employer from adding a 4th degree demerit to the grievant's record.

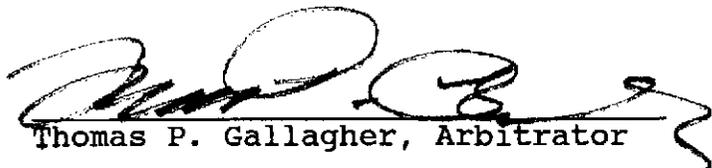
The Union also seeks a ruling that the twenty-four month period during which the 4th degree demerit remains active on the grievant's discipline record should be measured from September

27, 2010, the date of the notice of discharge, rather than from November 28, 2011. I make the following comments.

The period during which the grievant's misconduct should remain active on his discipline record is a matter that should be considered primarily in the future. If future discipline results in a future grievance and a future arbitration proceeding, just-cause issues, including issues relating to appropriate discipline, should properly be considered in that proceeding. Nevertheless, because the 4th degree demerit is based upon misconduct at issue in this case, I make the following comment, as guidance to the parties -- with the understanding that such guidance may be accepted or rejected in a future proceeding.

Measuring the active life of the 4th degree demerit from the date of the grievant's reinstatement is appropriate. It is the creation of a good work record over time spent working that is relevant to future issues about progressive discipline. Because the fourteen months during which the grievant has not been working show nothing relevant to any future consideration of appropriate discipline, the period during which the 4th degree demerit remains active should be measured from the date he returned to work, November 28, 2011.

January 4, 2012

  
Thomas P. Gallagher, Arbitrator