

**ARBITRATION DECISION - AWARD**

**IN RE**

Garelick Manufacturing Company  
St. Paul Park, Minnesota

and

FMCS #06-02979-7

IUE-CWA Local 87042

**DISPUTE:**

Employee Gary Frazee discharge.

Arbitrator:  
Daniel G. Jacobowski, Esq.  
September 28, 2006



COMPANY EMPLOYEE HANDBOOK. The company extensively recites discipline up to immediate discharge for a variety of offenses including fighting and/or threatening injury of fellow employees, having a weapon on company property or while performing job duties. It recites that threats or threatening behavior or violence against others on company property are strictly prohibited and that weapons in the workplace will not be tolerated.

#### **BACKGROUND - FACTS**

The company manufactures boat and marine accessories. The grievant, 21 years with the company, had a job of taking steel and aluminum tubing for final finishing and packing for shipment. Across the aisle from him were two co-workers who cut the aluminum tubing to prescribed lengths and then passed them over to the grievant. With them he had a continuing dispute in his complaint that they were not doing the work properly for him. Near to them also across the aisle was a third co-worker friend to whom the grievant made his gun remark, which led to his discharge.

The company case. Group leader Tyler and also a union shop steward, gave testimony on his experience with the grievant and the bickering feud with the other two co-workers across the aisle. They were always bickering and the grievant got hot and didn't take it well. He frequently crossed the aisle to them with his complaints. However, the other two seldom crossed the aisle back to him other than delivering to him the parts they finished cutting. Tyler and the supervisor frequently told them they had to stop, it was affecting the whole factory. The grievant seemed to be increasingly agitated, in an obsessive compulsive manner. Another employee related that he said his wife was trying to poison him with the lettuce in his sandwiches. The complaint of the grievant was that the other two were leaving their parts dirty for him and stacking them too high. The grievant was conscientious and a perfectionist in his work.

The specific remark incident occurred on Thursday morning, January 19, 2006. Early, Tyler had told the grievant to get back to his work station and the grievant responded by telling him to shut up and not tell him what to do. Tyler also noted the next morning on Friday, January 20, one of the two and the third friend approached Tyler and the friend related that the grievant had said to him "are you going to duck when I bring in my .44." This had been said to him on Thursday. On Friday morning the friend asked if he was serious and the grievant responded what do you think. The friend said he didn't report it to the company because he wasn't sure whether the grievant was serious. But the two did come to him each saying they were afraid. Tyler didn't think so and thought they were exaggerating but he thought he better tell his supervisor.

The supervisor was well-acquainted with the continuing bickering, warned the three about it and specifically directed and warned the grievant not to cross the aisle to the other two and to stick to his job. When Tyler related to him the gun statement remark he didn't think it was made that seriously, thought that all three should be disciplined, but related of the information to HR manager Deziel. He did question the third party friend as to what the grievant said and was told the grievant said that "he better duck if I bring in my .44."

Although the grievant was the one who frequently crossed the aisle in complaint to the other two, both Tyler and the supervisor felt that the other two were more the instigators causing the bickering. Tyler noted that the grievant was more soft spoken and that of the other two, one was 300 or more pounds and the other was active in martial arts. It was also noted that the grievant got along pretty well with other employees, and had no record of any prior disciplines.

When the supervisor reported the matter to HR Deziel she then talked to the grievant and to the third party friend and initially did not feel the matter to be that much a problem. Later, however, the other two made a complaint to her of the threatening remark and she held another meeting and decided that it was best to suspend the grievant until further investigation on Monday. On Monday she and the plant manager talked to all concerned and reviewed it with plant manager Garelick. Ultimately he made the decision that the discharge was appropriate, that the grievant had admitted making the remark. The president felt that it was a serious matter and that he had a responsibility to employees and to the company because the remark with the background was disruptive and a threat to safety. The company is clear that there is no tolerance for threats or weapons in the workplace. The employees were entitled to a safe, clean environment free from such threats and disruption. The grievant was advised of his discharge on Tuesday, January 24, 2006, for his threatening remark, and in context with his continuing bickering in spite of warnings.

The union case. The grievant indicated that he had worked in the area longer and that the two other co-workers with whom he had bickered had been assigned there some years later. Initially they got along fine but soon after one co-worker, K in particular, started to boss him around and tell him what to do. Among the complaints he had of the two thereafter was that they didn't clean off their parts properly and delivered them to him dirty. Also, they packed the parts too high, which were difficult to handle. He felt they were doing this deliberately to agitate him. He admitted frequently crossing the aisle to complain to them. On Thursday, January 19 he admitted going over to them and K told him to go away. Supervision told him to return to his job. On the way back he admitted saying to his third-party friend who worked nearby "what would you do if I came with my .44? Would you duck?" He related that he and his friend

frequently remarked about his .44 gun and that at one time the friend even suggested bringing it to work and taking care of the other two bickerers. They joked about it Friday morning.

He did admit one time joking to a friend that his wife was trying to poison him with spoiled bad lettuce she would put in his sandwiches. He stated that he was only joking. He admitted owning a .44 gun for 17 years but he never carries it. He bought it at a gun show. He did fire it occasionally at a gun range in Wisconsin but the last time fired was three years ago and he keeps it under lock.

#### **ARGUMENT**

COMPANY: In brief summary, the company argued the following main points. 1. It recited the facts supporting the discharge. Clear company policy prohibits threats and weapons in the workplace. The grievant, a perfectionist, increasingly complained to the other two of their faulty work and crossed the aisle to them. The bickering between them was escalating, and the group leader and supervisor frequently told the grievant to stop his bickering and crossing the aisle. After again being so directed by the group leader the grievant made the gun remark to his friend. Upon report to management, it investigated and determined that the bickering feud had become worse, was affecting the workplace, and the gun remark was considered as threatening to the safety of all the employees. 2. Violence and murder in the workplace have increasingly become a problem in recent years as reported in the media and studies. 3. Many cases were cited as supportive. 4. Here the clear misconduct warranted the discipline, which was carefully considered after thorough investigation and due process. 5. Respectfully, the discharge should be upheld.

UNION: In brief summary, the union argued the following main points. 1. The grievant is a 21-year employee, conscientious, and with a clean disciplinary record. 2. The remark of the gun was not meant as a threat but was made in joking banter between the grievant and his co-worker friend. 3. The remark was not made to the other two bickering co-workers. 4. The friend did not regard the remark as serious, but only banter. 5. The group leader, the supervisor, and the HR manager did not initially express concern nor seriousness about the remark initially. 6. It was only after the other two bickerers complained that the company gave the matter further consideration. The claim of the two that they were afraid is suspect, and they were recognized as the main instigators of the bickering. 7. The grievant did not violate the company weapon prohibition policy. He did not bring the weapon to work nor threaten to. 8. While the company has the right and responsibility to be concerned about the safety of employees, it cannot justify a termination simply because it thinks that the employee may pose some extremely remote risk. 9. The union cited many cases which it claimed supportive, both where disciplines were upheld and others were revoked. 10.

Respectfully, the grievance should be sustained and the grievant returned to his job with full back pay benefits and seniority.

#### **DISCUSSION - ANALYSIS**

I recognize that any remark of bringing a gun to work raises a red flag of alarm or concern, particularly in today's age of increasing reports of violence and shootings at the workplace. Even if made in foolish, non-threatening jest as claimed by the grievant, such a remark is foolish and unwise. Upon hearing of the remarks, the company here had ample cause to investigate the matter further and to determine its proper action. The remark and such investigation by the company was further compounded by the bickering history of the grievant with his two co-workers and his incident with them and admonishment by the group leader to return to his job that very morning. However upon full analysis, I have come to the conclusion that the discharge was not justified, based upon the following reasons and factors from the evidence.

1. The gun remark was not a threat nor made in any threatening manner of intent. It was simply a conjecture of "if" and not a reference to when or might.

2. It was made only privately to his friend, as a joking banter between them, even if sardonic or bitter resentment.

3. The evidence indicates the other two co-workers were the main instigators and baited him, causing his agitation and complaints.

4. The company, aware of the bickering and the cause of the other two, failed to take more positive management action to quell the cause of the bickering, other than telling all three to stop bickering.

5. While supervision did tell the grievant to stop crossing the aisle and to stick to his job, it failed to apply a lesser discipline of a formal warning, which may have helped reduce its continuance.

6. The remark was not made to the other two co-workers but only to his friend. There was no threat to them.

7. He brought no weapon to work nor was there any evidence of mention of such a possibility to anyone other than the banter with his friend.

8. The grievant was entitled to greater consideration by the company for his record of 21 years, with no prior disciplines, and that he got along reasonably well with other employees.

9. Finding: In summary, I find that the discharge was not justified and should be revoked, however with a lesser penalty as appropriate.

10. Finding: I further find that a lesser penalty of three-day suspension is justified, for the following reasons. While the gun remark was not a threat and only to his friend, it was a foolish and unwise remark to make in a work setting, indicating an improper state of mind. While made in a joking banter, it was with a sardonic and bitter resentment and failure to heed the admonishment given not to cross the aisle and to stick to his job.

11. If the complaining problem of the grievant persists or again arises, the company could consider or recommend anger control counseling as appropriate.

#### **DECISION - AWARD**

DECISION: The grievance is sustained. The discharge is to be revoked and reduced to the lesser penalty of a three-day suspension.

AWARD: The company is directed to revoke the discharge and reduce it to the suspension and to otherwise offer reinstatement to the grievant with full remaining back pay and restoration of benefits and seniority.

Dated: September 28, 2006

Submitted by:

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Daniel G. Jacobowski, Esq.  
Arbitrator