

Bocken #8

IN THE MATTER OF ARBITRATION BETWEEN:

Employer

AND

Union

December 16, 1993

ISSUES

1. Was the Employee was terminated for just cause.
2. If not, what is the remedy?

BACKGROUND

On the evening of March 9, 1993, the Employee punched in five (5) timecards in addition to his own timecard. This was contrary to Employer policy and a violation of category one of that policy. Inasmuch as there had been a number of maintenance employees who regularly commute to and from one of the outer islands to work found either catching flights to City 1 which arrived after the employees started the shift, or catching flights from City 1 which departed before the end of their shifts, there was evidence that time cards were punched in and out by individual employees falsifying their timecards for pay purposes or having another employee punch the timecards in and out. Because of the abuse of corporate policy, a Maintenance Newsletter was posted on March 1, 1993 which warned of the practice and pointed out that falsifying timecards or punching in and out for other employees was a violation of the Corporate Policy Manual,

Section 900, page 900:6. The newsletter further stated that the Employer would not condone any violation of the policy and that termination of employment was the penalty for the offense.

On March 9, 1993, the Employee was observed by a supervisor punching in his own timecard and timecards for five other employees who were not with him at the time. According to the supervisor, he observed the Employee looking around to see if anyone was watching him before he punched in the cards for the five other employees.

The supervisor testified that the Maintenance Letter referring to abuse of corporate policy was posted on the bulletin board and circulated on a "read and sign" procedural memorandum which the Employee initialed that he had seen.

The Employee admitted the charges against him but contended that he was not aware of the policy expressed in the March 1, 1993 Maintenance Newsletter referring to the abuses and that further violations would result in termination.

As a result of the Employee's violation of Employer policy, he was terminated from his employment with the Employer.

EMPLOYER POSITION

The Employer introduced evidence that the March 1, 1993 Maintenance Letter was posted on the bulletin board in Maintenance Control. This bulletin board is approximately ten feet from the time clock. In addition to that, the maintenance supervisor testified that the March 1, 1993 letter was distributed to the employees on March 1, 1993 and that each employee initialed receipt. The maintenance supervisor further testified that while he did not recall handing the newsletter personally to the Employee, he did note the Employee's initial of receipt of the newsletter. However, that document has since disappeared.

The Employer introduced further evidence that there had been a particular abuse of the policy against punching in for other employees and that it became imperative to stop the abuse.

Accordingly, the March 1, 1993 Maintenance Newsletter was published and distributed, which warned employees that further violations would result in termination. This Newsletter was published after a meeting with Union representatives regarding the abuse.

UNION POSITION

While the Employee admitted to violating Employer policy, he believed that since other employees, including supervisors, were violating the policy that it was not taken too seriously by the Employer. Evidence was introduced from other employees that the practice was prevalent.

Witnesses were called by the Union to testify concerning receipt of the March 1, 1993 Newsletter. One witness acknowledged receiving the Newsletter but he doesn't recall the date, except that it was a payday. Further, he did not notice the letter on the bulletin board. Another witness testified that he had seen Maintenance Newsletters on the bulletin board, but he didn't remember whether or not he saw the March 1, 1993 Newsletter. Another witness for the Employee testified that he believed he received the Newsletter dated March 1st when he was paid on March 10th. He acknowledged that he may have seen the Newsletter on the bulletin board but wasn't sure if it was prior to March 10th. He recalled on cross-examination that there was a separate "read and sign" log for the newsletter. He acknowledged receiving it the night of the Employee's incident.

The Employee testified that he was unaware of the March 1, 1993 Maintenance Letter until after he was called in by Management after he was observed punching-in for five other employees. He said he did not see the Newsletter on the bulletin board. He testified that he rarely reads the

bulletin board as a lead mechanic told him not to read the bulletin board on Employer time. So he decided that he wouldn't read it anymore. He further stated that no supervisor, lead mechanic or manager told him that the Employer was reemphasizing the prohibition concerning punching the time clock for other employees.

DECISION

Since the Employee has admitted to punching in for five other employees in violation of Employer policy, the only issues are (a) whether or not he was aware of the March 1, 1993 Newsletter prior to March 9th when the incident occurred, and (b) whether past practice of the Employer mitigated against termination as a disciplinary measure for violating the Corporate Policy Manual regarding punching another employee's timecard.

The Employee has admitted that what he did was wrong. However, he believed that termination was an unjust discipline for his action in view of the past practice of the Employer in dealing with such matters, and in the prevalence of the practice itself. Further, the Employee denied knowing that a more stringent policy was to be followed by the Employer and that termination would result from a violation of the Corporate Policy Manual Section 900.

The maintenance supervisor testified that he personally handed out the Newsletter to employees after it was prepared March 1st, and that he remembered noting the Employee's initial receipting for the Newsletter.

The Employer admitted that prior to March 1 there was an abuse of the policy and that violators had not been terminated. The Director of Maintenance testified that after noting an abuse of the policy concerning punching in for others, an investigation was conducted and management determined that possibly twenty (20) suspected violations of the Employer policy occurred.

Inasmuch as they did not want to fire twenty employees, the Employer representatives met with the Union to determine how to correct the problem. It was decided that a new emphasis would be placed on the abuse of the policy, and that is why the March 1, 1993 Newsletter was issued to warn employees that from then on violators would be terminated.

While it is unfortunate that the Employee was the first employee to be caught violating the newly emphasized policy against punching in for others, the fact remains that he knew that what he had done on March 9th was wrong. Further, the Arbitrator finds that the Employee knew or should have known that the March 1st Maintenance Newsletter had been distributed on March 1st and put on the employees' bulletin board. The Employee cannot excuse his failure to read the bulletin board by simply stating that he was advised by a supervisor not to read it on Employer time, and he then decided not to read the bulletin board anymore. That is an unacceptable excuse, as there are off-duty times when the Employee could have taken a few moments to read the bulletin board. The bulletin board is for the benefit of employees as well as the employer and is something which the employees are obligated to read.

For the foregoing reasons, the Arbitrator finds that the Employee was aware that what he had done was in violation of corporate policy and that he was aware or should have been aware, that the March 1, 1993 Maintenance Newsletter made it clear that any violation of the Corporate Policy Manual regarding punching in another employee's timecard would result in termination.

AWARD

The Grievance is denied.