

Bloch #3

IN THE MATTER OF ARBITRATION BETWEEN:

Employer

AND

Union

FACTS

Most of the facts in this case are undisputed. On the night of November 2, 1993, the Employee, a mechanic, entered a customer service office and removed a microwave oven. The Employee says he was taking it to install it at a later time in the Machinists' lounge. The Employer claims he was stealing it. Accordingly, he was discharged.

ISSUE

Was the discharge of the Employee for just cause and if not, what should the remedy be?

EMPLOYER POSITION

The Employer contends that, notwithstanding the microwave oven later turned up in an Employer store room, the Employee attempted, on the evening in question, to remove it from the office and take it for his own use. This, it contends, was a clear violation of rules prohibiting theft. The penalty of discharge was appropriate.

UNION POSITION

The Employee acknowledges removing the microwave secretly. He did not want it known that he was moving the equipment for use by the machinists, lest his actions be reported. He denies, however, that the actions were intended to remove the oven for his own use.

The union notes that other employees who "borrowed" furniture and materials for use by other departments were given substantially lower penalties. The union requests, therefore, that the Employee be reinstated and that he be made whole.

ANALYSIS

The Employee vigorously disputes the theft charge. On the evening in question, he says, he had entered the room earlier with a supervisor and another employee to reset a computer. At that time, says the Employee, he saw the microwave and determined that he would later come back and take it. Because several microwaves had been stolen from the area in the past, the Employer had installed hidden surveillance cameras. They confirm the Employee's re-entry into the room and his taking of the oven.

The evidence in this case reveals that the displacement of furniture and equipment within the facility, some on a temporary basis and some on a not-so-temporary basis, occurs with some regularity. In this case, the supervisor who accompanied the Employee on his first foray into the room, taking a chair and a telephone for use in the Maintenance Division, was later given a "strong" verbal warning. The question, therefore, is whether the Employee's taking of the microwave was for his own personal use or whether, as he claims, it was for the benefit of the machinist group in general which, at the time, was in the process of building an expanded lounge.

Management's burden, in a case such as this, is to provide clear and convincing evidence of the charge. In this case, as noted above, management has provided videotapes that clearly demonstrate the taking and, indeed, the Employee acknowledges the act. Accordingly, the question turns to his intent.

In certain respects, the Employee's story, if unusual, is tenable. He took the microwave, placed it in a black plastic bag and, he claims, moved it to a nearby storeroom, where he placed it on a shelf. His intent, he says, was to have it "found" some time in the near future when that room was to be expanded for use by the machinists. He did it furtively because, he says, he didn't wish to be identified by certain members of the workforce that might attempt to earn a "merit badge" by turning him in.

In several respects, however, the Employee's story is tenuous and ultimately unconvincing. Having reviewed the videotapes and discovered evidence of the taking, the Employer searched the entire area, to no avail. Management then called Employee in to be interviewed on the 4th of November. Initially confused and concerned that his job was in jeopardy, the Employee refused to talk about the microwave. Then, aware that he would have to answer to the police, he admitted taking it. At that point, he told the Employer that the oven was hidden in the storage room on a shelf in the black plastic bag. A management representative, accompanied by a union official, immediately went to the room, but the oven was not there. At that point, the Employee was informed he would be terminated. Days later, the microwave was found by another employee on the floor, in the black plastic bag, in an Employer storeroom in another part of the terminal. If one is to accept the Employee's proffered explanation for the taking, there must also be an

explanation for the vanishing microwave and for its subsequent reappearance. But these events are, ultimately, inexplicable.

By the Employee's account, he had placed the microwave in a nearby room, acting alone, on the night of November 2. It is conceivable that someone else happened upon the oven thereafter, but if so, why move it? If the intent was to steal it, why bring it back? If the intent was not to steal it, why move it to another storage area on the floor? These questions are serious, and they stand unanswered. But having, by his own admission, attempted to secretly remove the oven in the first place, it is the Employee's clear obligation to respond to these questions. In the absence of any answers, the facts leave room for no reasonable conclusion other than the Employee committed the charged acts. For these reasons, the grievance must be denied.

AWARD

The grievance is denied.