Bocken #4

In The Matter of the Arbitration Between:

EMPLOYER.

AND

Union

Arbitration Hearing: December 5, 1995

ARBITRATION DECISION

The grievance of the Employee, who was terminated from his employment with the Employer effective June 19, 1995, was heard on December 5, 1995 at the Employer's Conference Room.

BACKGROUND

On Saturday, August 27, 1994, the Employee "no-showed" for work after having an approved swap with another employee. Due to this, the Employee's supervisor suspended his swap privileges for six months and warned the Employee that future incidents would result in disciplinary action up to and including termination. By letter dated September 2, 1994, an investigative hearing was set for September 7, 1994. In the letter the Employee was advised that he was being charged with failing to properly notify the Employer of absence in violation of the Employer's Rules of Conduct. By agreement, the hearing was rescheduled for September 27, 1994. However, six days prior to the scheduled hearing, the Employee filed for occupational leave (shoulder problem), and did not return to duty until April 13, 1995.

On May 24, 1995, the Employee failed to report for work. His supervisor called the Employee at his home. The Employee said he overslept but would be right in. Again, he failed to report and, after a second call from his supervisor, admitted he "screwed-up". His supervisor advised him there would be a hearing concerning the incident.

On May 29 and 30, 1995, the Employee failed to report to work. He later told his supervisor that "he screwed-up and would not do it again."

On June 21, 1995, after an investigative hearing was held, June 20, the Employee was terminated effective June 19, 1995. The hearing officer noted that the Employee had a prior history of absences and warnings, and that his poor attendance record had not improved.

ISSUES

1. Was the Employee terminated for just cause?

2. If not, what should be the remedy.

EMPLOYER POSITION

An Employer witness testified of the importance of a customer service agent reporting to work on time. The Employer's "on-time" performance effort emphasizes this requirement as indicated in the Employer's Attendance Control Policy and "No Show Policy". Evidence was introduced reflecting that the Employee had a history of poor attendance dating back to 1987. Due to this, the Employee had been issued frequent verbal and written warnings of disciplinary action. On May 19, 1989, the Employee was issued a letter of termination warning as his absentee record had not improved. A similar warning

was sent May 2, 1990. In 1991, the Employee was placed on a four week suspension without pay for calling in sick, yet appearing at an Employer sponsored golf tournament that same day. He was also placed on a six month probationary period. On June 3, 1994, the Employee was provided another warning letter concerning his poor attendance, which advised him that if he did not improve, he would be subject to disciplinary action up to and including discharge.

After an investigative hearing, the Employer concluded that the Employee should be terminated effective June 19, 1995. A third step hearing was held on July 5, 1995. The hearing officer denied the grievance and upheld the termination decision, citing the continued poor attendance of the Employee, his failure to properly notify the Employer of his absences, and his failure to improve after frequent warnings.

UNION POSITION

The Union pointed out that many of the absences were caused by injuries and illness; the oversleeping which prompted some of the Employee's absences was caused by medication. Further, as an employee for 24-1/2 years, the Employee should be given another chance.

Finally, the Employee could not recall receiving certain warning letters, and the Employer's memorandum dated February 4, 1991, stated that the minimum discipline for a "no-show" violation would be a five working day suspension, and did not mention termination.

DECISION

The Employer introduced evidence of its Attendance Control Policy and "No Show" Policy. The Employee was aware of those policies. Notwithstanding frequent warnings, including warnings of possible termination, the Employee's absentee record continued. The Employer established that from 1987 through 1994 the Employee had time lost without vacation totaling 3,170 hours. In addition, in 1995, the Employee was on occupational leave from January 1, 1995 to April 14, 1995; on sick leave May 1 to May 3; again on sick leave from May 17 to May 22; on May 24 he was absent because he overslept and did not call in as required; on May 25 and 26 he was on sick leave; on May 29 and 30 he failed to appear for work and did not call in as required.

It is well recognized that an Employer has a right to terminate an employee who cannot perform the job for which the employee was hired, because of excessive absenteeism -- even though the repeated absenteeism is prompted by a medical condition. Stowe-Woodward Co., (1982) 78 AL 1038; How Arbitration Works, Elkouri (4th Ed.) pp. 576-577. The Employee's position is even more aggravated by unexcused absences caused by oversleeping or failing to call in as required. In this connection, it was noted that the Employee worked as a bartender while on sick leave; although he testified that the job did not require lifting.

The Employer repeatedly warned the Employee that continued absenteeism may result in termination. While the Employee said he did not recall seeing some of the warning letters, it was established that the letters were sent to the proper address. On cross-examination, the Employee admitted that he failed to pick up mail sometimes at that family address as he was living elsewhere.

The Employer introduced its policy directives at the hearing. There is no question that the Employee was aware of these policies. He was repeatedly warned that his continued pattern of absenteeism could lead to his termination.

It is unfortunate that an employee of 24 years should be terminated. However, the Employer has exhibited considerable patience with the Employee since 1987, and cannot be expected to continue to employ someone who cannot be depended upon to perform his job.

AWARD

The grievance is denied.