

Bocken #7

In the Matter of Arbitration Between:

Employer

AND

Union

DECISION AND AWARD

An arbitration hearing was held at the Employer's conference room on October 28, 1997.

BACKGROUND

On June 24, 1996, the Union was notified by the Employer that an investigative hearing would be held on June 26, 1996 in accordance with Article XV, Paragraph F, of the Collective Bargaining Agreement ("CBA") between the Union and Employer. The hearing concerned the charge against the Employee that he violated the Employer Rules of Conduct as follows:

- (a) Section 900, Category I, 111. Misuse of pass on reduced fare travel benefits by an employee or eligible dependents.
- (b) Section 900, Category I, 015. Defrauding or attempting to defraud the Employer.
- (c) Section 900, Category II, #16. Misconduct of employee and/or eligible spouse/dependent while traveling or attempting travel on a pass or reduced fare.

By letter dated July 11, 1996, the hearing officer, Person 1, advised the Union of her decision to terminate the Employee effective June 28, 1996, and summarized the matters presented at the hearing which commenced June 26, 1996, together with her findings. Specifically, she found that on June 20, 1996, the Employee traveled with an unidentified female using a trip pass, and represented the unidentified female as his wife. Such conduct violated the Employer's Rules of Conduct.

The Union filed a grievance contending that the Employer did not provide the Employee, after suspending him, with a fair and impartial hearing as required by Paragraph F, Article XV, of the Collective Bargaining Agreement ("CBA's). Therefore, the Employee should be reinstated as provided in Paragraph H, Article XV, of the CBA.

By letter dated September 5, 1996, the parties agreed to waive the third step grievance procedure hearing, and to submit the grievance to the System Board of Adjustment.

Subsequently, the parties agreed to waive the System Board of Adjustment procedure, and to refer the matter to an arbitrator for decision.

ISSUE

1. Did the Employer violate Article XV, Paragraph F, of the Collective Bargaining Agreement?
2. If so, what is the remedy?

RELEVANT PORTIONS OF THE COLLECTIVE BARGAINING AGREEMENT

Article XV, Paragraph F: No employee covered by this Agreement shall be discharged or suspended without pay from service without a prompt, fair and impartial hearing, and shall be represented and assisted at such hearing by a Business Representative, or his designee and members of the Local Committee. At least forty-eight (48) hours prior to such hearing the employee and members of the Local Committee and the Business Representative shall be advised in writing of the precise charges against the employee. Nothing herein shall be construed as preventing the Employer from holding an employee out of service without pay pending such hearing

Article XV, Paragraph G: Any employee dissatisfied with the action of the Employer in suspending or discharging him may appeal from such action by filing an appeal to the step three of the grievance procedure as provided for in this Agreement, and a hearing shall be held within ten (10) days of submitting such appeal. Oral and written evidence may be introduced at such hearings, and witnesses may be required to testify under oath. All decisions by Employer

representatives, and all appeals filed by the employee or Union shall be in writing, and shall conform to the time limitations set forth in the step three of the grievance procedure.

Article XV, Paragraph H: If, as a result of any hearing or appeals, it is found the suspension or discharge was not justified, or if Paragraph F above is not complied with, the employee shall be reinstated without loss of seniority, and made whole for any loss of pay he suffered by reason of his suspension or discharge. His personnel records shall be corrected and cleared of such charge; or if a suspension rather than discharge results, the employee shall have that time he has been held out of service without pay credited against his period of suspension. In determining the amount of back wages due an employee who is reinstated as a result of the procedures outlined in this Agreement, the maximum liability of the Employer shall be limited to the amount of normal wages he would have earned in the service of the Employer had he not been discharged or suspended.

DECISION

The Union contended that the hearing officer who conducted the hearing was not fair and impartial as required by Article XV, Paragraph F of the CBA. Specifically, at the arbitration hearing the Union complained that (1) it was not provided an opportunity to cross-examine Person 2, one of the key witnesses for the Employer; (2) written statements were submitted to and accepted by the hearing officer over the objection of the Union due to the fact that no opportunity to cross-examine was provided; (3) the hearing officer called the Employee a liar; and (4) the hearing officer talked to a witness outside the hearing.

The hearing officer, Person 1, testified at the arbitration hearing that the Union cross-examined Person 2 on the second day of the hearing. On the first day, Person 2 had to leave to take her son to the doctor prior to being cross-examined.

The hearing officer further testified that the Union never questioned her impartiality until the Union made its closing remarks at the end of the last day of hearings. At that time, the Union claimed she had a vendetta against the Employee and had made contacts

concerning the case outside the hearing. The hearing officer denied the accusation and testified that an example of her impartiality was her decision as a hearing officer on another matter involving the Employee. In that incident, the Employee was charged with striking another employee, but she held in favor of the Employee.

Person 1 related how she kept notes of the investigative hearing, and those notes reflected that the Union had an opportunity to cross-examine the Employer's witnesses. This testimony was not challenged. As to accusations that she talked to witnesses outside the hearing, no evidence was presented to indicate that her conduct deprived the Employee of a fair and impartial hearing. In fact, the Union had requested certain Employer documents, and Person 1 called to get them during the hearing. In reference to meeting the doctor, for whom the Employee's wife worked, Person 1 stated that the chance meeting with the doctor and his wife was not prejudicial nor any reflection of unfairness. Subsequently, at the investigative hearing a conference call was made to the doctor's office, and there was an opportunity for examination and cross-examination. This fact was confirmed by the Employee's supervisor who was present at the hearing as the Employer's representative when the call was made.

Person 1 denied calling the Employee a liar as alleged by the Union representative and the Employee's supervisor testified that he did not recall such accusation being directed to the Employee. In any event, the Union's evidence was insufficient to establish that the Article XV hearing officer's conduct denied the Employee of a fair and impartial investigative hearing.

AWARD

The grievance of the Employee is denied.