

**Gootnick #2**

IN THE MATTER OF THE ARBITRATION BETWEEN

Employer

AND

Union

HEARING: June 2, 1994

EXECUTIVE SESSION: June 2, 1994 RECORD CLOSED: July 6, 1994

**STIPULATED ISSUE**

Was the disciplinary action issued to Employee just and proper? If not, what should the remedy be?

**REMEDY REQUESTED**

The remedy requested by the Union is that the Board find that the action against the Employee was not just and proper or in compliance with the terms and conditions of the labor agreement and that the PE-1 be removed from the Employee's record.

**BACKGROUND**

The Employee in this case, has been employed by the Employer since 1985. In April 1993, at the time of the events which led to this grievance, he was a Lead Mechanic in City 1. In this case the Union is grieving the issuance of a written warning to the Employee. The notification of violation given to the Employee by his Foreman Person 1 stated as follows:

On April 8, 1993 at 0640 and again at 0650, you were directed by me to have someone clean-up an oil drip pan. Though you said you tried, when given specific directions from

me to find someone to clean-up an oil drip pan, you told me to write you up. When asked if you were refusing to obey my directions, you again told me to write you up.

Article 4(E) of the agreement provides: (E) Lead Mechanic

The work of a Lead Mechanic shall be the same as that of a Mechanic and, in addition, he shall be the employee who assigns, directs and approves the work of Mechanics.

Under the above language, Person 1 gives orders to the Lead, for assignment to the Mechanics.

The parties did not dispute the fact that, on April 8<sup>th</sup>, 1993, Person 1 directed the Employee to have an oil drip pan cleaned. The oil drip pan cleaning was not completed. As a result of the incident, the Employee was given a written warning for insubordination.

## **DISCUSSION**

### **I. INSUBORDINATION: FAILURE TO FOLLOW ORDERS**

It is well settled and undisputed that an employee, who fails to obey a supervisor's order, even if the employee believes that the order violates the collective bargaining agreement, is guilty of insubordination and is subject to discipline. With very few exceptions, an employee is required to obey a supervisory order and then use the negotiated grievance procedure for relief. None of the exceptions, which are principally for safety and health reasons, are applicable in this case.

Even assuming, for the purpose of argument, that during the previous negotiations the Employer unsuccessfully attempted to negotiate a provision to make a Lead responsible for the "quality and quantity" of the work of the Mechanics in his crew and under his jurisdiction, that fact does not excuse the Employee's actions in this disciplinary case.

This case is not a negotiation issue or a Union grievance claiming violation of the collective bargaining agreement. This is a disciplinary grievance brought by the Union to contest the issuance of a written warning to the Employee for insubordination.

In the negotiations, described by the Union, there is insufficient evidence to support the Union claim that the Employer unsuccessfully attempted to negotiate a requirement that employees must "obey now and grieve later". I am not persuaded by the Union claim that, based on previous negotiations described by the Union, denying this grievance would be "a text book application of "obey now, grieve later", and would give the Employer a contractual right it does not have and which it previously sought in negotiations. Nor am I persuaded that denial of this grievance would be a "mechanical adoption of the 'obey now, grieve later principle'." The basis for the "obey now grieve later" rule is well grounded in the basic and often expressed statement that "an industrial plant is not a debating society". Although the Employer is not an industrial plant, the concept that when a supervisor gives an order he must have the expectation that it will be followed, has never been stated in a clearer manner.

The Employee understood the order given to him by Person 1 in the clean-up room. Person 1 specifically told the Employee for the second time to "get someone to clean up that mess." When Person 1 asked the Employee if he was refusing to clean up the oil drip pan, the Employee said "write me up". The Employee repeated the statement "write me up." This indicated that he was aware that the consequences of failing to follow Person 1's order could be disciplinary action. Even assuming that Person 1's initial statement at about 6:40 -6:45 was not a direct order, Person 1 did give the Employee a direct order in the clean up room between 6:50-6:55. The Employee does not deny that the work was not completed.

When Person 1 found that the work was not completed, he looked for the Employee. When Person 1 found the Employee in the locker room, he asked the Employee why the work was not completed and why his order had not been carried out. The Employee took no action at that time to clean up the oil drip pan, or to get it cleaned up. The fact that everything but the oil drip pan was cleaned up did not cure the insubordination.

In the original grievance the Employee claimed that:

"he and a few of the other Mechanics were getting changed into work clothes when Person 1 came into the locker room and asked me to get someone to pick up the oil pan. I told him its five minutes til and that is my Union agreed on wash up privilege."

The Employee then told Person 1 "write me up". He said it twice. This indicated that not only did Employee understand the order, but that he was aware that there could be disciplinary consequences for failure to obey. It was the Employee's responsibility to comply with Person 1's order and to clean up the oil drip pan or see that it was cleaned up. His failure to do so constituted insubordination.

## **II. UNION CLAIM THAT PERSON 2 HAD PREVIOUSLY BEEN ASSIGNED TO CLEAN UP THE OIL DRIP PAN**

Person 2 is a Mechanic who was working in the bay where the oil drip pan was located. I am not persuaded by the Union claim that the Employee's obligation in this matter was satisfied because the job had been assigned to Person 2 who did not do it because he was repairing the transmission in a vehicle and did not have time to complete cleaning of the oil drip pan. I am not convinced by the Union claim that Person 2 had been specifically ordered to finish the cleaning of the oil drip pan by the Employee, and that Person 1 knew that the assignment had been given

to Person 2. The Union's claim that Person 2 decided in good faith not to clean up the oil drip pan, because he believed that he should give priority to the repair of the vehicle he was working on so it could be returned to service does not cure Employee's insubordination; nor is the Employee's insubordination excused or mitigated because the oil drip pan had needed cleaning for the past two shifts.

### **III. UNION CLAIM THAT THE EMPLOYEE DID FOLLOW PERSON 1'S ORDER WHEN HE ASSIGNED THE CLEAN UP TO A GROUP OF MECHANICS**

It is true that, after the order was given by Person 1, the Employee shouted across the room to a group of five or six mechanics who were not assigned to any other job to "to give Person 2 a hand" or "give Person 2 a hand in cleaning up the area." The mechanics clapped (as in giving a hand as applause). None of them cleaned the oil drip pan.

I am unconvinced by the Union claim that the Employee performed his duties as a Lead and that he complied with Person 1's order by shouting across the room as described above. I am unconvinced that he carried out his obligation by assigning the work to the Mechanics and informing Person 1 that he had done so.

I am also unconvinced that after the Employee shouted to the mechanics, to "give Person 2 a hand" or to "give Person 2 a hand in cleaning up the area", that they, rather than the Employee, became responsible for the failure to complete the work. I am not convinced by the Union claim that each mechanic had actually been given a direct order by the Employee and that each was insubordinate when each merely took the assignment as a joke and clapped rather than completing the task.

#### **IV. ISSUE OF WHETHER THE EMPLOYER VIOLATED THE AGREEMENT IS NOT BEFORE THE ARBITRATOR**

By making a finding that the Employee was obligated to obey the order and then file a grievance, I am not making a finding that Person 1's order conformed with all of the provisions of the negotiated agreement.

Even assuming, without finding, that there may be merit in the Union's claim that the order violated certain sections of the agreement, the Employee was under the obligation to obey the order and then file a grievance to claim that the order violated one or more of the following provisions of the collective bargaining agreement.

1. Article 2 (c) which provides in part:

(C) In the performance of their duties, employees covered by this Agreement shall be governed by Employer rules, regulations and orders issued by properly designated authorities of the Employer, providing such rules, regulations and orders are not in conflict with the terms and conditions embodied in this Agreement.

2. Article 5 (b) which provides in part:

All employees covered by this Agreement will be allowed a five (5) minute cleaning up period at the end of each shift which an employee can use for wash up and changing clothes.

3. Article 5 (J) which provides in part:

Employees at such stations will be allowed a five (5) minute cleaning up period prior to the lunch period, and five (5) minutes before quitting time.

4. Article 6 (F) which provides in part:

No employee will be expected to work overtime against his wishes

While these questions raised by the Union may be intriguing questions, none of them are properly before me. I have no authority to reach the question of whether Person 1's order and actions complied with the agreement since the Employee did not fulfill his obligations to obey Person 1's order and then subsequently use the proper mechanism of invoking his rights under the agreement by filing a grievance protesting the propriety of the order.

Put another way, the Employee was given an order which he and the Union believed violated the agreement. He was obligated to obey the order and then use the mechanism of the grievance procedure to assert his negotiated rights under the Agreement. He failed to do so. The grievance before me is a disciplinary grievance. My authority does not extend to answering the questions which may have been raised in a grievance which could have been filed if the Employee had first obeyed the order.

## **V. APPROPRIATE PENALTY**

The Employer is correct in its claim that the Employee's refusal to follow Person 1's order was insubordinate and that his repeated statement "write me up" indicated that he understood that there could be disciplinary consequences.

On the state this record, the written warning given by the Employer was the appropriate corrective discipline.

Accordingly, based on the entire record, the collective bargaining agreement and the facts and circumstances of this case the System Board makes the following AWARD:

1. The disciplinary action issued to Employee was just and proper.
2. The written warning issued to Employee was the appropriate penalty.
3. The grievance is denied.