

Lane #1

IN THE MATTER OF ARBITRATION BETWEEN

Employer

AND

Union

Pursuant to the Agreement between the parties effective March 21, 1995, this matter having failed of resolution under the grievance procedures prescribed in the Agreement, has been referred for final and binding arbitration before the undersigned Arbitrator, who was selected by the parties from a panel furnished by the National Mediation Board.

A hearing was held on Wednesday, April 10, 1996; at 1:00 p.m. Witnesses were sworn and testified under oath. On the basis of the testimony and evidence, and with due consideration of the statements of position which the parties elected to file within two (2) weeks from the date of receipt of the written transcript of these proceedings, the following Opinion and Award is rendered.

ISSUE

Did the Employer have just cause to suspend the Employee for three (3) days on November 4, 1994, and if not, what shall be the remedy?

OPINION AND AWARD

The Employer was known as Airline 1 prior to 1993 and is headquartered in City 1, State 1. The Employee, Employee, is an A&P Mechanic at the City 1 Maintenance Base and has been with Employer and the predecessor, Airline 1, since February 9, 1987. On November 4, 1994, the

Employee was suspended for three (3) days for improper job performance, and thereupon filed a grievance on the basis that the discipline was not for just cause, and should be rescinded and the Employee made whole for the time lost.

The Employer action was precipitated when QEC engine serial number 120110 was installed on an aircraft and on run-up on October 24, 1994, was found to be leaking fuel. Witness Person 1, Power Plant Manager at the City 1 base, testified that in an investigation to determine the cause of the leak it was found that one of two "O-rings" used in joining the fuel pump with the hydro mechanical unit (HMU) prior to assembly on engine number 120110 was missing. The missing O-ring was to seal the unit against loss of pressure at the point at which the pump and the HMU are connected. It is understood that the fuel pump supplies high pressure fuel to the HMU and this unit in turn supplies controlled fuel to the engine.

Further investigation revealed that the HMU and fuel pump were drawn from the Parts Department by the Employee on October 3, 1994, to be assembled together by the Employee, and thereupon installed as a part of the QEC build-up. Person 1 testified as to the seriousness of the fuel leak and possible consequence of a fire during engine run-up or in flight. The rotatable parts control tags for the HMU and the fuel pump were placed in evidence bearing the Employee's initials and employee number, and there appears to be no controversy with respect to the foregoing facts regarding the assembly of the HMU and fuel pump in the shop by the Employee on October 3, 1994.

The record reflects that the Pratt and Whitney Maintenance Manual is available in the shop, and fully treats with the maintenance and assembly of the fuel system, including the joiner of the hydro mechanical fuel control and the fuel pump, including the two (2) O-rings hereinabove

mentioned. Excerpts from the Maintenance Manual to this effect were placed into evidence as Employer Exhibit 1.

Person 1 also testified that on January 30, 1994, the Employee was performing the task of installing a bearing outer race into a bearing housing; that the top cast iron seal ring was not completely sealed; and that the bearing and housing were thereupon damaged and rendered unusable at a cost of \$11,400.00. Person 1, who was the Employee's superior at the City 1 base, stated that he counseled with the Employee at that time regarding this improper work, and the consequences thereof.

After the investigation was completed by Person 1 with respect to the missing O-ring, and the consequent fuel leak during the engine run-up, he testified that he took the matter to Person 2, Director of Maintenance, with responsibility for the maintenance production at the six (6) bases maintained by the Employer. Person 2 made the decision that disciplinary action should be taken, and that a three (3) day suspension would be appropriate. He testified that consideration was given to the improper assembly of the bearing unit on September 30, 1994, and to the fact that Person 1 had counseled the Employee with respect to that matter. He testified that he had concluded that the further demonstration of carelessness in the omission of the O-ring, as heretofore noted, required that more formal action be taken with the Employee as a corrective matter, and that a three (3) day suspension was deemed to be appropriate for this purpose. When asked why a written warning was not used, he testified that the problem was too severe to be dealt with by just a written warning, and that to have limited the action to a written warning would not have been proper. Subsequently, when recalled to testified further, Person 2 acknowledged that fuel leaks observed on engine run-up, either in the cell or on the wing, were not infrequent, but that this was not always the fault of the mechanics involved, and there had not

been many occasions when discipline was felt to be necessary. In this case he testified, "We had two back-to-back, close together incidents that both appear to be just inattentiveness to the work, not paying attention." He further said, "And I just felt that I couldn't let that go on; I had to do something. And that's the reason in this case we did what we did. I don't feel that every time a mechanic makes a mistake that it requires disciplinary action."

Person 2 also testified that in the interim an engine test cell has been made available at City 1, but that not all engines are run-up on the test cell because circumstances may require that they go ahead and put the engine on the wing for run-up purposes. He further testified and acknowledged that since this incident occurred a work card had been prepared covering the particular operation of assembling the HMU and the fuel pump, but that it had been considered a relatively simple operation and a card had not been found to be necessary at the time of the incident involving the Employee. In such circumstances, the reliance was placed upon the manual or manuals which were located in the shop and were available, as needed.

Union witness Person 3 is a Quality Control Inspector, and has been with the Employer for some six (6) years. He is also Chief Steward for the City 1 and City 2 maintenance bases. He affirmed that upon run-up in the test cell, or on the wing, fuel leaks are found, but that to his knowledge nobody had been disciplined to the point that they lost pay because of such leaks.

In the course of Person 3's testimony it was developed that there were some five (5) flights departing City 1 on the morning of October 24, 1994, and that the 8:20 flight was cancelled as a result of the fuel leak. He testified there was knowledge, or at least rumor, in the maintenance department that the 8:20 flight was not to be missed for maintenance reasons, it being attributable to the use of that flight by the airline president's daughter when returning to college. Further testimony developed that the flight department is the one which makes the call on what

flights to cancel, after getting information from maintenance; and, in this respect witnesses were unable to say precisely what time the engine run-up occurred, or what time information regarding the fuel leak problem was transmitted to the flight department.

Person 3 also was the first to testify that at the time the Employee assembled the pump and HMU the task was not covered by a work card, but that one was subsequently provided. He also testified that in the interim a fuel cell had been provided on the ground for run-up of engines in lieu of installing and running up the engine on the wing. The Employee testified that with respect to the September 30, 1994 incident, this was the first time he had assembled a bearing and bearing race. He said he used the manual instructions at that time. With respect to the assembly of a fuel pump with an HMU he indicated he had done this many times, both before and subsequent to the incident in question. He said that when he was counseled by Person 1 he did not recall any warning that a further action of that type would lead to disciplinary action; but subsequently, on cross-examination, he was asked, "Did he tell you to be more careful or anything like that?", and he replied, "Oh, yes. Yes, he did." Asked whether he felt that the three (3) day suspension was appropriate he replied in the negative, based upon "My years of service with no incidents." He further said that he could not really explain how it happened that the O-ring was omitted, other than possibly it may have fallen out, stating, "I'm just human, and I just think three (3) days was a little excessive."

POSITION OF THE PARTIES

It is the basic position of the Union that a penalty of a three (3) day suspension is excessive and should be reduced to a more appropriate remedy, particularly in view of the Employee's record of eight (8) years employment without any prior disciplinary action. The Union points out that in

the informal consultation of September 30, the Employee was not warned that disciplinary action might result if there were any further incidents, and at that time the Employee was not informed of the cost encountered by reason of his improper assembly of the outer race and bearing housing. Further, the record does not reflect any prior disciplinary actions where parts were damaged. The Union also contends that the selection of the 8:20 a.m. departure for cancellation was a factor in generating the action of suspension against the Employee, the departure of this particular flight having been given, according to Union witnesses, added importance because it was used by the daughter of the President of the airline to return to college.

It is the Employer's position that the decision as to whether and what degree an action should be taken is properly a function of management. In this circumstance, the nature of the Employee's carelessness or mistake in assembling the fuel pump and the hydro mechanical unit, coupled with a recent prior incident of a similar nature warranted the degree of action taken by the Employer. The action was and should be upheld, and the grievance herein should be denied.

OPINION AND AWARD

The facts, with respect to the incident which gave rise to the Employee's suspension appear to be uncontroversial. It is established that he assembled the fuel pump and the hydro mechanical unit and omitted the installation of an O-ring, which in turn, resulted in a significant fuel leak when the engine was installed on an aircraft and run up. The engine had to be removed, the aircraft taken out of service and flights cancelled, and the possibility of more serious consequences was present. Similarly, the Employee's action, at a point four (4) days earlier than the incident involving the O-rings, in improperly installing a bearing race into a bearing housing, with attendant damage rendering these parts unusable, was not factually contested. The three (3) day

suspension was essentially a progressive disciplinary action, and the question involved herein is whether this action was warranted under all the facts and circumstances involved.

The record does not reflect any rigid or regimented disciplinary action program involving the Employer and this Union. The Contract alludes to progressive disciplinary action only by way of stating in Article 16, Section H, that actions more than two (2) years old cannot be used in support of progressive disciplinary action. With respect to the counseling which occurred relative to the improper installation of the bearing race, the Employee did not recall that a specific warning was expressed with respect to further disciplinary action. The Supervisor said that he would normally include such a warning, but he could not recall whether he did so or not in this case. In any event, it is clear that the underlying facts as to the improper installation were well established and were reasonably ascribed to carelessness on the part of the Employee. And, when asked whether the counseling involved an admonishment "to be more careful or anything like that", the Employee replied in the affirmative. Despite the informality involved, the Arbitrator concludes that this counseling could be taken as an initial action insofar as progressive discipline is concerned.

It is well established that it is Management's right and function to determine the extent of disciplinary action, if any, to be taken in a specific instance. The first test of such action is to determine there was proper cause shown or "just cause", as the basis for action. On this score the facts involved in the Employee's assembly of the fuel pump and hydro mechanical unit are taken as establishing just cause for the Employer to take disciplinary action. The question then is whether a three (3) day suspension is excessive and should be reversed or modified.

In this Arbitrator's experience and in arbitral decisions, generally it is established that beyond a warning or reprimand a short-term suspension is not an excessive penalty per se, and is a

customary next step in the sense of progressive discipline. The record does not reflect comparative instances of disciplinary action on the part of the Employer, other than the testimony of the Union Steward that to his knowledge no employee had lost pay because of a fuel leak, and the testimony of the Director of Maintenance that there had not been many such instances when disciplinary action had been deemed necessary. The Director's rationale for taking suspension action as heretofore set forth is reasonable on its face. It is not seen as discriminatory or as arbitrary in nature, and the Arbitrator is impelled to find that it was a reasonable exercise of a Management function and of Management's rights under the Contract between the parties.

It is true that in the interim since the action was taken against the Employee, an engine test cell has been provided, and it may be argued that had such a cell been used rather than running the engine up on the wing of an aircraft, the potential consequences of a severe fuel leak might have been lessened. But, this does not appear to be relevant to the carelessness of the Employee in omitting an O-ring during the assembly of the component parts involved. Similarly, it is reflected that a card has been provided with respect to the assembly of the fuel pump and hydro mechanical unit as a result of this incident, although it had not been felt by Management that such a specific card was required for what is believed to be a relatively uncomplicated procedure. Again, the Arbitrator does not find that the provision of such a card at this point reflects upon or mitigates the actions of the Employee in omitting the O-ring during his assembly of these components.

There is also the intimation on the record that the degree of action taken against the Employee was in some manner linked to the rumored apprehension that the 8:20 a.m. flight should not be cancelled for maintenance reasons, because it was the flight used by the President's daughter to

return to college. The record reflects that the decision as to what flight, if any, to cancel was made by the Flight Operations Department, and was not in any way controlled by the Maintenance Department. Further, there is no reflection that the President's daughter or any members of his family were destined to take the 8:20 a.m. flight on that particular morning. And, in any event, it does not appear that the possible cancellation of this flight contributed in any way to the motivation of Management in taking the suspension action against the Employee. It follows, from the foregoing, that the three (3) day suspension was well within the Employer's judgmental latitude. The suspension should be sustained, and the grievance herein denied.

AWARD

The grievance is denied.