Wittenberg #1

IN THE MATTER OF ARBITRATION BETWEEN;

Employer

AND

Union

The undersigned, having been designated by the parties pursuant to the collective bargaining agreement, was selected to serve as arbitrator of the dispute described below. A hearing was held on December 18, 1995 at the offices of the Union.

The parties had a full opportunity to examine and cross-examine witnesses, to submit documentation and to make oral argument in support of their respective positions. The hearing was declared closed on December 18, 1995.

ISSUE:

Whether the Employee was discharged for just cause? If not, what shall the remedy be?

RELEVANT EMPLOYER RULES

> Violations of one or more of the following Rules will result in discharge unless mitigating factors are considered applicable.
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> Rule 3
> Falsely claiming:
> a) sick leave pay
> b) occupational injury leave pay
> c) other paid leave
> d) Workmen's Compensation benefits

Rule 4
Furnishing false information concerning absence from work.

BACKGROUND

The Employee was employed by the Employer as a Mechanic Helper at its City 1 Maintenance Operations Center from July 13, 1979 to January 9, 1995. He was discharged for violating Employer Rules 3 and 4. Specifically, the Employer claims that the Employee falsely claimed sick leave pay and furnished false information concerning his absence from work.

The events leading to the Employee's discharge are detailed below. In early December, 1994, the Employee requested time off without pay (WOP) for December 27 through December 30, 1994 for the purpose of traveling to City 2, Country 1. His request was denied. Thereafter, the Employee appealed to his general manager and was granted WOP for December 21 through 23, 1994. These dates, coupled with the holiday weekend, provided the Employee with six days off, requiring him to return to work on Tuesday, December 27, 1994.

Documents indicate that on December 25, 1994 the Employee saw a physician in City 2 who prescribed seven days of rest and tonics for his condition. The Employee testified that he rested at his brother's house in City 2 until December 31, 1994, after which he returned to the states.

The Employee was expected to return to work on January 3, 1995 at 3:00 p.m. Instead, he called in that morning and placed himself on the sick list, claiming that he had an appointment that day to see his doctor. The evidence shows that the Employee came to his workplace at approximately 3:00 p.m. that same day to pick up his paycheck. He did not visit his doctor until January 4, 1995, after which he returned to work. The Employee did not submit medical documentation to substantiate his absence on January 3, 1995. He testified that he was unable to get a doctor's appointment until the next day.

Doctor 1, a psychiatrist, testified on the Employee's behalf. Doctor 1 has seen the Employee off and on since August, 1977. Although she did not see him in 1994, the two spoke by telephone. Initially Doctor 1 diagnosed the Employee as suffering from low level anxiety and depression. In November, 1994 Doctor 1 spoke with the Employee by telephone about increased symptoms of anxiety, characterized by panic attacks.

The Employee attempted to contact Doctor 1 on December 24, 27, and 31, 1994 from City 2, but was unable to reach her. The two spoke for 19 minutes on January 3, 1995, after the Employee's return to the states. Doctor 1 provided reassurance to the Employee, but suggested he be checked out by his regular doctor before returning to work the next day.

After the Employee's return to work on January 4, 1995, the Employer launched an investigation into his absences. This included a review of the Employee's pleasure travel records. In the course of this audit, the Employer discovered three questionable absences affiliated with pleasure travel, one on April 22, 1993, the second on April 11, 12 and 13, 1994, and the third on August 30, 1994.

The Employer initiated charges against the Employee. The Notice of Investigative Review Hearing, which was sent to the Employee and the Union, listed alleged violations of Rules 3 and 4 on December 27 through 30, 1994 and January 3, 1995. Attached to the Notice were documents charging additional violations in April, 1993, April, 1994 and August, 1994.

Person 1, General Manager, Line Maintenance, served as the Hearing Officer at the Investigative Review Hearing on February 8, 1995. The Union objected to discussion of incidents not referenced on the Notice of Investigative Review Hearing. According to Person 1, he proceeded on all charges after the Union stated that it was prepared to respond to all charges.

Senior Staff Specialist Person 2 testified that it is the Employer's position that the entire document, not just the Notice of Investigative Review, which constitutes the charges against the Employee. According to Person 2, such discrepancies in the notice have occurred in the past, and the Employer either reissues the charges or proceeds with all charges providing the Union is prepared to proceed.

Person 3, Aircraft Mechanic Committeeman, who represented the Employee at the Investigative Review Hearing, testified that he objected to the inclusion of additional incidents being raised during the investigative hearing. He acknowledged, however, that the Union agreed to proceed on all charges and was prepared with information regarding the incidents in April, 1993, April, 1994 and August, 1994.

At the Investigative Review Hearing, the Employee was questioned about all three absences. The April 22, 1993 absence involved the Employee requesting time off with pay to take an A&P practical examination. The Employer had evidence that the Employee traveled to City 3 on April 20, 1993, to City 4 on April 21, 1993 and back to City 1 on April 22, 1993. During the investigation, the Employer learned that the Employee took the A&P exam in City 4 on April 22, 1993 and dropped all charges relating to that incident.

The Employer also investigated the Employee's absence on April 11, 12 and 13, 1994 when he called in sick from Country 2 for the same days that he requested and was denied WOP. Upon his return to work, the Employee was counseled about his absence. The Employee eventually submitted medical documentation to substantiate his illness in Country 2 and this absence did not form part of the basis for the Employer's decision to discharge. The Employer cited the incident,

however, to show that the Employee was counseled about absences affiliated with his pleasure travel.

The Employee's absence on August 30, 1994 was considered in the Employer's decision to terminate. The Employee requested WOP for that date in order to care for his daughter, which is considered emergency family leave. When his request was denied, the Employee appealed to his general manager and members of the labor relations staff for the time off allegedly to pick up his daughter from school and care for her while his wife was out of town. The Employee's pleasure travel records indicated that he traveled to City 4 with his wife and daughter on August 29, 1994, returning on August 30, 1994.

The Employee testified that he accompanied his wife and daughter to City 4 so that his wife could take the A&P examination, a claim substantiated by documentation. The Employee stated that his presence was necessary to care for his daughter while his wife took the examination. He denied that when he requested WOP that he told the Employer he needed to pick up his daughter after school.

OPINION

The issue before the Arbitrator is whether the Employee's absences on December 27 through 30, 1994, January 3, 1994 and August 30, 1994 represented falsification for leave purposes, justifying his discharge. Upon careful review of the evidence and argument in this case, I conclude that the Employee falsified the reasons for his absences, giving the Employer just cause for his discharge. My reasons follow.

At the outset, the Union raised a procedural argument concerning the Employer's reliance on the August 30, 1994 incident and other absences not specifically cited on the Notice of Investigative

Review. The record indicates, however, that the Union and the Employee had notice of the specific charges against Employee, including those relating to absences prior to December, 1994. The Union raised its objection to the additional charges at the Investigative Review Hearing. There is no question that the Employer could have adjourned the hearing and reissued the charges. However, since the Union acknowledged that it had prior notice of all charges and was prepared to respond to each of the Employer's allegations, the hearing proceeded on this basis. Under these circumstances, I find that all charges are properly before me, including the Employee's August 30, 1994 absence.

The Employer contends that the key issue in this case is the Employee's absence on August 30, 1994. The Employer claims that the Employee falsely reported his need to be at home to pick up his daughter after school while his wife was out of town when, in fact, he accompanied his family out of town so that his wife could take an A&P examination.

The Union contends that the Employee never told the Employer that he had to pick up his daughter after school while his wife was out of town. Instead, he asked the Employer for emergency family leave to care for his daughter while his wife was away. The Union claims that the Employee planned to remain at home while his wife went to City 4 for the exam, but later changed his plans. The Union argues that, in any case, the Employee was truthful in making his request for time off to care for his daughter on August 30, 1994.

I credit the Employer's claim that the Employee indicated his need to pick up his daughter from school on August 30, 1994 and baby-sit her while his wife was out of town in order to obtain emergency family leave. It is unlikely, given the fact that A&P examinations are scheduled in advance, that the Employer would grant emergency leave to the Employee to accompany his

wife and daughter to City 4 to allow his wife to take the examination. Therefore, the Employee's failure to state the true reason for his leave request constitutes falsification.

Of equal concern is the Employee's failure to return from City 2 on time. The Employer is correct in pointing out that it accommodated the Employee by granting him time off at Christmas to travel to City 2 to visit his family and that he failed to live up to his agreement to return on time.

Furthermore, the Employee's reliance on the diagnosis of Doctor 1, who could not recall the last time she treated the Employee in person, is insufficient to establish his inability to return to the states from City 2. Nor is the medical documentation from a physician in City 2 sufficiently specific to support the Employee's absence.

The Employee's failure to return from City 2 in a timely manner is particularly disturbing in light of his having been warned about extending his pleasure travel with sick leave. The Employee was counseled about this issue in April, 1993 after returning from Country 2. Under the circumstances, the Employee was under an additional obligation to establish proof of sickness through reliable medical evidence which is not present here.

I also find the Employee's absence on January 3, 1995 to be unjustifiable. The Employee could have attempted to see the Employer medical doctor to obtain clearance to return to work on that date. Instead, he waited until the next day to see his personal physician, and returned to work without documentation supporting his absence of January 3. In light of the Employee's failure to return to work from City 2 on time, his failure to report for work on January 3, 1995 or provide supporting medical evidence for his absence provides further evidence of his lack of responsibility in dealing honestly and directly with the Employer.

The Employer contends that this is a case of diminishing trust. It asserts that the Employee has a history of requesting time off for family matters and using the time to extend his pleasure travel. The record supports the Employer's claims.

The Employer has the right to expect that employees deal with its supervisors and managers in an honest and forthright manner.

When an employee requests time off on the basis of family obligations and the Employer accommodates the request, the individual is expected to be truthful regarding the reasons for the request. The Employee has shown by his actions that he repeatedly took advantage of the Employer's willingness to accommodate his personal needs without living up to his responsibility for honesty in return.

The Employee is a long-term employee of the Employer. While long service is often a mitigating factor in discharge cases, the Employee's lengthy service is insufficient to provide a basis to reduce the penalty in this case due to his repeated lack of honesty in his dealings with the Employer relating to his leave requests. Under the circumstances, there is no reason to expect that the Employee, if returned to work, can be relied upon to meet his responsibility for honesty and truthfulness in the future. Therefore, I conclude that the discharge must stand.

AWARD

The grievance is denied. The Employer had just cause for the discharge of the Employee.