

ARBITRATION II

Arbitration Case:
Discharge of Peter Seichek

Closing Statement

Mr. Arbitrator, the termination of the employment of Mr. Seichek, by the Wheelwright Corporation, was for his "sleeping on the job". Lets examine this stated reason - in the light of the evidence provided by witness testimony and contained within Mr. Seichek's personnel record.

1) Mr. Holloday testified that he and Mr. White, the third shift supervisor, observed Mr. Seichek, wearing his welding hood, sitting or leaning against the ladder, "apparently" asleep. Further, Mr. Holloday stated that he called to Mr. Seichek six or seven times to get his attention.

Mr. Seichek was then directed to accompany Mr. Holloday and Mr. White to the office. In the office, Mr. Holloday told Mr. Seichek that he had been caught sleeping before, and that his absenteeism was excessive, and therefore was being suspended.

Mr. Arbitrator, they found Mr. Seichek at his work station, wearing his protective clothing, waiting for a co-worker to return with needed parts, in order to continue the job. With the welding hood on, they could not positively determine that he was asleep, and six or seven calls to get his attention in the noisy, factory atmosphere is not extreme.

In reference to having been caught sleeping before, Mr. Holloday, testified that on August 16, 1982, that he found Mr. Seichek asleep in the reception area and on August 17, he was found asleep on a tool box near the time clock. In both instances, Mr. Holloday awakened him, directed him to clock in and return to work. Mr. Seichek complied with this direction.

Mr. Holloday went on to state that these instances annoyed him, but since Mr. Seichek was on break and not "on the clock", that he (Holloday) should not and did not issue a formal, verbal warning or make any notation concerning these incidents in Mr. Seichek's record.

2) Mr. Lewis, the third shift steward, gave testimony that it has been a common practice for employees to sleep during their break periods and to occasionally doze on the job.

This corresponds with Mr. Holloday's testimony concerning his decision not to issue a formal verbal warning to Mr. Seichek after he (Holloday) found him asleep during break.

Of further note, Mr. Lewis stated that heard Mr. Holloday use an ethnic slur when referring to Mr. Seichek sleeping on the job. This raises a question as to the objectivity of Mr. Holloday with regard to his supervision of Mr. Seichek.

On the morning of December 3, 1982, Mr. Holloday notified Ms. Delores Lopez, the Personnel Assistant, that he had suspended Mr. Seichek pending possible discharge because he had found him sleeping on the job. Mr. Holloday also told her that he had directed Mr. Seichek to report to the Personnel Office at 7:30 A.M. that same morning.

3) Mr. Banks testified that he conferred with the Plant Manager and the Production Superintendent before he and Ms. Lopez talked with Mr. Seichek.

Mr. Banks stated that in their conversation Mr. Seichek admitted that he had fallen asleep, but that he felt that this had been induced by the medication that

he was taking. This medication had been prescribed by the company physician to relieve the pain that Mr. Seichek continued to have from a work related injury. At the conclusion of this conversation, held on the morning of December 3, 1982, sometime after 7:30 A.M., Mr. Banks terminated Mr. Seichek "for sleeping on the job".

4) Mr. Seichek testified he was asleep on December 3, 1982, when he should have been at work, but that he could not do much without the parts that Stone, another employee, had gone for. He also stated that he was drowsy because of the medication he had been taking and didn't remember just which or how much medication he had taken that day or night. Mr. Seichek further testified that he had asked Dr. Jones for medication, not only to relieve the pain from his injury, but to permit him to continue to work because of his absenteeism situation. This statement is not contradicted. Mr. Seichek also stated that when he responded to Mr. Holloday's call, in the basement, that he had tried to explain to Mr. Holloday that he was under medication that made him sleepy. Mr. Holloday told him that it made no difference and let the suspension stand. Mr. Holloday admitted this response. Mr. Seichek also testified, that during his conversation with Mr. Banks in the Personnel Office on the morning following his suspension, it was he who volunteered the information that he had slept previously during break periods.

5) Chuck Adams, President of Local 200, United Industrial Workers Union testified to the filing of a grievance by Mr. Seichek over his discharge under provisions outlined in the contract. Mr. Adams stated that the Union and the Company had several grievance meetings. At the second meeting in the grievance procedure the Company produced the complete disciplinary record of Mr. Seichek and stressed that his absenteeism record as well as sleeping violations justified the discharge. After further investigation, Company representatives reaffirmed the decision to terminate Mr. Seichek on December 28, 1982.

A final piece of testimony, Mr. Adams states that at one stage in the grievance procedure the Personnel Director commented to him that a former employee had contended, in an EEOC proceeding, that the Company permitted white employees to sleep on the job without disciplining them.

Examination of Mr. Seichek's personnel record shows that he was verbally counseled twice for absenteeism in 1979 and once in 1980 for sleeping on the job by the maintenance foreman at that time. There is also one entry by Mr. Holloday who gave Mr. Seichek a written reprimand for excessive absenteeism and no report on March 13, 1980. Mr. Seichek was further warned that continued absenteeism would result in another reprimand and possible time off. On October 18, 1982, Mr. Seichek received a work related injury. He was absent until November 5, 1982.

On November 12, 1982, he was absent without report.

On November 15, 1982, he was reprimanded for absenteeism and suspended for 5 days.

On November 22, 1982, Mr. Seichek received a letter of "final warning" from the Personnel Office. The letter stated that his attendance record was completely unsatisfactory ; that his Supervisor Holloday had given him various oral warnings and two reprimands since January because of his absenteeism: that he would be discharged if his absenteeism did not improve.

Relevant Contract Article - 20.24...Any employee who receives two (2) written reprimands for the same offense within one (1) year may be subject to a three (3) work day layoff and any employee who receives three (3) written reprimands for the same offense within one (1) year may be subject to discharge although it is not to be considered as an established procedure.

At the end of this article is a list of twenty-four (24) offenses considered to be less serious. Number 3 on the list reads:

3. Sleeping on the job.

Number 15 on the list reads:

15. Habitual tardiness or absences from work without permission.

Mr. Arbitrator when the facts of this case are applied against Article 20.24 of the contractual agreement there is no justification for discharge. In his 6 year tenure with the company Mr. Seichek received two verbal warning for absenteeism in 1979 and one verbal warning for sleeping on the job in 1980. There is one written reprimand for absenteeism and no report. This is dated March 13, 1980. There are no other verbal or written disciplinary notations in Mr. Seichek's personnel record dated between March 13, 1980 and November 15, 1982, a period of 2 years, 9 months. Article 20.24 requires that there be three (3) written reprimands, for the same offense within a one (1) year for the employee to be subject to discharge.

Now I ask the questions for Just Cause:

Question One - Was the employee adequately warned of the consequences of his conduct?

For the charged offense of sleeping on the job - No.

Mr. Seichek received one (1) verbal warning for sleeping on the job in 1980. Further, it has been the commonly accepted practice for employees to sleep on the job during breaks. There has been no notification by the Company of the intention to no longer permit this practice.

Question Three - Did management investigate before administering discipline?

For the charge offense of sleeping on the job - No.

Mr. Seichek was terminated by Mr. Banks approximately three (3) hours after the alleged misconduct. The Company also failed to inquire into possible justification for the alleged violation. No inquiry was made concerning the possible effects of the prescribed medication prior to the termination of Mr. Seichek.

Question Four - Was the investigation fair and objective?

For the charge offense of sleeping on the job - No.

Mr. Banks did not question Mr. Holloday or Mr. White prior to the decision to terminate Mr. Seichek.

Question Five - Did the investigation produce substantial evidence or proof of guilt?

For the charge offense of sleeping on the job - No.

Mr. Banks failed to actively search out witnesses and evidence.

Question Six - Were the rules, orders, and penalties applied evenhandedly and without discrimination?

For the charge offense of sleeping on the job - No.

The enforcement of prohibition of sleeping on the job had been lax. The Company gave no notice to employees of the intent rigorously enforce this rule. Further, other employees had contended in EEOC proceedings that there had been discrimination in the enforcement of the sleeping prohibition.

Question Seven - Was the penalty reasonably related to the seriousness of the offense and the employee's past record?

For the charge offense of sleeping on the job - No.

A trivial offense does not merit harsh discipline unless the employee has been properly found guilty of the same or other offenses a number of times in the past.

Mr. Seichek was verbally counseled for sleeping on the job - once in 1980. There are no other notations concerning sleeping on the job in his personnel record. The contractual agreement lists sleeping on the job to be considered a less serious offense.

Was Mr. Seichek discovered in a reclining position in a dark corner or some other location, hidden from the view of his supervisors? No. He was found at his work station, wearing his protective clothing, leaning against the ladder, waiting for his co-worker to return. There was no intent to sleep on the job.

Mr. Arbitrator, I submit that the discipline imposed on Mr. Seichek violates the contractual agreement between the Wheelwright Corporation and the United Industrial Workers Union. Further, the imposition of this discipline fails six of the seven tests for Just Cause.

We ask that you overrule his termination. We ask that you make Mr. Seichek whole. We seek his reinstatement to the Wheelwright Corporation, in the job classification and pay rate held prior to termination, with full restitution of back pay and all benefits.

Thank you.

