

BEFORE THE ARBITRATOR

 In the Matter of the Arbitration :
 of a Dispute Between :
 : Case 5
 VILTER MANUFACTURING CORPORATION : No. 46413
 : A-4847
 and :
 :
 UNITED STEELWORKERS OF AMERICA, :
 LOCAL 1018 :
 :

Appearances:

Michael, Best & Friedrich, by Mr. Thomas W. Scrivner, on behalf of the
Mr. George F. Graf, on behalf of the Union.

Compan

ARBITRATION AWARD

The above-entitled parties, herein the Company and Union, are privy to a collective bargaining agreement providing for final and binding arbitration. Hearing was held on October 23 and November 5, 1991, in Milwaukee, Wisconsin, where it was transcribed and briefs were filed by January 21, 1992.

Based upon the entire record, I issue the following Award.

ISSUE:

The parties have stipulated to the following issue:

Did the Company have just cause to suspend grievant John Gradecki and, if not, what is the appropriate remedy?

DISCUSSION:

The Company is a primary manufacturer of ammonia-based industrial refrigeration and air conditioning equipment.

Lathe operator Gradecki, who works second shift and who is paid on an incentive basis, has been employed by the Company for about 10 years, during which time he was disciplined on various occasions under the Company's disciplinary point system.

On March 20, 1991, 1/ a piece of steel bar stock stuck in the A-line bar stock feeder and lathe he was working on. As he had done in the past, Gradecki tried to align the 4 foot bar stock in the lathe with an 8-inch metal pipe which was lying around. In doing so, he cut off part of his right index finger which was only a few inches from the machine when it became caught in the machine's pinch points. Gradecki missed about a month's work before his finger healed and before he returned to work on or about April 22.

In the meantime, the Company conducted an investigation to learn how the accident occurred. It ultimately concluded that Gradecki did not follow the proper procedures in working on the machine thereby violating Plant Rule (B) which provides:

"Negligence on Company property or during working hours resulting in minor damage to property or equipment or

1/ Unless otherwise noted, all dates hereinafter refer to 1991.

minor personel (sic) injury is not permitted."

On April 22 the Company suspended him without pay for two weeks. Its suspension notice also warned: "Any further plant rule violations by you within one year of this notice will result in your termination."

A grievance was filed on the same day, hence leading to the instant proceeding.

In support thereof, the Union primarily states that the Company bears the burden of proving that Gradecki acted in a negligent manner; that it has failed to do so because Gradecki was operating his machine in the manner he was taught and in the same way that other employes also operated that machine; that "the operators were never given any set of instructions as to how to operate the machine or handle the necessary prying or aligning operations"; that the penalty imposed was too severe because it could lead to Gradecki's discharge if he commits one more rule violation; and that Gradecki's actions should be judged by a reasonable man standard. It thus requests that Gradecki's suspension be rescinded and that he be made whole for his two-week suspension.

The Company, in turn, asserts that the accident happened because Gradecki "used a hazardous feeding procedure unknown to and unsanctioned by Vilter"; that important credibility questions must be resolved in its favor; and that once that is done, Gradecki's negligence is clear. It also points out that even though Gradecki's accident brought him past the points needed for discharge under its disciplinary system, it nevertheless suspended him instead in recognition of his long service record and the injury he received.

Much of the testimony here centers upon what Gradecki was or was not taught regarding the proper way to align product from the bar stock feeder, with the Company contending that first shift A-line operator Bruce Orgas showed Gradecki how to use the proper method. Orgas and Gradecki both testified that Orgas at that time also told Gradecki that he could use the left-handed method he followed here and a short prying device. In addition, Machine Shop Supervisor Robert L. Ziegler who investigated the accident for the Company testified that "All three of the operators had a different manner" for aligning bar stock. Moreover, there is also testimony that these other operators - including Orgas - 2/ regularly used the same prying procedure that Gradecki used here, i.e., a short 8-inch metal prying object on the left side of the chuck.

This latter testimony is important because it shows just what the practice was on this matter, irrespective of what Gradecki was told by Orgas when he was trained on this machine. 3/ As to that, Machine Operator Mike Kubisek testified that the right-handed feeding method favored by the Company and Orgas was "90 percent more dangerous" than Gradecki's left-handed procedure because one's hand under the right-hand procedure could be caught between a pinch point if the machine automatically started up, as the A-line machine once did in the past. Thus, Kubisek said, "We always use Allen wrenches for tightening" which were about 8-10 inches long and which were called a "community pipe", adding that Gradecki used such a pipe on the day of his accident. He went on to add that he had "at least a hundred" near-misses of where he almost hurt his fingers from using such a procedure.

2/ While admitting that said procedure was risky and dangerous, Orgas added that that was a necessary part of the job.

3/ It therefore is unnecessary to resolve exactly what was said on that occasion and what Orgas told Company representatives on this subject during the course of its investigation into Gradecki's injury.

In response, the Company asserts, "That situation did not result in an injury and it did not occur again" and that, furthermore, no explanation has been offered on how said machine could start up when it had two separate safety features which should have prevented that from happening.

That may be. But that does not negate the fact that, absent any reassuring explanation by the Company as to why that absolutely could not happen again, employes reasonably believed that it could. Accordingly, employes justifiably feared that that method was dangerous.

Moreover, up to the instant hearing, no supervisors even told Gradecki or any other employes that they could not use the procedure followed here by Gradecki. That did not happen until October 21 when Ziegler issued a memo to Gradecki, Kubisek, and other operators expressly prohibiting the use of such "...a short prying device..." Said letter also stated that they should take the time to obtain the proper tools, such as a 12-inch plus long-handled screwdriver.

Given the existence of the prior unsanctioned practice, the penultimate question herein turns upon whether it was so inherently unsafe as to constitute per se negligence and imposition of the discipline levied here. Arguing that it does, the Company asserts that "what other operators do explains nothing."

I disagree. The operators have done what they did because they believed that that is the best way of properly aligning the bar stock, which jams about 99 out of 100 times. That belief, in turn, is based upon a custom and usage and its acceptance - tacit or otherwise - by the Company.

To be sure, the Company was unaware of this feeding method until Gradecki's accident and it since then has told its operators that they no longer can use such a short prying device. Furthermore, the Company reasonably assumed that employes such as Gradecki were properly trained by their co-workers under the Company's extensive training program which provides for an added financial incentive and which relies so heavily on worker participation.

But the fact remains that the Company, too, must share some of the responsibility here because it - rather than the employes themselves - has ultimate responsibility under both the contract and the law for worker training and safety. That is why the contractual management rights clause at Section 11, entitled "Management", states that the Company retains the right to direct the work force and to determine "the method and processes of production. . ." and that is why Section 12, entitled "Safety and Health", provides that the "Company shall continue to make reasonable provisions for the safety and health of its employes. . ."

The Company certainly has acted reasonably in fulfilling this latter responsibility after learning at the first day of hearing that employes were still using very short metal objects to pry bar stock - a practice which it has since banned via Ziegler's October 21 letter and a practice which was never brought to its attention during the investigation of Gradecki's injury. Before then, though, employes such as Gradecki reasonably believed that they were free to use such short devices given the absence of any Company prohibition to that effect.

Hence - given the divided responsibility on the subject - I conclude that the Company lacked just cause to discipline Gradecki for following a work practice which it never tried to correct until after the accident and which employes reasonably believed was part of the inherently hazardous nature of running their machine. The Company therefore shall make him whole by paying to

him all wages and benefits that he lost because of his suspension and it shall expunge from his personnel record any references to said suspension. In order to resolve any problems over application of this Award, I shall retain my jurisdiction for thirty (30) days.

In so finding, I am aware of the Company's concerns that "sustaining the grievance would confuse "the clear responsibility machine operators must have to avoid unsafe practices"; that some of the testimony here is at variance with what was told to Company representatives during their initial investigation of Gradecki's injury; and that sustaining the grievance would "mean that the testimony of Ziegler, Ilnicki and Husmann was not believed."

These are all legitimate concerns. But the fact remains that: (1) the Company must also share some of the responsibility for what transpired here; (2) any contradictory testimony in this case does not negate the fact that Gradecki followed a well-established procedure which has been sanctioned over time; and (3), my decision herein in fact does not mean that I discredit the testimony offered by Ziegler, Ilnicki, and Husmann, as said testimony simply is not as important as the well-established practice which has arisen.

What must be remembered, after all, is that Gradecki has already paid a price for doing what he did by losing part of his finger and that that problem here - i.e., using a short prying device to properly align bar stock -- has since been corrected by the Company. That is where the focus of this dispute should be, rather than pointing the finger at the other side and trying to determine who shares the most blame for this situation.

In light of the above, it is my

AWARD

1. That the Company lacked just cause to discipline grievant John Gradecki;
2. That the Company shall make him whole in the manner noted above;
3. That I shall retain my jurisdiction for thirty (30) days.

Dated at Madison, Wisconsin this 13th day of March, 1992.

By Amedeo Greco /s/
Amedeo Greco, Arbitrator