BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between	
SHEET METAL WORKERS INTERNATIONAL ASSOCIATION, AFL-CIO, LOCAL UNION NO. 565	
and	Case 60 No. 47283 A-4904
CARNES COMPANY, INC.	

Appearances:
Mr. Paul Lund, Business Manager and Secretary-Treasurer, appearing on behalf
Michael, Best & Friedrich, Attorneys at Law, by Mr. Marshall R. Berkoff, appear

ARBITRATION AWARD

Sheet Metal Workers International Association, AFL-CIO, Local Union No. 565, herein the Union, and Carnes Company, Inc., herein the Company, agreed to have the undersigned arbitrate a dispute under the final and binding arbitration provisions of the parties' collective bargaining agreement. Pursuant thereto, the Wisconsin Employment Relations Commission appointed the undersigned as arbitrator to hear and decide the dispute specified below. A hearing was held on June 30, 1992 at Madison, Wisconsin. A transcript was issued on July 17, 1992. The Company filed a brief on August 18, 1992.

After considering the entire record, I issue the following decision and Award.

ISSUES:

The parties stipulated to the following issues:

1. Was the three-day disciplinary suspension of the grievant, Debbie Popp, on October 28, 29, and 30, 1991 for good and sufficient cause pursuant to Article 12, Section 1 of the Agreement?

2. If not, what remedy is appropriate?

FACTUAL BACKGROUND:

Events Prior to the October Incidents

The Company is a manufacturer of sheet metal air distribution equipment and ventilation products for commercial buildings. The grievant, Debbie Popp, is employed by the Company as a material handler. Her duties include supporting several assembly areas in the plant by delivering parts to assigned areas. One of the assembly areas serviced by the grievant was Department 113, supervised by Marcella Newell. Material handlers servicing a particular department are responsive to the directions and instructions of supervisors in that department and regularly take orders from them.

About seven months before the October incidents, Department 113 was reorganized. Aisles were widened and became staging areas where items being manufactured were temporarily stored. Employees worked on the aisle, and they were not always open. Accordingly, the aisles and ramp to Department 113 were closed to through traffic by lift trucks and four-wheeled flatbeds. Aisles and the ramp could still be used for delivery of parts to various areas in the department, to pick up parts from the department going elsewhere and as a throughway for small hand carts or small jack carts which could be safely "snaked" through the aisles without disturbing the product being staged there.

This instruction was initiated in the Department and was enforced at all relevant times by its production supervisor, Marcella Newell.

The Events of October 16

On October 16, 1991, the grievant was making a delivery to Department 105 on a four-wheeled flatbed. She came into Department 113 for the sole purpose of going through it.

Baskets of parts were in the aisle and the grievant moved the parts out of the aisle so she could go through.

Other employees told Newell that the grievant had moved the baskets and asked her to have the grievant put them back.

Newell went to Department 105, and told the grievant that Department 113 "was not a throughway for other departments for delivery with flatbeds." Newell instructed the grievant to return to Department 113 and replace the baskets which she did grudgingly with "shoves" and in a very rough manner.

The grievant did not question the statement or instruction given or ask for clarification.

The grievant claims what Newell told her was that she told another employee, Wally Anderson, that he couldn't use the aisle as a throughway with a lift truck to which the grievant responded "Well, I'm not a lift truck."

The grievant denies she was asked to move the baskets she put back.

The Events of October 24

On October 24, 1991, Newell found the grievant in Department 113 with the flatbed cart. Newell again approached the grievant and ascertained she was not making a delivery to the department. She then told the grievant the department was "not a throughway and to take her cart and go around."

Five minutes later Newell came back into the department. The grievant was still there. Newell approached her and the grievant stated she was looking for a "jack cart". Once again Newell told her "Just simply take your cart and go around."

Rather than following the instruction, the grievant stated "I'm going to talk to Chuck Becker." The grievant then called Becker, the materials manager, and asked him to meet her in Department 113.

Becker went to the department, and met with the grievant. The grievant told Becker she thought the instruction was "stupid," that they had been taking flatbed carts through the area for years. She asked why she couldn't continue to use the aisle way. Becker told her he didn't know why but would "find out why we couldn't use that area to take parts through" and get back to her.

The grievant then went back to the flatbed and proceeded through the department in violation of Newell's directions. The grievant claimed at the hearing Becker told her "he didn't have a problem with" her taking the cart through, but that he would check and get back to her.

Becker testified that he didn't say anything to the grievant which suggested that it might be okay to use the aisle in the interim.

Becker got back to the grievant later that same morning. He reinforced with her and three (3) other material handlers on duty the supervisor's instructions: that the area was "not to be used as a through aisle way."

The Events of October 25

On October 25, 1991, the grievant made and posted a sign on the top of the ramp in Department 113. The sign was clearly visible to other employees commonly in the area and stated:

> You are now entering the danger Zone. Anyone caught pushing a flatbed will be shot. P.S. For further details, call Mark.

"Mark" is the nickname known to employees for Marcella Newell.

The Company has a long standing rule prohibiting insubordination. Stated in the introductory paragraph to its work rules is the following language:

> Carnes Company, Inc. work rules apply to all employees. These work rules are required for the orderly operation of our business. Listed below are the major work rules, which if violated, could result in disciplinary action up to and including discharge. These work rules include:
>
> 5. Insubordination.
>
> . . .

The grievant understood that insubordination, if proven, is punishable by discipline up to and including termination of employment.

The grievant admitted that Newell was a supervisor in two of the departments that she was servicing and that she regularly received instructions from Newell and that she was expected to respond to those instructions.

During the investigation and processing of the grievance, the grievant indicated posting the sign was wrong and she probably shouldn't have done it. The grievant admitted at hearing that if the posting of the sign constituted insubordination, she supposed that she should have received a 3-day disciplinary layoff. The grievant also admitted authoring, making and posting the sign at least in part to show how "ridiculous" and "uncalled for" Newell's instruction was.

The grievant claimed at the hearing that she was also using the sign to communicate with employees who may not have known about the instruction.

Early in the grievance process the grievant indicated she posted the sign "as a joke." Again at the hearing, she said it was a "joke between the material handlers."

PERTINENT CONTRACTUAL PROVISIONS:

ARTICLE 12

DISCHARGES AND DISCIPLINE

Section 1 - No employee shall be discharged or disciplined without good and sufficient cause. . . .

UNION'S POSITION:

The Union basically argues that the grievant was not disciplined for good and sufficient cause.

In support thereof, the Union first claims the instructions the Company alleges were given to the grievant "were not as clear as they would have us believe."

The Union also claims that these instructions were not given to any other employee at any time prior to disciplining the grievant. The Union adds that these instructions have not subsequently been enforced.

Finally, the Union claims the grievant's placing of a sign up above the door "was merely an expression of free speech and not intended to be an exercise of insubordinate conduct."

Based on all of the above, the Union requests that the grievance be sustained, and the grievant be made whole.

COMPANY'S POSITION:

The Company emphasizes the following principal arguments.

The grievant's conduct in October, 1991 clearly constituted insubordination for which the three-day layoff without pay was appropriate discipline.

The grievant's acts of insubordination were multiple -- they included

ignoring and refusing to follow a supervisor's lawful instructions and engaging in conduct with the expressed intent of ridiculing the supervisor.

The Company has had a clearly stated and long standing work rule known to the grievant that insubordination can result in disciplinary action up to and including discharge.

The Company has disciplined other employees for insubordination including specific cases involving three days off without pay.

The overwhelming weight of the evidence -- most of which is undisputed proves the insubordination. (emphasis supplied) The grievant admitted the acts of insubordination.

The general rule concerning insubordination is stated in Scripto, Inc. and International Chemical Workers, 48 LA 980, 982:

> Disobeying a proper order of management is improper and is just cause for disciplinary action, including discharge. In most situations, even though the order is improper, the employee should comply with the order and then file a grievance testing the propriety of the order and the necessity of compliance. Employees are under a duty to cooperate with the employer to promote the efficient operations of the business. . . and legitimate rights of the Company should be protected, including the right to direct the workforce and manage the plant.

Arbitrators separately sustain strong discipline for employees who engage in insulting or offensive behavior which undermines or ridicules supervision or management. The sign authored, prepared and posted by the grievant herein was intended to and did ridicule supervisor Newell and the instruction.

The grievant's claims that this was a personal matter between Newell and herself were investigated by the Company and there was a determination by the Company that there was no basis for such a perception, at least as to any conduct by Supervisor Newell.

The Company carefully investigated the conduct involved and the three-day suspension was consistent with other discipline it had asserted for other acts of insubordination. The Company was restrained and temperate with its dealing with the grievant. The Company even transferred the grievant to provide service to other departments away from Newell after the event because of the grievant's complaints but one week later, the grievant requested she be transferred back to servicing Newell's areas.

In view of all of the foregoing, the Company requests that the grievance be denied and the matter dismissed.

DISCUSSION:

The parties stipulated that there are no procedural issues and that the instant dispute is before the Arbitrator for decision.

In so much as this is a disciplinary issue it is incumbent that the Company prove that the grievant is guilty of the actions complained of. In addition it should be noted that the Company has the duty of so proving by a clear and satisfactory preponderance of the evidence.

It is undisputed that on October 25, 1991, the grievant made the aforesaid sign and posted it at the top of the ramp entering Department 113. The sign was clearly visible to other employees in the area. The grievant admitted at hearing that if the posting of the sign constituted insubordination, she supposed that she should have received a 3-day disciplinary layoff. 1/

The record supports a finding that the grievant posted the aforesaid sign in order to mock and ridicule a designated supervisor. In this regard, the Arbitrator notes the sign ridiculed both the instruction given by the supervisor and the supervisor herself when it pointedly referred employees to her.

The grievant herself "makes no bones about it." The instruction in her opinion was "ridiculous." 2/ And the sign was intended by her to show how ridiculous the supervisor's instruction was. 3/

Having concluded that the record supports a finding that the grievant intended to ridicule supervision by the posting of her sign, the Arbitrator notes that ridicule means "Words or actions intended to evoke contemptuous ... feelings toward a person or thing. To deride, mock or make fun of." 4/

The grievant claimed for the first time at hearing that she was trying to communicate with employees who may not have known about the instruction. However, this claim comes rather late in the process and is not consistent with either the grievant's prior actions in the matter or her responsibilities as a material handler for the Company. Nor does the record indicate that the grievant was acting in any Union capacity when she posted the sign.

The grievant also indicated she posted the sign "as a joke." 5/ That may be true. However, as noted above, it is also clear from the language of the sign that it was posted to ridicule the supervisor and her instruction i.e. <u>You are now entering the danger Zone</u>, <u>Anyone caught</u> . . . <u>will be shot</u>." (emphasis added)

The Union claims that the comment made in the sign is protected by the constitution as free speech. However, the Union does not cite any case law or statutory language to support its position. The Company, on the other hand, cites several cases for the principle that the 1st and 14th Amendments of the Constitution apply only to actions of government and not to acts of private citizens or private employees or employers. 6/ The Company also relies on

---

1/ Tr. pp. 110-111.

2/ Tr. 83.

3/ Tr. pp. 86, 110.

4/ <u>The American Heritage Dictionary</u>, Second College Edition, page 1062 (1985).

5/ Tr. 88.

6/ <u>RMS Technologies</u>, 94 LA 297, 301 (Nicholas, 1990); <u>San Diego Gas & Electric Co</u>., 82 LA 1039 (Johnston, 1983) and <u>Hudgens v. NLRB</u>, 424 U.S. 507, 513, 91 LRRM 2489 (1976) wherein the U.S. Supreme Court stated again that the constitutional guarantees of free speech is a guarantee only against abridgement by government, federal or state."

Norfolk Naval Shipyard, wherein the arbitrator stated that private sector employers may discharge an employee for criticizing management absent some protections in the National Labor Relations Act. 7/ Based on same, and absent any persuasive evidence to the contrary, the Arbitrator finds that the Company did not violate any free speech rights of the grievant herein when it imposed discipline.

The grievant admitted during the Company's investigation of the grievance, that her conduct was wrong and she shouldn't have done it. 8/ She conceded at the arbitration hearing that Newell was a supervisor who gave her work instructions and to whom she responded. 9/ She admitted knowing the Company rule prohibiting insubordination and that insubordination is punishable by discipline up to and including termination. 10/ She testified that even if a supervisor's instruction was, in her opinion "ridiculous," she still had to follow it." 11/

Based on all of the above, the Arbitrator finds that the grievant committed the actions complained of (regarding the posting of the sign), and that the Company was entitled to discipline her for those actions. A question remains regarding the severity of the discipline.

The Union claims other employees have not been disciplined for insubordination. The record, however, does not support such a finding. To the contrary, the record indicates that the Company has given employees disciplinary time off up to and including three days for insubordination. 12/

The record indicates that at no time material herein has any prior disciplinary action been taken against the grievant during her employment with the Company. 13/ Ordinarily, this would mitigate against the discipline imposed. However, since this was considered when deciding what action to take against the grievant; 14/ and based on the grievant's prior refusal on following a supervisor's order on October 24, 1991 15/ the Arbitrator finds no mitigation herein.

The grievant does claim that this was a personal matter between Newell and herself. However, there is no basis in the record for such a perception, at least as to any conduct by the supervisor against the grievant. 16/

7/ 75 LA 889, 894 (Aronin, 1980).

8/ Tr. 22.

9/ Tr. 96.

10/ Id.

11/ Tr. 105.

12/ Tr. 23.

13/ Tr. 24.

14/ Id.

15/ Tr. 103.

16/ The Arbitrator is somewhat concerned about the implications of Newell's conduct off the witness stand wherein he observed her "glaring" at one of

As noted by the Company, arbitrators sustain strong discipline for employees who engage in insulting or offensive behavior which undermines or ridicules supervision or management. The Arbitrator finds no reason for upsetting the three day suspension imposed herein.

Based on all of the above and foregoing, the record as a whole and the arguments of the parties, the Arbitrator finds that the answer to the issue as stipulated to by the parties is YES, the three-day disciplinary suspension of the grievant Debbie Popp on October 28, 29 and 30, 1991, was for good and sufficient cause pursuant to Article 12, Section 1 of the Agreement. In light of all of the foregoing, it is my

AWARD

That the grievance of Debbie Popp is hereby denied and the matter is dismissed.

Dated at Madison, Wisconsin this 16th day of October, 1992.

By _____
Dennis P. McGilligan, Arbitrator

---

the Union's witnesses.