

IN THE MATTER OF ARBITRATION BETWEEN

HONEYWELL INTERNATIONAL, INC.,)	
)	ARBITRATION AWARD
Employer,)	
)	
and)	WADE DISCHARGE GRIEVANCE
)	
)	
TEAMSTERS LOCAL NO. 1145,)	
Union.)	FMCS Case No. 060517-56317-7

Arbitrator: Stephen F. Befort

Hearing Date: February 26, 2007

Post-hearing briefs received: March 20, 2007

Date of decision: April 19, 2007

APPEARANCES

For the Union: Russell J. Platzek

For the Employer: Chuck Bengtson

INTRODUCTION

Teamsters Local 1145 (Union) is the exclusive representative of a unit of production and maintenance workers employed by Honeywell International, Inc. (Employer). The Union brings this grievance claiming that the Employer violated the parties' collective bargaining agreement by discharging the grievant, Alan Wade, without just cause. The Employer maintains that it had just cause for discharge due to the

grievant's ongoing attendance problems. The grievance proceeded to an arbitration hearing at which the parties were afforded the opportunity to present evidence through the testimony of witnesses and the introduction of exhibits.

ISSUES

Did the Employer discharge the grievant for just cause? If not, what is the appropriate remedy?

RELEVANT CONTRACT LANGUAGE

ARTICLE XIX

Section 7. The Company shall have the exclusive right to discipline, suspend, or discharge employees for just cause. In case of a discharge, reasonable notice shall be given to the departmental committee member prior to the discharge. The union agrees a protest of discharge will be barred unless presented in writing under Step 2 of Article XV, Section 2, within five (5) working days after discharge of an employee. The Company agrees to make its final decision within five (5) working days after the written protest is submitted to the Company.

FACTUAL BACKGROUND

The Employer is a diversified national technology and manufacturing corporation with three principal facilities in the Twin Cities area. The grievant, Alan Wade, has worked for the Employer since 1979 as an assembly worker. He currently is 54 years of age.

Mr. Wade has a long history of time and attendance problems. Most of these problems resulted from Mr. Wade's abuse of alcohol, and many resulted in the imposition of discipline. The Union submitted evidence to the effect that Mr. Wade was able to get his alcohol use under control during the 1990's and that his disciplinary record improved as a result. After a series of family deaths during the early 2000's, including

that of his son, Mr. Wade lapsed back into excessive alcohol use and his disciplinary problems returned.

The Employer has adopted a Policies and Procedures Manual that contains a Disciplinary Policy. This policy provides for a progressive system of discipline measured by demerits. The policy authorizes the imposition of first degree demerits for minor offenses, and second and third degree demerits for more serious offenses. The policy states that a third degree demerit warrants a disciplinary suspension of between two and ten working days. A fourth degree offense, which the policy defines “as those acts or omissions of an intolerable nature which violate the commonly accepted or established rules of conduct,” may result in discipline up to and including termination. The demerits have a designated life span and are cumulative in nature. Two active second degree demerits, for example, equal a fourth degree demerit under the policy.

The Employer also has adopted a Time and Attendance Policy. Under this policy, unexcused absences, known as “lost hours,” may accumulate to constitute grounds for discipline. The Employer will issue a written warning to an employee who has 40 lost hours over the course of a year and a first degree demerit for 59 lost hours. Each additional ten-hour increment beyond 59 hours of unexcused absence triggers an additional first degree demerit. A total of 90 lost hours in a calendar year provides an independent basis for discharge.

In December 2004, Mr. Wade’s attendance problems progressed to the level of a fourth degree demerit warranting discharge. The Employer and the Union, however, negotiated a return to work on a fourth demerit status following a ten-day suspension.

In January 2005, Mr. Wade received additional demerits for being out of his work area, inefficient performance of duties, and reporting to work under the influence of alcohol. These infractions, coupled with his fourth demerit status, once again warranted discharge. The Employer and the Union negotiated a return-to-work agreement following a 20-day suspension. The agreement was premised upon a last chance arrangement that also required Mr. Wade to complete a chemical use rehabilitation program.

Mr. Wade relapsed later that year and missed work in October 2005 following an arrest for driving under the influence of alcohol. This resulted in a new fourth degree demerit, and the Employer terminated his employment. The Union filed a grievance challenging the termination, and the grievance was resolved with a settlement agreement reinstating Mr. Wade and requiring him to re-enter treatment. The agreement, dated December 13, 2005, imposed a three-month unpaid suspension and placed Mr. Wade on a new fourth degree demerit. The agreement also provided that Mr. Wade would be subject to drug and alcohol screening for one year upon the resumption of employment, subject to a clause stating, "if he does not successfully pass a screening his employment will be terminated."

Mr. Wade completed the rehabilitation program and returned to work on December 13, 2005. Mr. Wade, however, did not show up for work on either December 19 or December 20, and also failed to call in and report his absences on those days. Mr. Wade's immediate supervisor, Karen Ostendorf, received a telephone call from Officer George Loren of the Hennepin County Workhouse on December 20 reporting that Mr. Wade had been involved in an alcohol-related incident and that his work release

privileges had been revoked. At the arbitration hearing, Mr. Wade testified that he had consumed a single drink which caused him to fail a breath test. Mr. Wade further testified that he did not call in his absences because he did not have access to a telephone while incarcerated at the workhouse.

Honeywell's Human Resources Manager, Terry Clapp, issued a letter terminating Mr. Wade's employment on December 20, 2005. Mr. Clapp testified at the hearing that Mr. Wade's absences on December 19 and 20 triggered an additional demerit under the Time and Attendance Policy that, when added to the existing fourth degree demerit, warranted discharge under the Disciplinary Policy. Mr. Clapp also testified that Mr. Wade's conduct breached the terms of the December 13, 2005 settlement agreement and constituted an additional basis for termination.

The Union filed a grievance on behalf of Mr. Wade challenging the discharge decision. The grievance was processed through the steps of the contract grievance procedure and has now progressed to this arbitration proceeding.

POSITIONS OF THE PARTIES

Employer Position:

The Employer contends that it had just cause to discharge the grievant. More specifically, the Employer maintains that Mr. Wade's absence from work on December 19 and 20, 2005 due to an alcohol-related incident triggered three separate grounds for termination as evidenced by: 1) the Employer's Time and Attendance Policy, 2) the Employer's Disciplinary Policy, and 3) the terms of the December 13, 2005 return-to-work agreement. The Employer also claims that discharge constitutes the appropriate level of discipline in this matter. The Employer points out that it has rescinded discharge

decisions on three prior occasions in order to give Mr. Wade additional chances to overcome his alcohol and attendance problems. The fact that Mr. Wade has not corrected his behavior in spite of these repeated opportunities, the Employer argues, demonstrates that further discipline short of discharge is not likely to be effective.

Union Position:

The Union, in response, asserts that the Employer's discharge decision was not supported by just cause. In this regard, the Union claims that Mr. Wade did not have access to a telephone while incarcerated at the Workhouse in December 2005, thereby preventing him from calling in his absences and requesting the use of available vacation time for the two missed work days. In addition, while the Union does not dispute Mr. Wade's absences from work, it contends that discharge is an excessive sanction for several reasons. First, the Union argues that the mere fact that absences from work may technically warrant discharge under the Employer's unilaterally promulgated Time and Attendance Policy does not relieve the Employer of its obligation to show that such action is supported by just cause. The Union maintains that Mr. Wade's relapse into alcohol-related absences does not provide a just cause basis for discharge because such resulted from an unfortunate series of family deaths in the early 2000s, and because Mr. Wade is making a good faith effort to come to grips with his problems. Finally, the Union contends that the Employer did not undertake any investigation into the December 2005 absences and made its termination decision without any consideration of the broader circumstances of the situation.

DISCUSSION AND OPINION

In accordance with the terms of the parties' collective bargaining agreement, the Employer bears the burden of establishing that it had just cause to support its termination decision. This inquiry typically involves two distinct steps. The first step concerns whether the Employer has submitted sufficient proof to establish that the employee actually engaged in the alleged misconduct or other behavior warranting discipline. If that proof is established by a preponderance of the evidence, the remaining question is whether the level of discipline imposed is appropriate in light of all of the relevant circumstances. *See* ELKOURI & ELKOURI, *HOW ARBITRATION WORKS* 948 (6th ed. 2003).

A. The Alleged Misconduct

The Employer points to Mr. Wade's unexcused absences on December 19 and 20, 2005 as the alleged misconduct at issue. The Employer claims that these absences provide three different and sufficient grounds for terminating his employment.

First, Mr. Wade failed to call in his absences within one-half hour of the start of his shifts on December 19 and 20. The Employer's Disciplinary Policy states that "failure to call in within one half hour after the start of the shift twice within a six month period" is a first degree demerit offense. Combined with Mr. Wade's then current fourth degree demerit status, this offense constitutes grounds for discharge under the Employer's Disciplinary Policy.

Second, Mr. Wade's two absences gave him sixteen additional lost hours on top of the 64.17 hours that he already had accumulated. According to the Employer's Time and Attendance Policy, these additional lost hours triggered two first degree demerits.

When added to Mr. Wade's existing fourth degree demerit, these absences constituted an additional basis for termination.

Third, the December 13, 2005 return-to-work agreement signed by Mr. Wade provided that he would be subject to drug and alcohol screening for a period of one year. The agreement further states, "if he does not successfully pass a screening his employment will be terminated." Mr. Wade acknowledged at the hearing that he drank a "hot toddy" on December 17 and subsequently failed a breath test at the work release facility. By consuming alcohol and failing a screening test, Mr. Wade breached the terms of the return-to-work agreement and was subject to discharge.

The Union does not dispute the fact that Mr. Wade failed a breath test and missed two days of work due to incarceration. The Union argues, however, that Mr. Wade did not have access to a telephone while incarcerated at the Workhouse, and that he was therefore unable to call in his absences. While this may be true, it does not avoid the two alternative bases for discipline. Under the circumstances, the Employer has demonstrated adequately that Mr. Wade engaged in conduct warranting discipline.

B. The Appropriate Remedy

The Employer maintains that discharge is an automatic outcome under the terms of its Time and Attendance Policy and the December 13 return-to-work agreement. The Union, in turn, argues that the Time and Attendance Policy does not obviate the Employer's need to establish that a discharge is supported by just cause.

1. Status of the Time and Attendance Policy

The Time and Attendance Policy is not a directive that was made through collective bargaining. The Employer, instead, unilaterally promulgated this policy. That

does not mean that the policy is of no import. An employer generally has the right to establish reasonable work rules so long as they are not inconsistent with law or the collective agreement. ELKOURI & ELKOURI, HOW ARBITRATION WORKS 766-67 (6th ed. 2003). In this instance, the policy is a reasonable response to ongoing attendance problems. As such, the policy is a valid gloss on the contract's just clause standard and properly informs arbitral analysis. The unilaterally established policy, however, does not displace the contractual standard, and it is incumbent upon the Employer ultimately to show that its discharge decision was supported by just cause.

2. Just Cause Analysis

In spite of the two objective bases for the Employer's termination decision, the Union contends that discharge is an excessive sanction due to the equities at play in the instant matter. The Union asserts that Mr. Wade made good faith efforts to deal with his alcohol and attendance problems and had largely overcome them until a series of misfortunes struck during the early 2000s. These events included the untimely death of Mr. Wade's son. Since that time, the grievant has experienced several cycles of treatment and relapse. At the hearing, Mr. Wade testified that he sincerely desires to overcome this pattern and return to productive employment.

The Union also objects to the Employer's failure to undertake a meaningful investigation of the circumstances surrounding Mr. Wade's December 2005 absences. As the Union's post-hearing brief argues, "the Employer did not investigate the claims of the Hennepin County Corrections Department; did not try to determine the outcome of Wade's case; and did not discuss the matter with Wade to learn his side of the story, so as to determine if mitigating factor were present or if facts were disputed."

These concerns are not without some merit. Arbitrators not infrequently provide grievants with a second chance when misconduct or poor performance correlates with problems of chemical addiction. Similarly, arbitrators often will scrutinize a discharge decision more closely if it appears that an Employer's investigation has unfairly prejudiced a grievant.

In this case, however, the Employer has adequately carried its burden of demonstrating that these concerns do not warrant the mitigation of Mr. Wade's penalty. The Employer's lack of a full-blown investigation, for example, did not unfairly distort its decision-making process. The only pertinent fact not known to the Employer at the time of its termination decision concerned Mr. Wade's lack of access to a telephone while incarcerated at the Workhouse. Since the Employer had two alternative grounds for its decision, the absence of this particular information did not unduly prejudice Mr. Wade's rights to a fair disciplinary determination.

Most significantly, this is not a case where the Employer has failed to provide the grievant with a second chance to overcome his problems. The Employer in this matter has provided Mr. Wade three "second chances" to overcome his alcohol and attendance problems. The Employer on three occasions has rescinded discharge decisions and agreed with the Union to permit Mr. Wade to substitute treatment and progressive discipline as a potential means for him to retain employment. The desired objective in each instance, of course, was to correct employee behavior. But, each effort has proven to be unsuccessful. Where repeated attempts at progressive discipline and treatment have proven to be fruitless in correcting behavior, the Employer has just cause to terminate the employment relationship.

AWARD

The grievance is denied.

Dated: April 19, 2007

Stephen F. Befort
Arbitrator