Morris, former assistant human resources manager; Keith Snyder, mix plant manager. For the union — Stephen G. Katz, attorney.

SEASONAL DEPRESSION

The Issue

STALLWORTH, Arbitrator: — The Parties presented the following issue(s) to the Arbitrator:

1. Did the Employer have just cause to dismiss the Grievant?
2. If not, what shall the remedy be?

Relevant Contract Provisions

ARTICLE 11. PERSONNEL

Section 11.01 — The Company has the right to suspend or discharge any Employee for just cause. Upon written request over the signature of the Employee involved, the Company will notify him in writing of the reason for such suspension or discharge.

Background

The instant case involves the discharge of the Grievant for violating the Company's attendance policy. The Grievant had begun working for the Company in January, 1980. At the time of this discharge he was employed as a line operator in the Mix Plant. This portion of the Company's operation is responsible for mixing and packaging prepared food mixes. The Grievant's job was to oversee the production, filling and packaging of the boxes containing the food mixes.

The Company instituted a no-fault attendance policy in June, 1985. Absence (occurrences) are assigned a certain number of points, and when an employee accumulates certain point levels, he or she is subject to discipline. For example, at the sixth occurrence, a verbal warning is given; at the seventh and eighth, a written warning, and when the employee accumulate thirteen occurrences, he or she is subject to discharge. The employee may "wipe out" one point by maintaining an entire month without any occurrences. In addition, the first five (5) occurrences in any given year are not counted; with the sixth occurrence, however, the Company begins counting at the level at which the employee ended the preceding year.

Medical absences which are excused are not counted as occurrences. To obtain an excused medical absence, an employee is required to see a doctor on the first day of his illness and to give to the Company a Sickness and Accident form completed by his doctor within seven (7) days of his return.

The Grievant had received discipline for his attendance problems several times before his discharge. According to the Company's records, the Grievant reached the thirteen occurrence level in September, 1987. After meeting with the Grievant, the Company decided to suspend him and bring him back to work at the eleven occurrence level. The Grievant again reached the level of thirteen occurrences in April, 1988. At this point the Company became aware that the Grievant had a problem with depression. The Grievant was several months later in turning in his medical documentation, but the Company decided to accept it late and rolled back his number of points.

The Grievant received several further warnings regarding his attendance problems in November, 1988. In April, 1989 he had further problems with obtaining prompt documentation for medical absences. The medical documentation eventually was accepted, but only for the days after which he saw the doctor. The Company placed the Grievant at the 11 and ½ occurrence level at that time.

The final incidents which prompted the Grievant's dismissal occurred in early October, 1989. On October 2, 1989, the Grievant called off sick. The Grievant testified that the illness was the onslaught of another bout of depression. On October 3 and 4, 1989, the Grievant remained home, but did not call in to report his illness. On March 4th, Mr. Dave Stevens called from the Company to inform the Grievant that he should come in for a meeting to discuss his attendance situation on the following day, October 5, 1989. The Grievant did come in and told the Company officials that he had been "laying low." The Company witnesses also testified that the Grievant stated that he was deciding whether to terminate his employment at General Mills.

The Company officials, aware of the Grievant's past history of depression, asked him if he was seeing a counselor and asked him to see the Company's counselor at that time. The Company granted the Grievant a one-week leave of absence allegedly to review his file and so that he could consider his decision to resign.

A meeting was held one week later at which time the Company announced that it intended to terminate the Grievant, if he did not wish to resign. He stated that he did not wish to resign, but the meeting did not conclude in termination, because no Union executive board member was present. On October 20, 1989, a third meeting was

held at which time the Company announced that the Grievant would be terminated. The Union requested that the Grievant be given an opportunity for in-patient treatment at that time, but the Company declined to rescind the termination.

The Grievant also presented evidence at the arbitration hearing that he had sought help from various doctors for his depression. He had contacted the Company's Employee Assistance Program consultant, Dr. Richard Kilgis, as early as early 1987. The Grievant testified that he saw a psychiatrist at about this time, who gave him anti-depressants and read his newspaper at his desk while talking to the Grievant. In March, 1988, Dr. Kilgis made an appointment for the Grievant to see a Dr. Rabin, who provided the Grievant with some sample pharmaceutical, but, according to the Grievant, did not provide care that helped the Grievant.

The Grievant testified that he began seeing a new doctor, Dr. Leader, in March, 1989. He saw the doctor frequently throughout the spring and summer, and the doctor began using light therapy to help the Grievant. More recently the doctor had prescribed that the Grievant get out into the sun more to help with his depression, which the doctor was treating as seasonal depression (S.A.D.). The Grievant stopped seeing the doctor after he was terminated.

The Union filed a grievance dated October 18, 1989 over the Grievant's dismissal. The Parties could not resolve the instant grievance and it eventually proceeded to arbitration. It is within this factual context that the instant dispute arises.

The Company's Position

The Company contends that it had just cause to discharge the Grievant. In support of its position, the Company notes first that the Union in the instant case is not contesting the overall attendance program, and the program has been upheld in two previous arbitrations. The Company further notes that many arbitrators have upheld the right of an employer to terminate an employee when progressive discipline failed to correct absenteeism. Not only was the progressive discipline program properly applied in this case, according to the Company, but the Grievant was given the benefit of the doubt whenever possible. In support of this view, the Company notes that one of its witnesses testified that she had never seen the program applied as leniently as it was to the Grievant.

According to the Company, the Grievant was made well aware of the requirements of the attendance program. The Company notes, for example, that the Grievant had reached the termination point on three prior occasions. The Company notes further that the Grievant was well-informed of the requirements for providing verification of his medical problems, as demonstrated by his prior record and his testimony at the arbitration hearing. According to the Company, if the Grievant had just provided the Company with verification for all of his medical absences, he would not have been discharged.

In addition, the Company contends that at the last few meetings prior to his discharge the Grievant never mentioned that his absences were due to depression. Instead, according to the Company, he stated that during his absences he was deciding whether to continue to work for the Employer. Although he did state that he was "laying low," the Company asserts that he never explained this statement and never said that he was seeking help from a doctor. The Company cites other arbitration cases, including one between the same Parties, which indicate that an employee who fails to provide adequate documentation of alleged medical problems, in accordance with the rules of an attendance plan, is fairly subject to discharge.

The Company also asserts that the Union has failed to show that the Company's action was arbitrary or capricious, and therefore the Arbitrator should not disturb the Employer's action. Because the Grievant here persisted in a poor attendance record, and failed to heed repeated warnings to correct his attendance problems, the penalty hardly can be called arbitrary or capricious, the Company asserts.

According to the Company, the fact that the Grievant's absences were related to his depression is not relevant to the Company's termination decision and does not excuse his failure to comply with the reasonable requirements of the Company's attendance program. The Company contends that the Grievant's discharge was due solely to his failure to provide verification that he had been disabled from work, for whatever reason, on the specific dates in question. According to the Company, the Grievant did not even mention his depression until the third and final meeting regarding his discharge. The Company contends that it should not be expected to accept the self-serving statements of the Grievant as the only evidence of a legitimate medical absence.

In addition, the Company contends that it considered all the relevant factors when contemplating the discharge of the Grievant. The Company asserts that it conducted a thorough investigation of the Grievant's record and absences and had strong support for its ultimate conclusion that discharge was appropriate and that the Grievant was not likely to demonstrate any improvement in the future.

According to the Company, the issue is whether or not the Grievant provided adequate verifications of his disability from work on the specific dates of his absence, and not whether the Company should have believed his after-the-fact excuses for his absences. Therefore, the Company urges that the instant grievance should be denied and the discipline upheld.

The Union's Position

The Union contends that the Grievant's discharge violated the just cause provision of the collective bargaining agreement. In support of its position, the Union contends first that the Grievant has suffered from debilitating bouts of depression since he was thirteen or fourteen years old. It was the symptoms of his depression which caused him to run afoul of the Company's attendance program, the Union asserts.

The Union notes that the Grievant had a very good work record, except for his periodic attendance problems. According to the Grievant, he suffered periodic bouts of seasonal depression in the fall and spring of every year. During these periods, according to the Union, the Grievant would withdraw from all society and spend inordinate amounts of time in bed, with disrupted eating and sleeping patterns. The bouts would end only when a friend or family member would force the Grievant out of his forced inactivity.

According to the Union, the Company knew that the Grievant suffered from a major depressive illness since at lest early 1987. The Company also knew that the nature of the Grievant's illness rendered him non-communicative when he was suffering from symptoms of his illness. Therefore, requiring the Grievant to see a physician on the first day of his illness was an absurd requirement as it was applied to the Grievant, the Union asserts. If the Grievant could have seen a physician on October 2nd and received a medical leave for the other days of absence, then he would not have been discharged, the Union asserts.

According to the Union, the events of October, 1989 were engineered in order to resolve the "problem" of Shields and his attendance problems. The Company's policy only requires a medical excuse to be presented within seven (7) days after the employee returns to work from an absence. According to the Union, the Company terminated the Grievant here while he was still out on an absence which might have been approved if it had not been interrupted by the scheduling of the October 5 meeting.

The Union also suggests that the discharge of the Grievant was due in part to the fact that the personnel official who oversaw the dismissal was new to her job. However, the other management officials involved in the discharge knew that the Grievant always returned to work after relatively short absences in the spring and fall. The Company knew about the nature of the Grievant's illness and therefore, according to the Union, there was less of a need to verify the employee's illness.

The Union also contends that the Grievant's failure to call in on October 3rd and 4th was also related to his depression. Because he had not seen a physician on October 2nd, the Grievant already knew that he was in trouble, the Union asserts, and may, under the spell of his depression, simply have given up. However, had the Company done a bit more investigation into the reasons for the Grievant's absences, either from the Grievant or his physician, it is possible that the entire absence would have been approved.

The Union also suggests that the Company's continued agreements to waive the first-day rule and the seven-day rule were followed by admonitions that this was the last time. In October, 1989 the Company finally gave up on the Grievant.

The Union also contends that the decision of Arbitrator Malin in the K— discharge case should be followed in this case. There Arbitrator Malin determined that the Grievant should be reinstated because the Company had misapplied the rule requiring a physician's visit on the first day, even though the Grievant in that case did not have nearly as good a work record as the Grievant here does.

In conclusion the Union stresses that the Company has considerable discretion in applying its attendance policy, especially when the ultimate penalty of discharge is in issue. Here, the Union urges that the Company decided to see whether the technical requirements of the policy had been complied with, in spite of the past history of accommodating the employee's illness.

The Union urges that the Grievant should be returned to his job. Medical evaluations, treatment and counseling with the Company kept informed of the extent and nature of the Grievant's treatment and/or absences is a reasonable way to accommodate both the Grievant's and the Company's rights, the Union argues.

Opinion

This is a case involving the dismissal of an employee for poor attendance. The Parties have submitted the following issue(s) to the Arbitrator:

1. Did the Employer have just cause to dismiss the Grievant?

2. If not, what shall the remedy be?

The Arbitrator has considered the testimony, documentary evidence and arguments put forth by the Parties and concludes that the Grievant was not dismissed for just cause. The Arbitrator's findings, conclusions and reasoning are set forth below.

The Company established an attendance program in 1985 which assigns a certain number of "occurrences" or points to various absences or instances of tardiness. An employee who is absent but has given the Company notice before his shift is charged with one occurrence; without notice the employee is charged with three occurrences for that absence. When an employee reaches certain levels of points, he or she is subject to discipline. For example, at the sixth occurrence, a verbal warning is given; at the seventh and eighth, a written warning, and when the employee accumulates thirteen occurrences, he or she is subject to discharge. The employee may "wipe out" one point by maintaining an entire month without any occurrences. In addition, the first five (5) occurrences in any given year are not counted; with the sixth occurrence, however, the Company begins counting at the level at which the employee ended the preceding year.

Medical absences which are excused are not counted as occurrences. To obtain an excused medical absence, an employee is required to see a physician on the first day of his illness and to give to the Company a Sickness and Accident form completed by his physician within seven (7) days of his return.

The Grievant was a nine-year employee of the Company at the time of his discharge. There was no evidence of any prior discipline on his record, except for that relating to his attendance problems. The Employer's witnesses acknowledged that the Grievant is a good employee, except for his attendance problems.

The evidence indicates that the Grievant had reached the level of thirteen occurrences three times prior to his discharge: in September, 1987, in April, 1988, and again in April of 1989. In each case the Grievant was gone for a number of days and failed either to see the doctor on the first days of his absence and/or to provide the requisite medical documentation within seven (7) days of his return. In each case the Company decided not to discharge the Grievant, and rolled back his points. In addition, the Employer permitted the Grievant to submit his medical documentation later than the end of the seven (7) day period.

The Union argues that the Grievant's attendance problems fall into a very predictable pattern. According to the Union, in the Spring and the Fall, the Grievant has a period of severe depression lasting about one or two weeks when he has a difficult time reporting for work. The Arbitrator has examined the records in this case and concludes that this is an accurate description of the Grievant's record. There are very few other absences, such as one-day absences, or instances of tardiness or early quits, outside of the pattern described above.

The Union contends that the Grievant's absences are outside his control because they are caused by acute bouts of seasonal depression (S.A.D.). The Grievant testified that when these attacks of depression hit he withdraws from contact with other people, and has disrupted eating and sleeping patterns. He testified that in order to stop this pattern, he needs a friend or family member to pull him back into contact with society and to help him seek help.

The Company did not dispute that the Grievant suffers from depression. On a number of occasions the Grievant discussed his problem with the Company's Employee Assistance Program (EAP) counselor, Dr. Richard Kilgis, with the Company's knowledge and encouragement. Dr. Kilgis sent him to several other physicians, who diagnosed the Grievant as suffering from depression. This diagnosis was communicated back to the Company through its medical unit, on several occasions.

The Company does not dispute that the Grievant suffers from depression. Nor did the Company directly dispute that the Grievant suffers from some sort of seasonal depression, limited to periods in the Fall and the Spring. The Company disputes, however, that the Grievant ever established that any kind of depression or any other medical disability was the cause of his last absence of several days with the Company. Therefore, the Company contends that it acted within its rights when it discharged the Grievant, and the Arbitrator should not overturn that result.

The Arbitrator concludes, however, that there were extenuating circumstances in this case which demonstrate a lack of just cause in the imposition of the discharge. At the outset the Arbitrator concurs with the view that the Company has the right to discipline and discharge employees for attendance problems. The Company has the right to a reliable workforce, i.e., employees who normally show up for work at the times they are scheduled.

In addition, to enforce this right the Employer may institute an attendance program and may discipline employees under the terms of that program. However, adherence to the terms of this or any attendance program, does not in itself demonstrate that the demands of just cause have been met in any particular case of discipline. Adherence to the terms of an attendance program cannot substitute for the standard of just cause mandated by Article 11 of the collective bargaining agreement, either for the employer or the Arbitrator. The Undersigned Arbitrator regards the just cause standard as a separate, controlling standard to be applied independently in cases involving discipline under attendance plans. This is especially true where the action involves a discharge, given the effect of a discharge on the Grievant's ability to obtain other employment.

In the instant case there are several factors which convince the Arbitrator that the discharge did not meet the just cause standard. This is not a case in which the Grievant was discharged for a continuing pattern of missing single days or racking up instances of tardiness or early quits. Rather, the discipline imposed in this case involved absences of several days, on several occasions, for which the Grievant claims he had a legitimate medical excuse, i.e. his recurring seasonal problem with mental depression.

Unlike the no-fault plans used by some employers, documented medical absences are excusable under the Company's plan here, and do not count towards the point totals which lead to discipline. Here, the Company discharged the Grievant basically for failing to meet the requirements of the attendance plan for documenting these medical absences. In particular the Grievant was caught by two requirements: the requirement that he see a physician on the first day of his absence, and that he provide medical documentation of the absence within seven (7) days of his return to work.

As a threshold issue, the Company did not argue directly that a bona fide diagnosis of mental depression was not a legitimate medical excuse for the employee's absences. Rather, the Company argues that the Grievant did not document properly his absences, in accordance with the requirements of the attendance plan, particularly in regards to the last several days of absence prior to his discharge.

The Union argues, however, that the employee is not required to provide medical documentation for seven (7) days after his or her return to work. In the case of the last absence at issue here, the Grievant called in sick on October 2nd, 1989, did not call in at all on October 3rd and 4th and was called into a meeting on October 5th, 1989, at which time he was placed on a one-week leave of absence so that both he and the Company could determine what to do. At the meeting one week later, the Union argues, it was clear that the Company already had decided to discharge the Grievant.

The Union argues, therefore, that the Grievant never was given an opportunity to present medical documentation seven days after his return from his last absence because his return from that absence was thwarted by the premature discharge. If the Grievant had been permitted to provide medical documentation, the Union argues, then the entire absence would have been excused, and the Grievant would not have been terminated.

The Company argues, however, that the Grievant never mentioned any problem, including depression, in the first two meetings regarding the October absences, as the cause of these absences. Therefore, the Company urges that it had no reason to believe that any medical documentation was available or forthcoming, at the time of the

Grievant's dismissal. In addition, the Grievant did not mention that he had been to see a physician on the first day of his absence, the Company notes.

The Grievant's testimony at the arbitration hearing, and the records of the Company's minutes of the meeting on October 5, 1989, indicate that the Grievant told the Company that the reason for his absence was that he had been "laying low." The Grievant also testified that he stated that he was not happy, and he explained the reasons for his unhappiness at the arbitration hearing, as follows,

> Well, knowing that I had fallen into this trap of depression again, and to the point of termination as I was, plus knowing the fact that I hadn't seen a doctor on the initial date, knowing the rules, I knew I was in trouble.

The Company official who wrote up the report for the meeting on that date stated that the Grievant stated that he was unhappy working at General Mills and was trying to determine whether he should resign or simply allow himself to be fired.

The Arbitrator concludes that the Grievant was not very communicative at the October 5th hearing, and could not, under most circumstances, expect the listener to know that the term "laying low" meant that he was very depressed. However, the inability to communicate well with others is one of the symptoms of the Grievant's depression, as evidenced by his testimony that he withdrew from contact with other people as one of the most serious symptoms or results of an attack of the depression. Furthermore, there is sufficient evidence that the Company officials knew or should have known that the Grievant was indicating that he was suffering from another serious bout of depression at this meeting, for the following reasons. First, the Company had medical evidence from other absences which indicated that this particular pattern of absence was caused in the past by bouts of depression. Second, there was evidence from the Company's minutes of the October 5th meeting that Company officials inquired about whether the Grievant was undergoing counseling and thus raised the issue of his mental health at that time. There was also unrefuted testimony from the Grievant that the Company made an appointment for him to see the EAP counselor the next day, who expressed concern about whether the Grievant could make a rational decision to quit, and about whether the Grievant was suicidal. The Grievant saw the Company's EAP counselor, at the Company's request, twice in the week before his discharge, and there can be little doubt that the EAP counselor knew that he was depressed.

Under these circumstances, the Arbitrator concludes that the Company did have notice that the Grievant's absences in October, 1989 were a result of his medical problem with depression. It is possible that Karen Morris, who wrote the minutes for each of the Company's three meetings with the Grievant, and who had only worked for the Company for a short time at this location, did not recognize the Grievant's absences as clearly being due to this problem. But other management officials present at the meetings were familiar with the Grievant's history, and clearly were aware of his recurrent problem with depression. Because the Company knew or should have known that the Grievant's absences in October, 1989 were probably due to his depression, the Company should have afforded him an opportunity to produce medical documentation within some time period, to substantiate his illness.[1]

The Company suggests, however, that the documentation would have been ineffective since the Grievant did not go to see a physician on the first day of his illness. The Arbitrator concludes, however, that the nature of the Grievant's illness renders unfair discipline on the basis of the application of the first-day rule to him.

As stated earlier, one of the key symptoms of the Grievant's illness, which was not refuted by the Company, was his withdrawal from society when the depression came over him. As he stated, it usually took the intervention of another person to pull him out of it, and get him to seek help. Under these circumstances, the Arbitrator cannot conclude that the Grievant's failure to follow the first-day rule was voluntary. Rather, this case is more like the case decided by Arbitrator Malin, between these Parties, where he ruled that the grievant's failure to follow the first-day rule was not cause for discharge when the grievant's physician could not see him on

[1] There was no evidence that the Grievant could provide such medical documentation at this point. However, the Arbitrator must examine the facts as they existed at the time of the discharge, and the seven-day period had not lapsed at that point. Once the discharge was imposed, the grievant, especially as a person in a depressed state, may have thought that there was no further reason to obtain the documentation.

the first day. *(General Mills v. American Federation of Grain Millers, Local Union No. 316,* (Malin, Arb., 1988). The Company attempts to distinguish that case because. The grievant there was unable to see his physician *through no fault of his own,* whereas in the instant case, the Grievant's inability to provide documentation was caused solely by the Grievant himself. For the reasons discussed above, the Arbitrator concludes that this is not the case.

Therefore, the Arbitrator concludes that the standards of just cause were not met when the first-day rule was applied to the Grievant. In reaching this decision, the Arbitrator has considered whether applying the rule differently to the Grievant is appropriate. The Arbitrator notes that there is no anti-discrimination clause in this agreement which covers employees with mental (emotional) or physical disabilities. Nor is there a provision of the Agreement which specifically incorporates the federal Rehabilitation Act into the Agreement, although the employer may well be covered by that Act as a federal contractor. The absence of any incorporation of this act or a general anti-discrimination clause in the labor agreement, however, leads to an interesting situation.

In the not very distant past our society often treated mental or emotional illness, drug and alcohol addiction as moral failings, within the control of the victim. However, in the past thirty or so years society has come to treat these problems not as moral failings, but rather as illnesses in need of treatment. These attitudes have in turn affected the way in which arbitrators now view discipline cases which were affected by a mental illness or addiction. See, e.g. Benjamin Wolkinson "Rights of the Handicapped or Disabled Worker" Chapter 27 in Tim Bornstein and Ann Goseline *Labor and Employment Arbitration* (Matthew Bender Co., 1989). In the past if an employee came to work intoxicated, the employer often discharged the employee, and arbitrators usually upheld those discharges. Now, depending upon all the circumstances, an arbitrator might be just as likely to reinstate an employee, and require participation for a certain period of time in an Employee Assistance Program.

One rationale behind this new approach is that the individual is not totally responsible for his actions when he is under the influence of an addiction or a mental illness. We would not hold responsible an employee who could not get to the telephone to call in absent because he had a heart attack or stroke and was lying on the floor unconscious or unable to move. The symptoms of the Grievant's depression, which were not refuted by the Company, appear equally immobilizing, at least in its earliest stages. The Arbitrator concludes that under the just cause standard he must consider such mitigating factors, even though the agreement does not contain an anti-discrimination clause involving the handicapped or disabled.

In reaching this conclusion, the Arbitrator recognizes that sometimes an employee, through no fault of his own, accumulates so many absences that the Employer justifiably decides that his services are no longer of value to the enterprise. Perhaps this rationale underlies the Employer's actions in this case. However, the Employer here did not argue that the Grievant had reached this level; rather the Employer argued that the Grievant had not met certain technical requirements of the attendance plan. There was not sufficient evidence for the Arbitrator to conclude that the Grievant had reached this level, at the time of his discharge.

In this regard, the Arbitrator notes that the Grievant had been diagnosed as suffering from *seasonal* depression (S.A.D.) only by the last physician he saw before his discharge. This is a more specific diagnosis than the general diagnosis of depression, and this physician had begun treating the Grievant with light therapy, both through increased exposure to the sun and through a bank of lights which the Grievant bought for himself. The Grievant testified that this has caused some improvement in his condition.

However, the fact that the Grievant may still be so incapacitated by depression (S.A.D.) that he cannot maintain a good attendance record has affected the way in which the Arbitrator concludes that the remedy should be fashioned. In addition, in fashioning the remedy, the Arbitrator also considered the fact that the Grievant, even when he returned to work from his absences, was not diligent in returning his medical documentation. In one case the Grievant waited almost two (2) months after the Company told him he absolutely had to submit the documentation, to actually comply with the request. There is no evidence that his illness prevented him from complying with this requirement, in the same way that his illness prevented him from complying with the first-day rule. Even though the Arbitrator has found that the Employer erred in imposing this requirement too quickly to the last absences, the Grievant did

have control over complying with it at earlier stages.

For this reason and others the Arbitrator concludes that backpay is not an appropriate remedy. However, the Grievant will be reinstated, under the guidelines described below.

AWARD

The Grievant is to be reinstated, without backpay, for a one-year trial period. During that time the Grievant must enter the Company's employee assistance program, during which time the Grievant should be evaluated by a physician agreed to by both parties to determine his continuing fitness for duty, and to determine whether the Parties can agree to a scheme which would reasonably accommodate the Grievant's condition without undue hardship to the Company.

PRECISION PRODUCTS OF TENNESSEE —

Decision of Arbitrator

In re PRECISION PRODUCTS OF TENNESSEE, INC. [Springfield, Tenn.] and UNITED STEELWORKERS OF AMERICA, LOCAL 6798, FMCS File No. 92/05360, June 16, 1992

Arbitrator: David A. Singer Jr., selected by parties through procedures of the Federal Mediation and Conciliation Service

ABSENTEEISM

— Discharge — Dyslexia — Overtime — Enforcement of policy ▸118.6362 ▸118.6366 ▸118.305

Just cause existed to discharge employee whose failure to work required Saturday overtime increased his point total under absence control policy beyond 11-point maximum. It is contended that grievant's dyslexia precluded him from fully comprehending fact that he was scheduled to work overtime, but work schedules consisting mainly of numbers were posted throughout plant, schedules were explained to employees on daily basis, and grievant admitted that he understood meaning of numbers; both point system and fact that Saturday overtime was no longer optional had been subjects of "shop talk" for some time, and grievant knew or should have known that overtime in question was mandatory; grievant knew that his employment was tenuous, and employer had good reason for its failure to give him prescribed notification when he reached eight-point warning mark, since he was not at work to receive it.

Appearances: For the employer — Larry W. Bridgesmith, attorney. For the union — Michael Wilson, staff representative.

MANDATORY OVERTIME

Issue

SINGER, Arbitrator: — [The issue is: —]

Was B— (hereinafter the Grievant) discharged for cause and, if not, what is the appropriate remedy?

Background

Precision Products of Tennessee, Inc. (hereinafter the Company), located in Springfield, Tennessee, manufacturers tooling for the beverage can industry. Work is completed according to customer specifications, and production is geared to satisfy delivery date demands. The exclusive representative of approximately fifty bargaining unit employees is the United Steelworkers of America, AFL-CIO, Local Union 6798 (hereinafter the Union). The agreement currently in effect was entered into on August 13, 1990, and shall continue in effect to and including midnight, August 13, 1993, and for successive yearly periods thereafter, subject to certain stipulations.

The Grievant was employed in January, 1987. At the time of discharge he was classified as a machinist, operating a computer lathe. His assignment demanded close tolerance work including setting up the machine, reading the computer program, editing faulty programs, making adjustments, and producing the required part. A psychiatrist's statement, dated May 19, 1992, declares that the Grievant has been in treatment"... for problems related to stress" and has "... has responded positively to treatment involving both psychotherapy and antidepressant medication in small amounts." The statement further establishes that the Grievant "... has been treated off and on for 15 years for depression and stress and has been diagnosed as dyslexic."

The management team is arranged hierarchically. Supervisors are at the first level of management. Their primary task, in addition to supervision of general production, is to monitor work schedules that are based on pro-