

REVIEW COMMITTEE DECISION

Review Committee File No. 1062
North Bay Division L.I.C. Grievance No. 4-71-4

This decision concerns a one-day disciplinary layoff, and letter of reprimand, imposed on a Subforeman at the Sonoma Service Center. The discipline followed a fight between the Subforeman and a Warehouseman at the service center on December 7, 1970.

The grievance was discussed at the Division level and referred on to the Review Committee. The Review Committee could not reach agreement and the Union elected to pursue the matter to arbitration.

Following the appointment of a Board of Arbitration, and a neutral arbitrator, the matter came on for hearing December 16, 1971. The grievant was the only witness called to testify. Following direct and cross-examination, the Company, as it may do, withdrew the issue from arbitration upon the stipulation that this decision would issue from the Review Committee.

The following statement of facts is drawn from the testimony of the grievant at the arbitration hearing:

Statement of Facts

The grievant has been employed by the Company for some 20 years, the last nine of which he has served as a Subforeman. He has never before been involved in a fight during work hours and, in fact, nothing has been presented either to the Review Committee or the Board of Arbitration that reflects adversely on the employment record of the grievant.

In the year preceding this disciplinary action, the grievant had been upgraded on occasion to General Foreman at the Sonoma Service Center.

On the other hand, the employment record of F - -, the other party to fight, is marked with several instances of erratic and violent behavior that extends back a number of years. Apparently this behavior preceded his coming to the Sonoma Service Center. At the time of his transfer to Sonoma, the grievant testified, the supervisor in charge called the men in the yard together and explained that F - - was a nervous high-strung person. The supervisor requested any help the yard personnel could give him as far as trying to overlook a lot of things F - - might do and helping him along. There was further testimony of F - - striking other employees seemingly without provocation. Among those who F - - had previously struck was a supervisor and the grievant. At that time the grievant did not strike back.

The occurrence underlining this grievance took place on December 7 at about 10:00 AM in the bull room of the service center. The grievant was seated at a table when he heard sounds of scuffling. As it appeared to him that an altercation was about to take place, he stood up and shoved the two

combatants apart. F - -, one of the persons engaged in the scuffling, responded by striking the grievant in the mouth, causing a severe laceration. The grievant pushed F - - back, but F - - came at him again three or four times, at which point the grievant struck F - -, apparently each time. The evidence adduced at the hearing indicates that the grievant was penned in by tables and chairs and was prevented from escaping F - -'s onslaught. The grievant's testimony of F - -'s appearance at the time leads this Committee to the conclusion that F - - was in a highly irrational and emotional state of mind and for this reason believes the grievant's testimony that he could not have talked F - - out of the attack as the record indicates he had done in the past.

Discussion

Fighting by employees on the job is typically a serious industrial offense warranting disciplinary action in the absence of justifying or mitigating circumstances. It tends to have a disruptive effect upon the work force, and it carries with it the potential for serious injury to the participants.

Mitigation or justification may be present when one of the participants strikes back instinctively to protect himself. Even then, however, disciplinary action may be warranted if his conduct after that was such as to cause the fight to continue when continuance could reasonably be avoided. In short, one is not privileged to at the same time defend himself and whale the tar out of the other guy if there exists a reasonable opportunity to prevent further prolonging of the fight by backing away.

On the facts of this case, the Review Committee is of the opinion that such an opportunity did not reasonably exist. It is apparent that F - -, the other employee, was in an extremely emotional and irrational state of mind. Further, hemmed in as he was the grievant had no opportunity to get away from F - - or use other means to subdue him.

Decision

Taking into account all of the foregoing, it is the decision of the Review Committee that the grievant should be paid for January 18, 1971, and the letter of December 21 removed from his personnel file.

FOR UNION:

W. H. Burr
E. R. Sheldon
L. N. Foss

By

Date

L. N. Foss

March 1, 1972

FOR COMPANY:

J. A. Fairchild
H. J. Stefanetti
L. V. Brown

By

Date

L. V. Brown

March 1, 1972
