

On these grounds, the Union asks the arbitrator to give full compensation to all employees involved for all hours subcontracted.

POSITION OF THE COMPANY

To find for the Union, asserts the Company, the arbitrator must conclude that: (1) Rationalization I constituted "normal circumstances"; (2) the necessary skills and equipment to perform the job within the time constraints were available in the plant; and (3) the Company did not advise the Chief Steward of the subcontracting.

None of these three conclusions is justified, however, as the Company views matters. The circumstances, with some \$22 million being spent, hundreds

of subcontracts being made, and an employment rise "from 350 to 600," were not normal at all, it says. The engineering skills and equipment were in its opinion unavailable in the plant within the time constraints mandated by the conditions of the business. And, the Company adds, even though as a result of these first two considerations it was not obligated to talk to the Union at all, it did talk to the Chief Shop Steward—in 2001—and reached agreement with him that it would not have to notify the Union of subcontractors as long as the work pertained to Rationalization projects, as it assuredly did in this case.

Therefore, in the eyes of the Company, there was no violation of the Agreement and the grievance should be denied.

Case 8 Discharge for Fraud

THE ISSUE

Did the Company have just cause to discharge the grievant, Thomas Sax? If not, what should the remedy be?

BACKGROUND

The grievant, Thomas Sax, was discharged on January 12, 2002, for (as a confirming letter to him 2 days later from the Company's Manager of Labor Relations, John T. Raymond, stated) "dishonesty in working elsewhere on days when you were not working for [the Company] allegedly due to illness or disability."

From the time that a 99-day strike at the Company had ended in early November 2001 until the end of December 2001, Mr. Sax—the Company had learned from investigation—had been absent on some 10 of 30 scheduled working days. On most of these days of absence he had either reported sick and received sickness pay or reported on disability and gotten disability pay.

Further investigation by the Company, triggered by the Labor Relations Manager's recollection that Mr. Sax had told him that he had worked at the Hunterdon State School during the strike and had liked it, had unearthed the information that the grievant was still working there as a full-time employee. And Sax had then freely admitted to the Company that he had worked at Hunterdon on a number of days for which he had collected disability pay from the Company in November and December. He had also conceded that on several days in these same months on which he had reported off sick at the Company and received sick pay he was not really sick and that on one of these he had also worked at the State School.

On November 10, 2001, Mr. Sax apparently injured his back while working on the third shift. Because of this injury, he did not work on November 11, and on November 13 he reported to Dr. Charles R. Rooney, on duty at the time as the physician in the Company dispensary. Relying not only on a physical examination of the grievant but also on the latter's oral complaints about his back and the difficulty that Sax said he was having in walking because of the back injury, Dr. Rooney then instructed Sax to rest, stay off his feet as much as possible, and use moist heat and a muscle relaxant that was prescribed for him. Reliance on the grievant's references to the difficult time that he was having in moving deterred the doctor from recommending light duty at the Company for the grievant, as he could have done. And Sax received disability compensation under Article 17, Section 5 for November 14, 15, and 16, or the days on which he was scheduled to work but was directed to rest by the doctor (as well as for November 11). On November 14, he worked the 3 to 11 P.M. shift at Hunterdon. He reported back to Dr. Rooney on November 16 as directed and was cleared to return to work.

On December 16, 2001, Mr. Sax went to the dispensary complaining that he had reinjured his back at work and was sent to see Dr. Rooney at his hospital because the plant doctor was not in. Rooney, again relying on both physical inspection and conversation with the grievant, first suggested hospitalization to Sax this time, but, when the latter spurned this offer, once more prescribed rest, moist heat, and muscle relaxants. Rooney then (according to a notation made that day by Supervisor Medical/Safety Don Foster, presented in Company Exhibit #6, page 13, and to Rooney's own testimony at the hearing) told

Mr. Sax to report to the dispensary at the Company and see the doctor there on December 18. Sax, however, testified at the hearing that he remembered his instructions from Rooney on December 16 as allowing him an option: He could either report to the dispensary on December 18 or could telephone in. The grievant received disability pay from the Company on December 17 and 18 and worked on both days at Hunterdon (as he had done on December 16) amid bad weather, which forced him to stay over at Hunterdon—the 3 to 11:30 P.M. shift on December 17, from 11:30 P.M. on the 17th until 7:30 A.M. on the 18th, and also from 3 P.M. until 9:30 P.M. on the latter date.

The grievant did not see the plant doctor on December 18 but phoned in at about 8:05 A.M. on that date that “he felt okay and would see doctor when he reports to work (on December 22).”

According to Company records (Co. Exhibit #5), Mr. Sax also called in sick on November 24 and December 9 and 22 and received sick pay for each day. He acknowledged that he was not sick on those days and that he in fact worked the 3 to 11:30 P.M. shift at Hunterdon on December 9. The same Company records also show that the grievant reported off from the Company (without specifically claiming sickness or drawing sick pay) on November 28 and December 12 and worked at Hunterdon on both days.

CONTRACTUAL PROVISIONS

ARTICLE 9

Leave of Absence

SECTION 5. SICK LEAVE

1. All employees are eligible for seven (7) days fully paid non-authenticated sick leave each contract year.

ARTICLE 17

Present Benefits

(5) If an employee is disabled by a compensable accident, he or she will be paid eight (8) hours per day at the rate shown in Schedule A hereof during his or her disability up to the eighth (8th) regular working day and thereafter such further amounts in addition to the compensation provided by the law as the Company in its discretion deems proper.

POSITION OF THE COMPANY

In the eyes of the Company, the grievant “intentionally and without responsibility defrauded the Company of its property” (Company Post-Hearing Brief, page 11). A bright and articulate individual, he knew exactly what

he was doing. He clearly understood Dr. Rooney’s instructions that he should rest and chose to disregard these. He never once asked the doctor about working at Hunterdon, presumably recognizing that Rooney would not have allowed him to do this had he known of the other work. Although he accepted the disability compensation from the Company, he never informed the Company that at the same time that he was supposedly disabled he was working at Hunterdon—even on December 17 and 18 when he worked (by the Company’s calculations as summarized on page 13 of its Post-Hearing Brief) “22½ hours in a 30½ hour period.” Either he was not disabled and exaggerated his condition to the doctor or (less likely given his many hours of advanced medical technician training) he was injured and chose to ignore Dr. Rooney’s instructions, but in either case the Company was improperly deprived of his services and suffered the liability of his wage. Knowingly collecting disability compensation while at the same time working another full-time job amid these circumstances, Sax was clearly dishonest and the Company unquestionably had just cause to discharge him, it argues.

In addition, the Company contends, the grievant’s act of calling in sick on days when he was not provides a second (if unneeded) reason for his discharge. “Non-authenticated” as used in Article 9, Section 5, means nothing more (in the Company’s opinion) than that an employee does not have to prove his sickness and the Company draws on both the dictionary definition of “non-authenticated” (“not rendered authentic or valid . . . not verified . . .”) and Mr. Raymond’s testimony that the parties never understood that sick days could be used as personal days (Company Post-Hearing Brief, page 16) in support of this position. The grievant said he was sick when he was not and, as the Company views matters, no employer should be asked to tolerate such deliberate deception.

POSITION OF THE UNION

In a nutshell, the Union asserts that Mr. Sax did nothing wrong. To prove dishonesty, in the Union’s opinion, the Company must prove that: (1) Sax was not injured; (2) the company doctor recommended *bed rest*; and (3) the grievant worked in the same kind of employment and during the same shifts at Hunterdon that he would have worked at the Company.

It has proven none of this, says the Union. On the contrary, the Union argues that: Sax had clearly been injured on both occasions on which Dr. Rooney diagnosed