

Case 2 Fighting on the Employer's Premises

THE ISSUE

Was the grievant, Fred Brooks, discharged for just cause? If not, what should be the appropriate remedy?

BACKGROUND

On July 15, 2002, forklift driver Fred Brooks was involved in an incident on Company property and on Company time with another forklift driver, Harold Thomas. As a result of the incident, both men were suspended for 2 days for investigation and on July 18, 2002, both of them were terminated.

Brooks' official Termination Notice (Joint Exhibit 3) gives as the reasons for his separation "Fighting on co. property (knife involved in incident) and assault. Also destruction of company property. Violations of Rules 38 and 39." On August 18, 2002, he filed a grievance (Joint Exhibit 6), complaining that, "I was discharged for fighting on company property. I feel that this is unfair and unjustified because the company does not fire everyone for fighting. I ask to be reinstated with back pay and seniority." It was denied, triggering this arbitration.

CONTRACTUAL PROVISIONS

ARTICLE III

Management's Rights

SECTION 1. It is agreed that the operation of the business and the direction of the employees including the making and enforcing of reasonable rules to assure orderly and efficient operations, the right to hire, to transfer, to promote, to discharge for cause, to lay off for lack of work, or to change or regulate shifts, are rights vested exclusively in the management of the Company. . . .

ARTICLE XII

Representation and Grievance Procedure

SECTION 2. A grievance is defined to be any dispute between the Company and one or more employees and/or the Union as to an alleged violation of a provision of this Agreement. The steps for processing grievances shall be as follows:

Step 1: Within three (3) work days of the occurrence of the alleged violation, the employee will take the matter orally to his/her immediate supervisor, with or without the Department Steward present. The supervisor will give an oral answer within two (2) work days.

Step 2: If the complaint or grievance is not then settled, it shall be reduced to writing and taken up within three (3) work days by the Chief Steward and the Plant Manager and/or designated representative(s) of the Company. The Company agrees to give a written disposition on all written grievances submitted by the Chief Steward within three (3) work days.

Step 3: If the complaint or grievance is not then settled, it shall be taken up by the Plant Manager, Chief Steward and higher officials of the Company and the Union within ten (10) work days. The Company will give a written answer within five (5) work days after this meeting.

Step 4: If a grievance has not been settled after the steps have been carried through, either party may ask that the grievance be arbitrated. Grievances challenging labor standards, incentive wages, or base rates of jobs will not be subject to arbitration. If the parties cannot reach an agreement on the selection of an arbitrator, the selection then shall be made from a list provided by the Federal Mediation and Conciliation Service. The expense of the arbitrator, if any, shall be shared equally by both parties. It shall be the function of the arbitrator to make decisions in cases of alleged violation of the specific Articles and Sections of this Agreement. He/she shall have no power to add to, subtract from, disregard, alter, or modify any of the terms of this Agreement.

SECTION 3. Any grievance not referred further by the Union in Step 2 and Step 3, within three (3) work days of the Company's written disposition shall be considered settled on the basis of the last Company answer, without prejudice to either party, unless the time limits are extended by agreement.

Employee Handbook Language

Company Rule	1st Infraction	2nd Infraction
38. Destruction: Employees shall not carelessly or unnecessarily abuse or destroy Company property or another employee's property.	Written Warning carrying 2-10 days suspension or dismissal	Dismissal
39. Fighting: Employees shall not engage in fighting with anyone on Company property or on Company time.	Written Warning carrying 2-10 days suspension or dismissal	Dismissal
46. Assault: Employees shall not assault anyone on Company property or on Company time.	Dismissal	

POSITION OF THE COMPANY

In the eyes of the Company, Mr. Brooks was properly discharged for cause for violating Rule 46 by committing an assault on Company property and on Company time. He was properly discharged for cause for violating Rule 38 by carelessly and unnecessarily abusing and destroying Company property. And the Union's actions in handling his grievance were in addition untimely at all three steps of the grievance procedure beyond the first one.

Regarding the grievant's alleged violation of Rule 39, the Company asserts that even Brooks admitted that he engaged in fighting with another employee on Company property and on Company time. Indeed, it contends, he not only freely engaged in such fighting but even encouraged its occurrence instead of simply leaving the area as he easily could have done. He violated a Company rule that he was well aware of in so doing and the fight was serious enough in nature to warrant dismissal for the first infraction. And, says the Company, even though the preponderance of the evidence shows that it is not necessary to reach the aggressor question, this same evidence nonetheless reveals that Brooks was in fact the aggressor.

Regarding the grievant's alleged violation of Rule 39, finally, the Company argues that the truthfulness of Brooks' expressed justification for even approaching Thomas on the day in question has been seriously called in question. Brooks, it says, justified his actions on the grounds that Thomas was "allegedly picking at or bothering him at work and running across his path on the fork lift" (Co. Post-Hearing Brief, p. 16). But Brooks' testimony that he complained to former Personnel Manager A. L. David about this prior to the fight was impugned by the latter's testimony that he didn't remember such complaints, contends the Company. Brooks' credibility was also detracted from, as the Company views matters, by his effort to get David to change his feelings about the incident after he learned that David had also left the Company's employ and by his own "intermittent inappropriate laughter at the hearings" (*Ibid.*, p. 17).

Brooks, says the Company, also violated Rule 46. There is unimpeached evidence in this case, it argues, from a witness with no allegiance to the Company (Thomas) that the grievant not only committed an assault but did so with a deadly weapon. Thomas' credibility, it asserts, "has not been impeached like Brooks' has" (*Ibid.*, p. 20). Thus, there was no discretionary aspect to Brooks' dismissal at all because an assault in violation of Rule 46 requires a penalty of dismissal on the first infraction.

And because "it is undisputed that there were boxes of company product stacked on the loading dock at the time of the incident in question . . . [and] that Brooks threw one or more of those boxes at Thomas" (*Ibid.*, p. 21), hitting him with at least one of those boxes and breaking jars of product in the boxes on contact with Thomas and/or the floor, Brooks also violated Rule 38, as the Company sizes up the situation: He carelessly, unnecessarily, and, indeed, deliberately abused and destroyed Company property.

Lastly, declares the Company, all of Brooks' actions were untimely at each step of the grievance procedure beyond the first. Step 2 was required to be taken by July 27, 2002; Step 3, by September 2, 2002; and Step 4, by November 20, 2002. As Step 2 was taken on August 18, 2002, Step 3 on November 17, 2002, and Step 4 on February 8, 2003, they all were untimely.

For these reasons, the Company asks the arbitrator to find that Fred Brooks was discharged for just cause and/or that his actions were untimely at all stages of the grievance procedure, including his request for arbitration.

POSITION OF THE UNION

Mr. Brooks' sole sin in this entire matter, as the Union assesses it, was in being out of his workplace—certainly not grounds for discharge. All the way through the circumstances that took place on July 15, 2002, his role was strictly one of protecting himself. He was not the aggressor and not the assaulter. And whereas admittedly the incident would not have happened at all if he had not gotten off of