

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS

IN THE MATTER OF THE ARBITRATION
BETWEEN:

AUBUCHON DISTRIBUTING, INC.

-and-

TEAMSTERS, LOCAL 170

*
*
*
*
*
*
*
*
*
*
*

ARB-16-5033

Arbitrator:

Brian K. Harrington, Esq.

Appearances:

Jack Collins, Esq. - Representing Aubuchon Distributing, Inc.

Ken Berger - Representing Teamsters, Local 170

The parties received a full opportunity to present testimony, exhibits and arguments, and to examine and cross-examine witnesses at a hearing. I have considered the issues, and, having studied and weighed the evidence presented, conclude as follows:

AWARD

The grievance is denied. The Employer did not violate the Collective Bargaining Agreement when it terminated Mark Knoll for just cause.

Brian K. Harrington (BE)

Brian K. Harrington, Esq.
Arbitrator
June 24, 2016

INTRODUCTION

On January 7, 2016, Teamsters, Local 170 (Union) filed a unilateral petition for Arbitration. Under the provisions of M.G.L., Chapter 23, Section 9P, the Department of Labor Relations (Department) appointed Brian K. Harrington Esq. to act as a single neutral arbitrator with the full power of the Department.¹ The undersigned Arbitrator conducted one day of hearing at the Department's office in Springfield on April 26, 2016.

The parties made oral closing arguments at the conclusion of the hearing in lieu of submitting briefs.

THE ISSUE

Did the company terminate Mark Knoll for just cause?²

If not, what shall be the remedy?

RELEVANT CONTRACT LANGUAGE

The parties' Collective Bargaining Agreement (Agreement) contains the following pertinent provision:

ARTICLE 10 – Disciplinary Action

ITEM 1- JUST CAUSE

¹ Pursuant to Chapter 145 of the Acts of 2007, the Department of Labor Relations "shall have all of the legal powers, authorities, responsibilities, duties, rights, and obligations previously conferred on the ... the board of conciliation and arbitration ... including without limitation those set forth in chapter 23C, chapter 150, chapter 150A, and chapter 150E of the General Laws."

² In his opening statement, counsel for the Employer initially raised a procedural arbitrability claim based upon the timeliness of filing with the Department. I noted that the date that the Department docketed the filing in this matter was earlier than the date of the Notice of Arbitration. This resolved the procedural arbitrability question and the Employer withdrew that claim.

The employer will not discharge, suspend, or discipline any employee without just cause.

WORK RULES

The Employer has established work rules that the Union and employees follow.³ The relevant provisions are:

I. GENERAL WORK RULES

No employee is to punch the time clock of any other employee under any circumstances and drivers are to maintain proper time records.

III. WORK STANDARDS

All employees who are subject to Work Standards must be able to reach 94 percent of standards on a daily basis and employees who are working diligently and also participating in good faith in that retraining will be afforded a 4% deficiency margin before further discipline.

Employees that are not reaching the required level of 90% (1st offence)(sic) will be warned; they will also be observed, counseled, monitored and retrained as required and determined by the company.

If the Employee continues to perform below 90%, additional progressive discipline will be implemented, as follows:

2nd Offense- Below Standard Notice- retraining
3rd Offense- Below Standard Notice- retraining
4th Offense- "Verbal Warning" (in writing)
5th Offense - "Written Warning"
6th Offense - Suspension - 1 day
7th Offense - Suspension - 5 days
8th Offense- Termination

Provided, after the passage of twelve months (from the underlying event of an offense) without additional

³ Although the evidence was not clear that these work rules are incorporated as part of the Agreement, the Union does not challenge their validity or application to its members in this matter.

deficiency, an Employee's progressive discipline record shall revert to the 2nd Offense level.

Employees transferred into jobs which they have not previously performed will be given a one (1) week period to achieve Work Standards before this provision is applied.

V. GROUNDS FOR IMMEDIATE DISMISSAL

Violation of any of the following rules will subject an employee to the appropriate disciplinary action up to and including termination for reasons set forth above:

- 3) Punching the time card of another employee or wrongly reporting of hours worked.

THE FACTS

Aubuchon Distribution, Inc. (Aubuchon or Employer) is a private company based in Westminister, Massachusetts that distributes products to 107 Aubuchon Hardware stores located in New England and upstate New York. The Teamsters have been the exclusive representative for employees at Aubuchon Distributing for approximately seventy years. The Westminister warehouse and distribution facility holds 16,000 different products which are sold in stores. There are about 65 full time employees at the distribution center with an additional 12-15 casual employees during the summer.

The Employer and the Union are parties to an Agreement which is currently in effect.⁴ This Agreement covers employees that work at the Westminster distribution facility, including Mark Knoll (Knoll).

The basic operation of the Westminster facility is that the Employer orders products from hardware manufacturers or distributors which are then shipped to the facility. Once these products arrive, they are sorted and placed in the appropriate bin with others of their kind. Stores place orders for various products with the facility, and employees move from bin to bin gathering products and assembling them into packages for shipment to the stores by company drivers. When employees arrive at the start of their shift, they place their hand in a scanner which records their time of entry. Employees repeat the process at the end of the shift. Handprint scanning replaced a time card system approximately six years ago.

Knoll was a long-term employee who worked as a "picker" at the facility for approximately twelve years. A picker is an employee who places products in their respective bins when they arrive and also removes products from their respective bins and assembles them into orders for shipment to stores. Pickers are subject to work standards as defined in the work rules listed above. These work standards measure employee productivity by demonstrating how long an assigned task takes to complete. If a picker fails to maintain a sufficient percentage work standard (meaning that they completed 94% or greater of their

⁴ The parties did not indicate the expiration date of the Agreement and submitted what they believed to be relevant portions rather than the entire Agreement.

tasks in the expected time) they are subject to the performance disciplinary matrix listed above. Knoll had received warnings under this system in the past.⁵

Computer terminals are located in each designated area ("zone") of the facility where pickers work. When an employee is assigned a task, multiple tasks or to work in an assigned area of the facility, they log in with their picker number (Knoll's was 76) and password (the same number). When they move to a new area after completing their assigned task(s), they repeat the process.

On December 1, 2015, Knoll was working as a "fill-in" employee. Fill-in employees cover for employees taking time off who are assigned to be in a specific zone of the facility. On December 3, Knoll was filling in for employee 29, who was the last employee to use the computer in zone 4. The IT manager, Evan Pinsoneault, (Pinsoneault) credibly testified that in that circumstance, the number "29" would be listed in the top field on the computer screen, with the password field blank.⁶ In that situation according to Pinsoneault, Knoll should delete the "29" in the user field and type in "76", his employee number and then his password.

However, Knoll testified that instead of "29," the number "36" appeared in the user field, and, rather than change "36" to his number "76," he just typed in the password for employee 36 and started to work. Sometime after Knoll started

⁵ Aubuchon emphasized at the hearing that Knoll's termination was not performance based. The evidence regarding the performance matrix was introduced to demonstrate Knoll's familiarity with that system.

⁶ The password system in use at the time required the employee's password to match their two digit number.

work in zone 4, an assistant manager started to look for him.⁷ As this search was unsuccessful, the assistant manager spoke to distribution manager Brian Morey (Morey), who had access to the computer system and could locate Knoll.

Morey logged in to see where Knoll was and to check his production levels. Soon after, he observed Knoll in zone 4 but realized that Knoll was not logged in to the production system. Morey also observed that employee 36 was logged in and working in another zone at the same time. Morey checked work logs and determined the last time employee 36 had been assigned to zone 4 was October 17, 2015, and that on December 1, 2015, there was essentially no productivity from the "36" who was working in zone 4 that day.

On December 2, 2015, the circumstances above repeated themselves exactly. Knoll logged in again as "36" for a period of time and did not complete any of the tasks assigned to him. In circumstances where unforeseen events take place, i.e. an employee drops something and has to clean it up, they fill out a sheet to give to their supervisor to explain why they did not hit their production numbers for a given period of time. Knoll did not fill out such a sheet for the time periods in question on December 1 or 2, 2015.

On December 3, 2015, Morey called Knoll in to his office at the start of the shift and asked for an explanation of his log in as "36" for the prior two days and the lack of productivity displayed each time. Knoll replied that an unknown supervisor had assigned him to perform a different task on December 1 (for which he did not log in) and that on December 2, he had been in the restroom for

⁷ It is unclear why the assistant manager was searching for Knoll.

a long duration during the time in question. After hearing these explanations, the Employer terminated Knoll.

POSITIONS OF THE PARTIES

THE UNION

The Union first argues that Knoll “had a target on his back”, meaning that the Employer was looking for a reason to terminate Knoll and the unfortunate error with the computer in zone 4 gave them the reason they needed. Aubuchon is attempting to terminate Knoll for poor performance without going through all of the steps necessary. Knoll was not responsible for the appearance of the number 36 on his work screen on December 1 and 2, 2015, and logged in as employee 36 because he thought that was what he was supposed to do. Other employees do the same on a regular basis.

While punching the time card of another employee would be grounds for termination, this is not what Knoll did. He did not deliberately falsify any time records. Because he did not speak to Morey on a regular basis, Knoll was unclear as to what to do if another employee’s login appeared at his terminal. He had no idea that logging in as 36 was improper, and his fellow workers led him to believe that this is how he should log in if another employee’s number appeared on the screen when he logged in. Knoll should be reinstated with full back pay and benefits as his termination was not for just cause.

THE EMPLOYER

Knoll was aware of the login procedure, as he had been employed at the facility for nearly twelve years, most often as a fill-in employee. It is not believable that every other time Knoll logged in as a fill-in, he did it correctly, as

in those occasions another employee's number would have appeared on the login screen. The only way for "36" to be logged in to zone 4's terminal on December 1 and 2, 2015 was if Knoll did so deliberately in order to avoid doing his assigned work and not run afoul of the performance quotas.

This is not a time card case. Falsely reporting hours worked is grounds for immediate termination, which is what Knoll did. His reasons for doing so were not credible and his explanations for what he was doing during those times on December 1 and 2, 2015 were not believable. Moreover, the last time employee 36 worked in zone 4 was in October of 2015. The computer system at the facility does not prepopulate random login numbers. No evidence was presented to suggest that any other employee logs in to work terminals by using another employee's number. Knoll's termination was a clear violation of a work rule and should be sustained for just cause.

OPINION

The issue before me is: Did the company terminate Mark Knoll for just cause?

If not, what shall be the remedy?

For the reasons stated below, I find that the Employer did not violate the Agreement when terminated Mark Knoll for just cause. The grievance is denied.

The Union urges me to find that this case is not a time card violation, and therefore not worthy of termination. While I agree that this is not a time card case, it is analogous to one. Adopting the Union's argument would render one of the agreed upon work rules meaningless, and I decline to remove the rest of the meaning from item 3 in the list of grounds for immediate dismissal. A result which finds contract language meaningless should be avoided in arbitration,

Elkouri and Elkouri, How Arbitration Works, 9-35 (7th Ed., 2012). The work rules, as agreed by the parties, are an extension of the contract itself.

If the parties had intended to have the work rule provisions apply only to punching in and out at the start and end of shifts, they would have made that clear. Instead, the phrase “wrongly reporting hours worked” appears. This language clearly relates to the productivity standards agreed to by the Union and the Employer that are present in the contract. Wrongly reporting hours worked interferes with the maintenance of those production standards by Aubuchon. Clearly the Employer has a high motivation to enforce those standards without disruption.

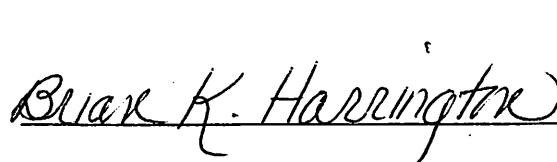
Knoll purposely, deliberately and wrongly reported the hours he worked by logging in as employee 36 for periods of time on December 1 and 2, 2015, and then avoided the performance of his assigned tasks. Pisoneault’s credible testimony about what employee number would “default” to the terminal in zone 4 showed that “36” could not have been the default number, and the only way “36” could have been entered on those occasions was if someone did it deliberately. Morey gave convincing testimony regarding the operations of the distribution facility and demonstrated that all pickers knew how to log in to the computer system correctly because it was part of Morey’s job to make sure that they did.

I find that Knoll was on notice of the work rules regarding productivity and that he knew or as a reasonable person should have known, of the consequences of logging in as another employee. Knoll’s testimony regarding his knowledge of the log in system and his actions during the time periods when he was logged in as employee 36 was self-serving and not credible. There was

no suggestion that the work rule prohibiting wrongly reporting time was selectively enforced on just Mr. Knoll. If the log in as employee 36 had happened on one occasion I might have looked more favorably on the Union's case or at least reduced the punishment imposed by the Employer. However, the improper log in on two consecutive days demonstrates Knoll's clear intent to avoid work which justifies his termination.

AWARD

The grievance is denied. The Employer did not violate the Collective Bargaining Agreement when it terminated Mark Knoll on December 3, 2015.

 (KE)

Brian K. Harrington, Esq.
Arbitrator
June 24, 2016