UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
PIKEVILLE

CIVIL ACTION NO. 86-05

PIKEVILLE COAL COMPANY, PLAINTIFF,

VS: MEMORANDUM OPINION

BLAINE C. CHANEY, ET AL., DEFENDANTS.

INTRODUCTION

The above-styled action was brought under the Labor Management Relations Act of 1947, 29 U.S.C. Section 185, by a coal company for which the individual defendant, Blaine C. Chaney, had worked. The plaintiff seeks to overturn a decision of an arbitrator issued December 17, 1985 regarding Chaney's "discharge from employment". The case is currently before the undersigned on cross-motions for summary judgment.

FACTS

Both the union and the plaintiff company were signatories to the National Bituminous Coal Wage Agreement of 1984 (Wage Agreement). Said agreement contains mandatory provisions relating to the settlement of disputes in Article XXIV, which provides in pertinent part:

> Section (a) **Just cause required**
> No Employee covered by this Agreement may be disciplined or discharged except for just cause. The burden shall be on the Employer to establish grounds for discharge in all proceedings under this Agreement.
>
> Section (b) **Procedure**
> Where management concludes that the conduct of an Employee justifies discharge the Employee shall be suspended with intent to discharge and shall be given written notice stating the reason, with a copy to be furnished to the Mine Committee. After 24 hours, but within 48 hours, the Employee shall be afforded the right to meet with the mine superintendent or manager. At such meeting, a member or members of

the Mine Committee shall be present and, if requested by the Employee or the Mine Committee, a representative of the District shall also be present. When the district representative requests, the forty-eight hour time limit will be extended by an additional 48 hours. The Employer shall be entitled to have an equal number of representatives at the meeting.

Section (c) **Suspension**
If the Employer informs the Employee at the meeting between the Employee and the mine superintendent or manager that he still intends to discharge the Employee (or if no meeting was requested), the Employee remains suspended with intent to discharge for a period of time necessary to permit him to file a grievance and have it arbitrated. If the Employee does not file a grievance within five days of the notice of suspension with intent to discharge, the discharge shall become effective immediately.

Section (d) **Immediate Arbitration**
(1) If the District believes that just cause for discharge does not exist, it shall arrange with the Employer for immediate arbitration of the dispute, bypassing steps one through three of the grievance procedure.
(2) The next available district arbitrator shall immediately be assigned to hear the case.
(3) The appropriate district arbitrator shall hear the case within five days. At the conclusion of the hearing, the district arbitrator shall at that time announce his decision which shall be binding on all parties. Following the hearing, the arbitrator shall forthwith reduce his decision to writing within 10 days. If the arbitrator determines that that Employer has failed to establish just cause for the Employee's discharge, the Employee shall be immediately reinstated to his job. If the arbitrator determines that there was just cause for the discharge, the discharge shall become effective upon the date of the arbitrator's decision.

Article XXIII, which sets out the grievance procedure, also contains the following provision:

An earnest effort shall be made to settle differences at the earliest practicable time. Where an Employee makes a complaint during work time, the foreman shall, if requested to do so, and if possible, consistent with continous production, discuss the matter briefly on the spot.

At all steps of the complaint and grievance procedure, the grievant and the Union representatives shall disclose to the company representatives a full statement of the facts and the provisions of the Agreement relied upon by them. In the same manner, the company representatives shall disclose all the facts relied upon by the company.

Wage Agreement, Article XXIII, Section e.

On November 21, 1985, Chaney was informed by management that there were allegations of misconduct on his part--specifically, having committed a sexual assault on a coworker's wife on company property several days previously. On the 23rd of the month, a formal meeting was held at which time Chaney was notified of the company's intent to suspend him with intent to discharge;[1] the employee requested the presence of his union president, Denver Sullivan.[2] Two days later, the 24-48 hour meeting was held; management then reaffirmed its intent to discharge.

By agreement of the parties, steps 1 through three of the Article XXIV procedures were bypassed and the matter was submitted to Arbitrator William J. Hannan on the issue "Did the company have just cause to discharge the grievant?". However, at the hearing on December 10th, the arbitrator heard evidence relating to a procedural issue raised by the union at the time of the hearing.[3]

In his decision issued on December 17th, the arbitrator concluded that the employer had failed to follow the mandated discharge procedure of the contract. Against the company's objections, he then imposed upon the employee a thirty day suspension, a sanction which the union did not contest. The arbitrator specifically stated that his decision was <u>not</u> based on the company's failure to establish "just cause" for discharge.

The company contends that the 1985 arbitrator's decision should be overturned in that the arbitrator exceeded the scope of his authority by making the decision on the procedural issue, which the union had already waived under the

---

[1]There was evidence that the "notice letter handed to Chaney at the time had been prepared before the meeting.

[2]There was some dispute about whether Chaney had requested that the union president be present on the 23rd. At any rate, the official was informed of the charges as of that date.

[3]The union has noted that the arbitrator had unspecified "informal" discussions with the parties about the gist of the charges.

contract. Further, there was no basis for the arbitrator to fashion a remedy of suspension of thirty days when he had heard no evidence on the misconduct issue. The company asserts that a remand to the arbitrator should be made so that all the evidence could be considered.

The union states that the arbitrator's decision must be upheld in that it was within the arbitrator's duty to consider procedural issues and that the union had not waived the issue, as all were informed at the time of the hearing. Further, it argues that the arbitrator did hear some evidence of misconduct at the hearing. Lastly, it contends that the company's recent attempt at discharge was improper in that the additional incident was long known and had just been dredged up in an attempt to circumvent the decision of the arbitrator.

The company admits that it has never reemployed the plaintiff. However, it points to the fact that the arbitrator indicated at the conclusion of his hearing that his ruling would not jeopardize or prevent a subsequent consideration of the merits of the charges against the employee, especially in light of any new of additional charges which might be made and thereafter considered cause for suspension and discharge. Affidavit of John E. Hodges at 2. Affidavit of Terri Thornsbury at 3-4. The company, in fact, instituted new proceedings after the hearing, but before the formal decision was entered--making a reference to an additional, similar incident in 1982, which was "discovered" as a result of the on-going investigation.[4] The employee failed to file a timely grievance with regard to this action.

---

[4]According to an affidavit of the alleged victim in the 1982 incident, she had told no one other than her family of the encounter with Chaney until the first week in December, 1982, just before the time of the arbitration hearing. Affidavit of Terri Thornsbury at 1-2. She also stated that, before this time, she had not even told the complete story to her husband for fear that there would be trouble between her husband and Chaney on the job, and because of the threats and wild behavior that Chaney had exhibited. Id.

[5]See footnote 3, supra.

DISCUSSION

1. Scope Of Submission

As noted previously, the company contends that the arbitrator's decision did not draw its essence from the contract when he based his decision on a matter which was not submitted to him.

The fact situation underlying the recent decision in Johnston Boiler Company v. Local Lodge No. 893, 753 F.2d 40, 43 (6th Cir. 1985) is similar, although in that case the parties had not drafted a formal submission to the arbitrator. The Sixth Circuit indicated that even though an employee's grievance form noted only that he had been "unjustly suspended" without "just cause", the arbitrator was not restricted to only determining whether the cause for termination was just but could determine whether the procedure followed in discharging the employee was proper under the collective bargaining agreement. Id. A determination of procedural fairness was sufficiently integral to "just cause" to sustain arbitrator's decision to decide that issue, where the submission did not make it clear that procedural fairness was not in question. Id. However, since a party cannot be required to submit to arbitration any dispute which he had not agreed so to submit, the Court stated that it did not mean to imply that parties could not limit the arbitrator's authority by careful drafting of the submission; rather, it was holding that the presumption of authority that attaches to an award applies with equal force to his decision that his award is within the submission. Id. at 43.

An example of a situation in which the arbitrator was found to have exceeded his authority was when the parties had specifically withdrawn a certain issue from consideration. Champion International Corporation v. United Paperworkers' International Union, 779 F.2d 328, 335 (6th Cir. 1985).

The major question is, then, whether the submission was carefully drafted enough to "make it clear that procedural fairness was not in question". In this particular case, the parties had taken the time to draft the question for submission and that submission clearly was limited to the substantive issue. Further, as the company points out, according to Article XXIII(e) of the contract, the union would appear to have waived the argument since it was not waived until the time of the hearing itself. Thus, although the underlying situation is not as clearly established as in Champion International, supra, the undersigned is of the belief that the arbitrator exceed his authority in this particular case.

2. Thirty Day Suspension Remedy

The company also alleges that the imposition of the thirty-day suspension remedy for misconduct was improper when no evidence about misconduct was heard. The union, on the other hand, points to that portion of the arbitrator's decision indicating that "informal discussions" were had with the parties, through which the arbitrator discovered the gist of the company's allegations of misconduct.

In National Post Office Mailhandlers, Watchmen, Messengers and Group Leaders Division, Laborers International Union of North America, AFL-CIO v. United States Postal Service, 751 F.2d 834, 841 (6th Cir. 1985), the Sixth Circuit held that since arbitrators are not bound by formal rules of procedure and evidence, the standard for judicial review is merely whether the party to the arbitration has been denied a fundamentally fair hearing. Id. at 841. This fundamental fairness does not require that an arbitrator must hear any and all evidence that a party might wish to offer, regardless of its length, repetitiveness or irrelevance; when the interpretation of a term in the collective bargaining agreement such as "just cause" is at issue, the arbitrator's judgment as to whether evidence is or is not relevant to his determination is subject only to limited review

by the courts. Id. Certain alleged minor procedural errors in the hearing did not deprive the complaining party of a fair hearing when parties had filed substantial written briefs both before and after the hearing. Id. Finally, the Court noted that courts must defer to an arbitrator's chosen remedies unless they demonstrate a clear infidelity to the agreement itself. Id. at 842.

A more recent decision has set out the standard for judicial review of the remedies chosen:

> When an arbitrator is commissioned to interpret and apply the collective bargaining agreement, he is to bring his informed judgment to bear in order to reach a fair solution of a problem. This is especially true when it comes to formulating remedies. There the need is for flexibility in meeting a wide variety of situations. The draftsmen may never have thought of what specific remedy should be awarded to meet a particular contingency. Nevertheless, an arbitrator is confined to interpretation and application of the collective bargaining agreement; he does not sit to dispense his own brand of industrial justice. He may of course look for guidance from any sources, yet his award is legitimate only so long as it draws its essence from the collective bargaining agreement. When the arbitrator's words manifest an infidelity to his obligation, courts have no choice but to refuse enforcement of the award.

Cement Divisions, National Gypsum Company (Huron) v. United Steelworkers, 793 F.2d 759 (6th Cir. 1986) (emphasis added).

The present situation does not appear to be one in which there were merely minor procedural errors. Rather, it appears that the company was not afforded a fundamentally fair proceeding in that no systematic effort was made to investigate the charges, and that the thirty day suspension had no basis in the evidence.

3. Effect of Second Discharge

The union has raised the question of the effect of the second discharge proceeding as part of its counterclaim for failure to reinstate the plaintiff. As should be obvious from the discussion, supra, the present award is unenforceable in

its present state. Thus, the plaintiff is not automatically entitled to reinstatement and the issue of whether the company tried to "circumvent" the earlier proceeding may become moot.

It should be noted, however, that allegations that an employee committed other sexual assaults on the working premises was sufficient to provide a basis for immediate suspension and, if established, discharge. Washington Heights--West Harlem--Inwood Mental Health Council, Inc. v. District 1199, National Union of Hospital and Health Care Employees, 608 F. Supp. 395 (S.D. N.Y. 1985).

CONCLUSION

Based on the foregoing discussion, a separate order will be entered granting the company's motion for summary judgment, denying the union's motion for summary judgment, and remanding the case to the arbitrator for a consideration of the substantive issue of "just cause".

This the _____ day of November, 1986.

HENRY R. WILHOIT,
JUDGE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
PIKEVILLE

CIVIL ACTION NO. 86-05

PIKEVILLE COAL COMPANY, PLAINTIFF,

VS: ORDER

BLAINE C. CHANEY, ET AL., DEFENDANTS.

* * * * * *

In accordance with the memorandum opinion entered this same date,

IT IS HEREBY ORDERED that:

(1) the plaintiff company's motion for summary judgment be GRANTED;

(2) the defendant's motion for summary judgment is DENIED;

(3) the case must be REMANDED to the arbitrator for consideration of evidence relating to "just cause for discharge."

This the _____ day of November, 1986.

HENRY R. WILHOIT,
JUDGE