

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

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CONOCOPHILLIPS COMPANY,		:	
		:	
Plaintiff,		:	
		:	
v.		:	CIVIL ACTION NO. _____
		:	
UNITED STEELWORKERS, LOCAL 10-234,		:	
		:	
Defendant.		:	
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COMPLAINT

Plaintiff ConocoPhillips Company (“ConocoPhillips” or the “Company”), by and through its attorneys, brings this action against the United Steelworkers, Local 10-234 (the “Union”) seeking to vacate an arbitration Opinion and Award, obtain relief from the remedy awarded therein, and stay enforcement of the Award pending this Court’s determination as to its validity. In support hereof, ConocoPhillips alleges as follows:

NATURE OF THE ACTION

1. The arbitration at issue arose out of a dispute regarding the two-day suspension of Richard Bishop (“Mr. Bishop” or “Grievant”), a former B Pumper Operator employed by ConocoPhillips at its Trainer, Pennsylvania refinery. As set forth *infra*, the arbitration raised the question of whether ConocoPhillips had “just cause” to issue the suspension.

2. ConocoPhillips contended during the arbitration proceedings, and the Arbitrator specifically found, that Mr. Bishop was suspended for his knowing violation of the required procedures for obtaining certification samples from a tank located at the Company’s Trainer Refinery.

3. The Arbitrator also acknowledged that Mr. Bishop previously had received a verbal warning for his issuance of deficient safe work permits and a written warning for opening the wrong transfer valve, which caused butane to contaminate a sphere of highly flammable pressurized propane gas.

4. Despite these findings, the Arbitrator nevertheless concluded that the Company did not have just cause for the two-day disciplinary suspension imposed on Mr. Bishop, reduced that suspension to a written warning, and awarded Mr. Bishop two days' pay.

5. Specifically, the Arbitrator made an express finding that progressive discipline was required and then created and imposed upon the parties a five-part progressive discipline structure, despite the fact that the parties' Collective Bargaining Agreement ("CBA" or "Agreement") contains no reference—much less a requirement—of progressive discipline.

6. Rather than making an independent determination as to whether the two-day suspension was warranted under the circumstances, the Arbitrator merely concluded that the two-day suspension "was not the next 'building block'" in his five-part progressive disciplinary system, crediting testimony of the Union President and the Grievant that they did not receive notice of the written warning issued for the sphere contamination until arbitration was requested. For this reason, the Arbitrator concluded, the two-day suspension was unjustified.

7. In reaching this conclusion the Arbitrator manifestly disregarded the Grievance and Arbitration Procedure provision of the parties' CBA expressly restricting him to the specific terms and provisions of the Agreement and prohibiting him from

adding to, subtracting from, or in any way altering any of the provisions of the Agreement.

8. The Court should vacate the Opinion and Award because the Arbitrator exceeded the authority accorded to him by the CBA between the parties. The Opinion and Award is contrary to the terms of the parties' CBA and does not draw its essence from that CBA.

PARTIES

9. ConocoPhillips is a Delaware corporation with its headquarters located in Houston, Texas. The Company operates the Trainer Refinery located along the Delaware River in Trainer, Pennsylvania. At all times relevant to this dispute, ConocoPhillips was an employer within the meaning of Section 2(2) of the National Labor Relations Act ("NLRA"), 29 U.S.C. § 152(2), and Section 301 of the Labor Management Relations Act ("LMRA"), 29 U.S.C. § 185.

10. At all times relevant hereto, ConocoPhillips was engaged in an industry affecting commerce within the meaning of the LMRA, 29 U.S.C. § 185.

11. Defendant, United Steelworkers, Local 10-234, is an unincorporated association. At all times relevant hereto, the Union was a labor organization as defined in Section 2(5) of the NLRA, 29 U.S.C. § 152(5), and Section 301 of the LMRA, 29 U.S.C. § 185, and was recognized by ConocoPhillips as the exclusive collective bargaining representative for a bargaining unit of non-supervisory employees engaged in refining as conducted by ConocoPhillips at the Trainer Refinery.

12. At all times relevant hereto, the Union represented employees in an industry affecting commerce within the meaning of 29 U.S.C. § 185 and represented employees in this judicial district for the purpose of collective bargaining.

JURISDICTION AND VENUE

13. The claim asserted in this Complaint is brought under Section 301 of the LMRA, 29 U.S.C. § 185.

14. Jurisdiction of this Court is based on Section 301 of the LMRA, 29 U.S.C. § 185, and 29 U.S.C. §§ 1331 and 1337.

15. Venue in this District is proper under 28 U.S.C. § 1391 and 29 U.S.C. § 185. This is a judicial district in which Defendant's duly authorized officers or agents at all relevant times have been engaged in representing or acting for employee members, and in which Defendant maintains an office.

16. The arbitration at issue took place at the offices of the American Arbitration Association, 230 South Broad Street, Philadelphia, Pennsylvania.

17. This action is timely filed under the Pennsylvania Uniform Arbitration Act, 42 Pa. C.S.A. § 7301 *et seq.*, as it was filed within 30 days after ConocoPhillips received notice of the Arbitrator's Opinion and Award that is the subject of this action.

FACTS

18. At all times relevant to this proceeding, ConocoPhillips and the Union were parties to a Collective Bargaining Agreement. A copy of the CBA is attached hereto as Exhibit A.

19. Article 24.1 of the CBA provides that "[t]he Company may discipline an employee for just cause."

20. Article 24.3 further provides that “[c]ommitting a posted offense, failing to obey working rules, or unsatisfactory work performance may be cause for discipline.”

21. The CBA does not otherwise specify the penalties for commission of a posted offense, violations of work rules, or unsatisfactory performance.

22. Article 25 of the CBA provides for a Four Step Grievance and Arbitration Procedure in the event that the Union, on behalf of a member employee, disagrees with the Company’s decision to discipline an employee. Of relevance herein is Step 4, which provides as follows:

If satisfactory settlement is not reached at Step 3, the grievance may be carried to arbitration at the written request of either party to the other within twenty (20) working days after the Company’s answer in Step 3. The Union or the Company shall request the AAA to submit a list of seven (7) arbitrators each of whom must be members of the National Academy of Arbitrators from which one shall be selected to hear the grievance. However, if either party is dissatisfied with the list, additional lists may be requested from the AAA. In no event shall the parties request more than three (3) lists. **In reaching a decision, the arbitrator shall be restricted to the specific terms and provisions of this agreement, and shall not add to, subtract from, or in any way alter any of the provisions of this Agreement.**

* * *

CBA, Article 25.8 (emphasis added).

A. Mr. Bishop’s Employment History

23. At all times relevant hereto, Mr. Bishop was employed by ConocoPhillips’ Trainer Refinery as a B Pumper Operator assigned to Area 6 of the Refinery.

24. Mr. Bishop’s date of hire was September 27, 2004.

25. As a new employee, Mr. Bishop underwent a lengthy, six-month training program consisting of fundamental safety training, operations classroom training, and on-

the-job training, and which covered specific chemical transfers and line-ups, as well as written procedures for all job tasks.

26. At the completion of this training Mr. Bishop was administered written tests and field tests to determine his proficiency in the job for which he had trained and thereafter received his qualification as an operator.

B. Mr. Bishop Improperly Issues Safe Work Permits

27. On November 9, 2005, Mr. Bishop signed and issued safe work permits for work to be performed on 157 tank.

28. A routine audit of the required permitting revealed a number of deficiencies in the permits issued by Mr. Bishop, thereby necessitating the stoppage of work on 157 tank until the permits were properly and accurately completed.

29. One day later, Business Team Leader Colin Franks (“Mr. Franks”) met with Mr. Bishop and issued him a verbal warning for failing to follow proper procedure for issuing the safe work permits.

30. During this meeting Mr. Bishop admitted that he failed to review the permits before signing them and did not dispute that he had failed to follow proper procedure for issuing the permits.

C. Mr. Bishop Misaligns Transfer Pipes, Causing the Contamination of a Sphere of Highly Flammable Pressurized Propane Gas

31. On October 26, 2005, the Company received a shipment of butane from the Texas Eastern Pipeline, and Mr. Bishop was directed by his Console Supervisor, Bernie Friel, to line up the butane shipment to 515 sphere.

32. Mr. Bishop, however, opened the wrong valve, which directed the butane transfer to a sphere of highly flammable pressurized propane gas (propane sphere 520) and contaminated the product therein.

33. Mr. Bishop's error resulted in significant economic loss to the refinery and a serious safety threat to Mr. Bishop, refinery personnel, and the community at large.

34. Mr. Franks investigated the sphere contamination incident, and, on January 18, 2006, issued Mr. Bishop a written warning.

D. Mr. Bishop Fails to Follow Required Sampling Procedure

35. On September 4, 2007, Mr. Bishop again failed to follow procedure when he was directed by his Console Supervisor to sample a tank for certification.

36. Specifically, the gauging and sampling procedure that Mr. Bishop was required to follow, titled "Area 5/6 Gauging and Sampling Procedure," mandated that Mr. Bishop take three different samples—one from the upper third of the tank, one from the middle third of the tank, and one from the bottom third of the tank, to obtain a representative sample of the entire tank.

37. To obtain each of these samples, including the sample from the bottom of the tank, Mr. Bishop was required to climb a ladder to the top of the tank, open the gauging hatch, and lower a one-quart bottle attached to gauging tape down into the product.

38. Mr. Bishop, however, obtained each of the samples from a valve located at the bottom of the tank.

39. On September 18, 2007, Mr. Franks met with Mr. Bishop to discuss the improper sampling incident. At this meeting Mr. Bishop did not deny taking the improper samples.

40. Accordingly, on September 18, 2007, Mr. Bishop was issued a two-day suspension for his failure to follow the proper procedure for obtaining certification samples.

E. Mr. Bishop Grieves His Suspension

41. On September 21, 2007, the Union filed a grievance alleging simply that the suspension was “too harsh.”

42. The Company denied the grievance at all levels, and the Union elevated the grievance to arbitration.

F. The Arbitration Proceeding

43. An arbitration hearing was held on May 7, 2009, before Arbitrator Robert E. Light.

44. At the hearing, the parties stipulated that the following issue would be submitted to Arbitrator Light: “Was there just cause for the two (2) day suspension imposed on Richard Bishop? If not, what shall be the remedy?” See Opinion and Award of Arbitrator Robert E. Light (“Opinion and Award”) at 2 (attached hereto as Exhibit B).

45. On June 15, 2009, the parties submitted post-hearing briefs.

G. The Arbitrator’s Decision

46. On or about July 22, 2009, the parties received an electronic copy of the Opinion and Award issued by Arbitrator Light.

47. In his Opinion and Award, the Arbitrator found that “the grievant violated the written and required operating procedures for obtaining certification samples from Tank 157 on September 4, 2007” and that “[h]e knew what those procedures were and he simply did not follow them, offering no legitimate excuse for not doing so.” Opinion and Award at 8.

48. The Arbitrator also acknowledged that Mr. Bishop had previously received a verbal warning for his issuance of deficient work permits and a written warning for his misalignment of transfer pipes resulting in the contamination of the propane sphere, stating, “there were some prior issues regarding the grievant: one involving safe work permits and also the issuance of a written warning respecting switches where the grievant opened the valve which directed the butane transfer to propane sphere 520 rather than butane sphere 515.” Opinion and Award at 5.

49. Despite these findings, the Arbitrator concluded that the Company did not have just cause for the two-day disciplinary suspension imposed on Mr. Bishop.

50. Specifically, the Arbitrator concluded that ConocoPhillips was obligated to adhere to a five-part progressive discipline structure created by the Arbitrator himself and consisting of “an oral warning, a written warning, a penalty of some duration, perhaps a penalty of longer duration and subsequently, if no improvement is made, then termination.” Opinion and Award at 8.

51. According to the Arbitrator, the Union and Mr. Bishop had not been made aware of the written warning placed in Mr. Bishop’s file for his contamination of the 520 propane sphere and, therefore, the two-day suspension was not the appropriate “next ‘building block’ in the progressive disciplinary scheme.” Opinion and Award at 8-9.

52. The parties, however, never agreed to any such progressive discipline system.

53. Nevertheless, the Arbitrator concluded that the two-day suspension for Mr. Bishop’s knowing violation of the required procedures for obtaining certification

samples should be reduced to a written warning, with Mr. Bishop being made whole for the two days in question. Opinion and Award at 8-9.

54. The Opinion and Award should be vacated because the Arbitrator exceeded the scope of his authority under the CBA.

55. Article 24.1 of the CBA authorizes ConocoPhillips to discipline employees for “just cause,” and Article 24.3 provides that “[c]ommitting a posted offense, failing to obey working rules, or unsatisfactory work performance may be cause for discipline.” See CBA (Exhibit A), at p. 32. Neither of these provisions, nor any other provision of the CBA, specifies the penalties to be imposed for the commission of posted offenses, failure to obey work rules, or unsatisfactory performance.

56. The Grievance and Arbitration Procedure in the CBA provides that “[i]n reaching a decision, the arbitrator shall be restricted to the specific terms and provisions of this agreement, and shall not add to, subtract from, or in any way alter any of the provisions of this Agreement. See CBA (Exhibit A) Article 25.8, at p. 36.

57. The Arbitrator disregarded this language and ordered that, although Mr. Bishop had clearly and knowingly violated the Company’s procedures for obtaining certification samples and had been issued both a verbal warning and a written warning for prior unsafe conduct and unsatisfactory performance, namely, his issuance of deficient safe work permits and his misalignment of transfer piping that caused the contamination of a sphere containing highly flammable pressurized propane gas, his two-day suspension should be reduced to a written warning.

58. By exceeding his authority under the CBA, the Arbitrator did not render a decision that drew its essence from the parties’ collective bargaining agreement.

CLAIM FOR RELIEF

59. Plaintiff repeats and re-alleges paragraphs 1-58 as though fully set forth herein.

60. As a result of the foregoing, the Opinion and Award should be vacated and set aside on the grounds that:

a. the Arbitrator exceeded the authority granted him under the terms of the CBA;

b. the Arbitrator acted in contravention of the terms of the CBA;

c. The Arbitrator evidenced a manifest disregard of the terms of the CBA;

d. The Opinion and Award fails to draw its essence from the CBA;
and

e. the Award is based on an impermissible modification, addition to, variance, change, removal, or disregard and/or abolishment of the provisions of the CBA, in violation thereof.

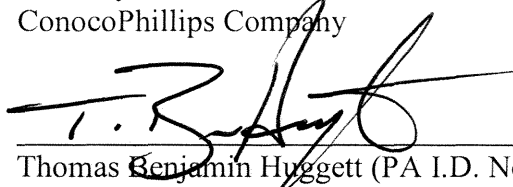
61. Plaintiff has no adequate remedy at law, as only a judgment vacating the Arbitration Opinion and Award will provide Plaintiff with the relief required under these circumstances.

62. There has been no prior request for the relief sought herein.

WHEREFORE, Plaintiff respectfully requests that this Court grant judgment staying the enforcement of the Award and vacating the Arbitrator's Opinion and Award in its entirety and award such other relief as may be just and proper.

Respectfully submitted,

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