

BEFORE THE ARBITRATOR

 :
 In the Matter of the Arbitration :
 of a Dispute Between :
 :
 CITY OF MARINETTE :
 (DEPARTMENT OF PUBLIC WORKS) :
 :
 and : Case 59
 : No. 43226
 : MA-5929
 MARINETTE CITY EMPLOYEES :
 UNION, LOCAL 260, AFSCME, AFL-CIO :
 :
 :

Appearances:

Mr. Richard B. Boren, City Attorney, on behalf of the City.
Mr. Steve Hartmann, Staff Representative, Wisconsin Council 40, AFSCME,
 AFL-CIO, on behalf of the Local Union.

ARBITRATION AWARD

According to the terms of the 1989-1990 collective bargaining agreement between the City of Marinette (hereafter the City or DPW) and Marinette City Employees Union, Local 260, AFSCME, AFL-CIO (hereafter the Union), the parties requested that the Wisconsin Employment Relations Commission designate a member of its staff to act as an impartial arbitrator to hear and resolve the dispute between them involving the October 27, 1989 termination of DG. The undersigned was designated arbitrator and made full written disclosures to which no objections were raised. Hearing was held on April 9, 1990 at Marinette, Wisconsin. No stenographic transcript of the proceeding was made and all post-hearing briefs were received by May 29, 1990 and thereafter exchanged by the undersigned. The parties agreed not to file reply briefs.

ISSUE:

The parties were unable to stipulate to the issue or issues herein, but they agreed to grant the undersigned the authority to frame the issue(s). Based upon all of the relevant evidence herein and the parties arguments thereon, I find and conclude that the issues herein shall be as follows:

- 1) Did the City violate the collective bargaining agreement when it discharged DG by letter dated October 27, 1989?
- 2) If so, what is the appropriate remedy?

RELEVANT CONTRACT PROVISIONS:

ARTICLE 1

RECOGNITION AND UNIT OF REPRESENTATION

. . . .

The Employer agrees not to discharge nor to discriminate against any employee for membership in the Union, or because of Union activities, and in the event an employee is discharged or discriminated against, shall reinstate and/or make restitution to such employee if, through the procedures contained in this Agreement, he is found unjustly discharged or discriminated against.

. . . .

ARTICLE 17

DISCIPLINARY PROCEDURE

The following disciplinary procedure is intended as a legitimate management device to inform employees of work habits, etc., which are not consistent with the aims of the Employer's public function, and thereby to correct those deficiencies.

Any employee may be disciplined, demoted, suspended, or discharged for just cause. The sequence of disciplinary action shall be oral reprimands, written reprimands, suspension, demotion, or discharge. A written reprimand sustained in the grievance procedure or not contested shall be considered a valid warning. A valid warning shall be considered effective for not longer than a nine (9) month period.

The above sequence of disciplinary action shall not apply in cases which are cause for immediate suspension or discharge. Theft of personal or public property, drinking intoxicants during working hours, or being drunk on the job are hereby defined as cause for immediate discharge. Gross negligence or willful dereliction of duty or violation of the grievance procedure are hereby defined to be immediate cause for suspension.

Any discharged employee may appeal such action through the grievance procedure and shall initiate grievance action by immediate recourse to Step 3, within ten (10) days of notice of discharge.

Any suspended employee may appeal such action through the grievance procedure and shall initiate grievance action by immediate recourse to Step 2.

Suspension shall not be for less than two (2) days, but for serious offense or repeated violation, suspension may be more severe. No suspension shall exceed thirty (30) calendar days.

Notice of discharge or suspension shall be in writing and a copy shall be provided the employee and the Union.

BACKGROUND:

DG was first employed by the City in its Public Works Department in 1983. DG was terminated on October 27, 1989 from his position (held during 1989) of light equipment operator on the DPW Street Crew. Notably, as a light equipment operator, part of DG's duties involved the operation of City-owned vehicles and equipment on City streets. As a light equipment operator in 1989, was expected to drive such vehicles/equipment as the blacktop raker, the chipper truck and occasionally if other DPW employees were on vacation, the garbage and dump trucks normally driven by those other employees.

Prior to the instant termination, DG had been discharged and returned to work in 1987. On May 11, 1987 WERC Arbitrator Lionel L. Crowley issued a Consent Award which reinstated DG and provided as follows:

1. The following grievance has been settled: The grievance filed by DG for a two (2) day suspension without pay, issued to him by the Marinette Department of Public Works, for an incident occurring on or about August 7, 1986, wherein DG was operating a motorcycle at excessive and unsafe speeds on Marinette Department of Public Works' garage property. The suspension followed at least two (2) prior incidents of improper use of either a City vehicle or a private vehicle on City owned property.
2. The City shall compensate DG by giving him two (2) additional vacation days during calendar year 1987.
3. The discipline for the above incident shall have the legal and contractual effect of a suspension through May 6, 1989, and the next step in the progressive discipline sequence during this entire period shall be discharge. (emphasis in original)

Thereafter, DG was again discharged by letter dated October 20, 1987, which letter stated in part as follows:

Please be advised that you are hereby discharged from your employment with the City of Marinette effective immediately. This letter will briefly set forth the reasons why.

As you know, your employment with the City was conditioned upon the terms of a Consent Award issued by the Wisconsin Employment Relations Commission on May 11, 1987. Paragraph three (3) of the Consent Award states that the next step in your progressive discipline sequence through May 6, 1989 shall be discharge. You have committed two (2) acts or omissions subject to discipline.

The first act occurred on or about Friday, October 16, 1987, when you threw a dead skunk into the back of a City garbage truck with such force that you apparently broke the scent bags. The intense odor made the working conditions for the loaders on the back of the truck intolerable that afternoon. Your actions caused dissension and disruption among your coworkers. Despite a thorough spray cleaning of the garbage truck in question, the odor is still noticeable as of today.

The second incident requiring discipline and/or discharge in its own right is the fact that you failed to report for work at the scheduled time on both the morning of Monday, October 19, 1987, and the morning of Tuesday, October 20, 1987. As of midmorning on Tuesday, October 20, 1987, you still had not reported to work nor had you notified your superior regarding your absence. By virtue of these facts you have violated the terms of article twelve (12) of the present union contract including the sixth (6th) paragraph therein. 1/

. . .

This case then went to a full hearing before WERC Arbitrator Amedeo Greco. In his Award, Arbitrator Greco found that DG's wife had properly notified the City of DG's absence on October 19 and 20, 1987, pursuant to Article XII of the then-effective agreement, 2/ and that this incident could not form a basis for DG's discharge. With regard to the skunk incident, Greco found DG's acts in this regard were insufficient basis upon which to discharge DG. In conclusion, Greco stated as follows:

There are several problems with the City's contention that this incident (relating to the dead skunk) was

1/ The above quotations from the Crowley Award and from the City's October 27, 1987 discharge letter, appear in WERC Arbitrator Greco's February 11, 1988 Award which put G. back to work following his October 20, 1987 discharge. The admission into evidence here, of the Greco Award was objected to by the Union in the instant case. The Union's objection was to relevance, that the Greco Award is now stale and should not be relied upon and that, in any event, Greco exceeded his authority in the Award.

I find and conclude that the Greco Award, as well as the Crowley Award are relevant here as they concern G.'s employment history with the City. Furthermore, nothing in Article 17 forbids reference to prior discharges. Article 17 merely serves to clear an employee's personnel file of valid written warnings which are more than 9 months old. Finally, whether Arbitrator Greco exceeded his authority is not an issue I have jurisdiction to consider or decide.

2/ Article XII provided at that time:

If an employee is unable to report for work at the scheduled time because of illness or other unavoidable cause, he/she shall notify his/her superior before the time scheduled to report to work, but in no event later than the same day he/she was scheduled to report to work. When giving such notice, the employee shall specify the reason for his/her inability to report for work and the probable length of his/her absence. Failure to report for work for a period of two (2) successive days without prior notice to the Employer shall be the cause for immediate discharge.

enough to discharge DG. The first is that there is no official policy which prohibits employes from putting dead animals in someone else's truck, and in fact some employes have done so on prior occasions without being disciplined over it.

Secondly, the record shows that Mullen (DPW Superintendent) bore animus against DG and that this affected his recommendation to the Mayor and the City Attorney that DG be discharged. Being such a key participant in the discharge decision, it follows that the discharge decision itself was tainted and that, as a result, it is not at all certain that DG would have been fired but for Mullin's (sic) role in all of this.

Thirdly, fellow employe Richard Larsen testified that "I can't see firing DG over this." Since Larsen was such a highly credible witness with no ax to grind on anyone's behalf, and since Larsen actively participated in the Consent Award issued by Arbitrator Crowley in May, 1987 and thereby understands what is expected of DG, I credit and accept his assessment that DG at most only deserved a verbal warning over the skunk incident and that his discharge was unwarranted.

Accordingly, DG is to be immediately reinstated to his former job, but only on the following conditions:

1. He will not get any backpay or any other benefits, monetary or otherwise, for the time he was off work.
2. He must apologize to those truck employes who worked on the truck to which he threw the skunk.
3. I will retain my jurisdiction indefinitely (sic) to determine whether DG is to be fired over any possible future misconduct.

In closing, it perhaps should be noted that it is too optimistic (sic) to say that DG is skating on thin ice by virtue of his reinstatement. He in fact has already fallen through it and is now hanging onto the ice's edge only by his fingernails which, given any future misconduct, will surely break and cause him to sink. For his own sake, he had better understand this.

Following the Greco Award, DG was reinstated and he worked for the City without disciplinary incident of any kind until his discharge by letter dated October 27, 1989, which formed the basis of this grievance arbitration case.

FACTS RELATING TO THE INSTANT DISCHARGE:

On August 25, 1989 DG was arrested for operating a motor vehicle while intoxicated. On that date, DG's driver's license and privileges were suspended by Marinette Municipal Judge John B. Kerski who also issued DG a "Temporary Occupational Operator's License" which by its terms specifically allowed DG to operate his "78 Olds Delta 88 . . . Plate #WS6841," "within City of Marinette." No other vehicles were listed among those "to be operated" pursuant to DG's Temporary License. DG's Temporary License, also provided in part:

. . .

3. Type of Operation: State occupation (may include full-time or part-time study), name of employer and necessity for such operation. If in pursuit of occupation the petitioner drives for hire or is hired to drive more than 50% of the work week, a chauffeur license is required. An occupational license cannot be issued for chauffeur duties. **IF THE PETITIONER PRESENTLY HOLDS A VALID CHAUFFEUR LICENSE, AN OCCUPATIONAL LICENSE CAN BE ISSUED TO OPERATE ONLY TO AND FROM PLACE OF EMPLOYMENT.**

**General Laborer, Public Works Dept. City of Marinette,
1905 Hall Avenue, Marinette, WI 54143**

. . .

Conditions:

1. A temporary occupational license may not be issued by a court under s. 343.10(1), until the person is eligible under the law.

2.The Department of Transportation shall not issue an occupational license until the person is eligible under the law.

3.Except for a revocation or suspension that arose out of the same incident, issuance of an occupational license may not be ordered if the petitioner has had his or her license suspended or revoked under Chapter 343 within the one-year period immediately preceding the present revocation or suspension except as provided in ss. 343.30(1q)(b), 343.305(8)(d) and (10)(b) and (em) and 343.31(3m).

On the back of this Temporary License it also stated, in part, as follows:

. . .

(4) The occupational license issued by the department shall contain such restrictions as are ordered by the judge: in addition to such restrictions an occupational license authorizes the licensee to operate a motor vehicle not to exceed 12 hours per day and then only when such operation is an essential part of the licensee's occupation or trade. An occupational license is valid from the date of issuance until termination of the period of revocation or suspension, as provided by law, unless the occupational license is revoked, suspended or cancelled prior to termination of that period.

(5) An occupational license is not renewable when it expires. If an occupational license expires and is not revoked, suspended or cancelled, the licensee may obtain a new license upon that expiration but only if he or she complies with the conditions specified in s. 343.38 Revocation, suspension or cancellation of an occupational license has the same effect as revocation, suspension or cancellation of any other license.

. . .

Both Judge Kerski and DG signed the Temporary License below the portion (quoted above) entitled "conditions."

On September 8, 1989, the DOT issued DG an Occupational License which stated, in part, as follows:

RESTRICTIONS

PERMITTED TO OPERATE HIS 1978 OLDS, MON-FRI FROM 6:30 AM TO 4PM; WITHIN THE CITY OF MARINETTE IN PURSUIT OF HIS OCCUPATION AS A GENERAL LABORER FOR PUBLIC WORKS DEPT., CITY OF MARINETTE.

. . .

LICENSE CONDITIONS

A serious traffic offense prior to the expiration of this license or any conviction for violation of the restrictions will cause revocation of your operating privilege.

If this license permits operation in states other than Wisconsin, you must first contact the driver license authorities in those states concerning the honoring of this license.

Proof of financial responsibility must be maintained for the period of operation of this license.

To continue the legal operation of a motor vehicle after expiration of this license, you must meet the requirement as specified on your order of revocation or suspension. If you have questions with reinstatement, please contact this office.

On September 11, 1989 (according to the attached affidavit of Service), the Wisconsin Department of Transportation (hereafter DOT) sent DG an "Order of Suspension" which stated:

It is ordered that your privilege to operate a motor vehicle on the highways of this state and license #545-1905-9062-07RE issued to you and expiring February 22, 1993 is suspended effective August 25, 1989.

Your operating privilege is suspended, as ordered by the Marinette Municipal Court, for a period of six months because of your conviction for operating while under the influence of an intoxicant or controlled substance.

Under this withdrawal you are eligible to gain reinstatement on February 26, 1990. Any indefinite or longer period of revocation or suspension may alter the date of eligibility.

Surrender any suspended license in your possession to the Division of Motor Vehicles. Failure to surrender licenses may make you subject to prosecution.

Your operating privilege remains under suspension beyond the basic period of suspension until reinstated. Do not operate any motor vehicle until your operating privilege has been reinstated according to law and a reinstated license is in your possession. Retain this form and present it to the examiner when you apply for reinstatement..... (emphasis supplied)

From August 25, 1989 until his suspension by the City DPW from his driving duties on October 18, 1989, DG worked full-time for the City. No evidence was presented to show that DG was observed driving any City vehicle or, for that matter, any other motor vehicle during this period of time. The City merely proffered evidence that it was practice for the more senior man on any job to normally drive the vehicle involved. The Union did not dispute this point.

Sometime during the week following Labor Day, 1989, the Superintendent of the City's DPW, Michael F. Mullen (Superintendent at the time of DG's October, 1987 discharge) had a meeting with Judge Kerski, initiated by the Judge. At this time, Judge Kerski showed Mullen a copy of DG's August 25, 1989 Temporary Occupational License. Mullen was not asked nor did he testify as to what was said during this conversation with Judge Kerski. Mullen stated that he did not know why the Judge showed him DG's Temporary License and that he (Mullen) only briefly looked at the copy of the License which the Judge showed him. Mullen also stated that he did not make any assumptions based upon this viewing of DG's Temporary License except that he thought that the Temporary License meant that DG could drive City equipment at least for the 30 days following the issuance of the Temporary License.

On October 10, 1989, the DOT sent DG a Notice of Revocation of his license and his privilege to operate a motor vehicle on Wisconsin highways. This Order provided as follows:

It is ordered that your privilege to operate a motor vehicle on the highways of this state and license #545-1905-9062-07RE issued to you and expiring February 22, 1993 is revoked effective August 29, 1989.

Your operating privilege is revoked, as ordered by the Marinette County Circuit Court, for a period of two years because of your refusal to submit to a breath or chemical test for intoxication.

Under this withdrawal you are eligible to gain reinstatement on August 29, 1991. Any indefinite or longer period of revocation or suspension may alter the date of eligibility.

Your operating privilege remains under revocation beyond the basic period of revocation until reinstated. Do not operate any motor vehicle until your operating privilege has been reinstated according to law and a reinstated license is in your possession. Retain this form and present it to the examiner when you apply for reinstatement. (emphasis supplied)

This Order was incorrect in that it stated an eligibility date for reinstatement of August 29, 1991, rather than the correct date of August 25, 1990. DG testified in the instant case that he received this Order of Revocation on Saturday, October 14, 1989.

Thereafter, the DOT sent another Order of Revocation to DG, dated October 13, 1989, which contained the same information as the first Order with the exception that the date of reinstatement, therein was changed to August 25, 1990 and the second Order also included an additional paragraph which had not

appeared in the October 10 Order, as follows:

The actual time you will be under revocation is 360 days as you are being given credit for the time previously served under a revocation or suspension resulting from the same incident.

On the reverse side of both of the Orders of Revocation (one dated October 10 and the other dated October 16, 1989), the following relevant information was printed:

OCCUPATIONAL LICENSE INFORMATION

Wisconsin Law provides that a person whose operating privilege has been revoked under Chapter 343 may be eligible to petition for an occupational license. The petition must be filed with a judge of court of record in the person's county of residence or with a municipal court in the county of residence. The act of petitioning for the issuance of an occupational license does not necessarily guarantee the issuance of the license.

The parties dispute the date on which DG actually received the Order of Revocation dated October 13, 1989. The City submitted an envelope from the DOT postmarked October 16, 1989 which DG admittedly received. DG denied receiving the Order of Revocation dated October 13th until the end of the day, October 17th and stated that he received that Revocation in an envelope postmarked October 16. 3/ The latter envelope was neither offered nor admitted into evidence here.

It is undisputed that DG took sick leave on October 16 and that he did not return to work until the morning of October 17th. DG was assigned to the chipper truck with less senior employe Fred Johnston on October 17th. DG stated that he did "not recall" whether he drove any City vehicle on October 17th. Superintendent Mullen stated that since Johnston is less senior than DG, it was unlikely that DG would have allowed Johnston to drive on October 17. The City offered no eye witnesses to testify that they had seen DG drive any vehicle on October 17th. Rather, the City presented DPW Daily Reports showing that on October 17, DG and Johnston were assigned to the chipper truck. Such reports did not indicate whether DG drove the chipper truck that day.

On October 18th, DG had come to work at the usual time, 7 A.M., and he was assigned to the chipper truck with more senior employe Warren Howard. It is undisputed that Howard drove the chipper truck that day. Sometime in the morning of October 18th, Captain LaBombard of the Marinette Police Department notified the Mayor and the City Attorney that DG's license had been revoked. At approximately 9:30 a.m., the Mayor and City Attorney called in DPW Superintendent Mullen and several Union representatives to notify them of the problem. It was decided that DG should be called in off the job immediately, and told that he could no longer drive any City-owned vehicles.

It should be noted that on the morning of October 18th, DG had admitted to Howard that he had received a letter on Saturday saying that he (DG) had lost his driver's license because his insurance company had "screwed up." Howard stated that DG also told him that the whole problem would be cleared up by Friday. Thereafter, DG was called in off the job.

The City also provided two subpoenaed witnesses, Glenn Terrell and James Van Hemelryk, both current DPW employes and members of the Union who stated that on the morning of October 18th after DG had been called in off the job, DG admitted that he (DG) had received a letter on Saturday about his driver's license and he knew that this was why he had been called in from the job. 4/ Van Hemelryk as Union President, then formally notified DG that DG was to cease driving City vehicles because of the revocation of his license, at this time.

DG continued working for the DPW until Thursday, October 27, 1989 in non-driving positions. On October 27, the City Attorney issued a letter terminating DG and DG was then paid his accrued benefits and for work done through that date. DG's letter of termination read as follows:

As you know, your Wisconsin motor vehicle operating privileges were suspended by Marinette Municipal Judge Kerski on August 25, 1989, for six (6) months as the

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- 3/ The Orders of Revocation which DG received each had an affidavit of service attached to them indicating that each was mailed on the date placed on each Order of Revocation.
- 4/ The parties stipulated that a third employe witness, Union Vice President Keller, was also present and would have corroborated the Terrell and Van Hemelryk conversation on October 18th.

result of a drunk driving conviction.

As you further know, Judge Kerski issued to you a "temporary" Occupational Driver's License on August 25, 1989, which expired thirty (30) days after the date of issue. The condition upon which it was granted was that you would provide proof of insurance (Form SR22) to the State of Wisconsin. The only vehicle you were allowed to operate under the "temporary" Occupational Driver's License was your personal vehicle.

On October 13, 1989, a notice from the Wisconsin Department of Transportation was sent to Marinette Municipal Court, with a copy to you, indicating that your "permanent" Occupational License could not be issued until the Department was provided with acceptable financial responsibility information. My investigation reveals that you have admitted actually receiving the letter on Saturday, October 14, 1989.

Notwithstanding these facts, you regularly operated a City garbage truck and other City vehicles from Friday, August 25, 1989, through Tuesday, October 17, 1989, without notifying your employer, the City, that you had no Wisconsin motor vehicle operating privileges for City owned vehicles.

The City recently became aware of your lack of valid operating privileges. It was not until confronted by the City on Wednesday, October 18, 1989, that you admitted you did not have a valid Driver's License and refrained from further driving at work.

The fact that you operated City vehicles, including a garbage truck, on a regular basis since the date of your suspension, without lawful authority to do so, is extremely serious from a liability standpoint to the City. You took no steps whatsoever to inform your employer of your suspended status.

In the Arbitration Award pertaining to you issued by Mr. Amedeo Greco, Arbitrator, of the Wisconsin Employment Relations Commission, on February 11, 1988, you were put on notice as to the consequences of any future misconduct.

Please be advised that pursuant to Article 17 of the present Collective Bargaining Agreement, you are hereby discharged from employment with the City of Marinette effective immediately.

Your actions as outlined above constitute grounds for immediate discharge, including but not limited to gross negligence and willful dereliction of duty. Assuming for the sake of argument that your conduct did not approach gross negligence or willful dereliction of duty, it is certainly conduct about which you were warned by Mr. Greco.

The City will pay you for the remainder of the day. You shall immediately clear out any personal belongings from the City garage and will thereafter not be allowed on the premises without permission. Please see City Clerk, Fred E. Westphal, about any vacation time which you might have coming.

POSITIONS OF THE PARTIES:

In its brief, the City argued that DG had been justifiably and properly discharged; that DG's testimony at the instant hearing had been totally incredible given contradictory evidence from his co-workers, Postal Service officials and DOT officials; that DG knew or should have known that he needed an Occupational Operator's License to drive his personal vehicle after August 25, 1989, which would expire in 30 days and which did not allow him to drive any City vehicles or any vehicle other than his own personal car; that DG had a responsibility (which he ignored entirely) to report his lack of driving privileges to the City and that DG's failure to so report had put the City at great risk; that DG had at least consistently made himself available to drive City vehicles, from August 25 through October 18, 1989, and the City contended that evidence tended to show the DG would have driven City vehicles during this period pursuant to the Departmental practice whereby the more/most senior employe normally drives the City vehicle necessary to complete an assigned task. Finally, the City emphasized that DG's past disciplinary history as well as his actions here -- which the City asserted amounted to gross negligence or

wilful dereliction of duty -- support his discharge and that discharge should be sustained.

The Union argued that the City is merely harassing the grievant who has, in this case, complied with all known and valid City rules in regard to what an employe should do if his/her driver's license is revoked. Furthermore, the Union asserted that no City rule covering the situation exists and that both DG and DG's supervisor, Mullen, believed DG had full driving privileges, based upon DG's and Mullen's (late) viewing of DG's temporary occupational license. In addition, the Union contended, the City never proved that DG had actually driven any City vehicle on October 17th (or at any other time) with knowledge that he, DG, lacked proper driving privileges. And, the Union stated, DG "denies having driven for the City" on October 17th.

In conclusion, the Union asserted that the City has not met its burden of proof to show that DG ever knowingly drove a City vehicle without a license; that DG has violated any rule or statute. The Union, therefore, seeks the grievant's return to work with full seniority and back pay.

DISCUSSION:

The collective bargaining agreement here requires that the City prove that it had "just cause" to discharge DG at the time it made its decision to do so. The fact that the State Unemployment Compensation Commission may have found that DG was discharged for cause and that DG was therefore not due any unemployment compensation benefits is neither relevant nor material to the issues before me given the different standards and procedures applied, the different jurisdiction and requirements of proof in force before the Unemployment Compensation Commission. Therefore, I have not taken DG's unemployment compensation case decision into consideration here.

Turning to the merits of this case, DG stated that he believed that the application and the temporary permit allowed him to drive not only his personal vehicle, listed on the forms he signed, but also any City-owned vehicles he would be required to drive for his job. Having one's operator's privilege suspended or revoked is a serious occurrence with potentially grave consequences. It is the operator's responsibility to fully understand and comply with the terms and conditions of any temporary operator's permit issued after the operator's license is suspended. I note that if law enforcement authorities had stopped DG as he operated a vehicle on or after October 14th, these authorities would not have excused DG's conduct based upon his professed misunderstanding of the extent of his temporary operator's privileges. Similarly, ignorance of the law will not stand as an excuse in this case. However, for purposes of this decision, it is not necessary for the undersigned to determine or decide whether or not DG understood all of the important forms and papers DG received from the DOT regarding his driver's license.

I note that DG admitted that he received the Order of Revocation dated October 10th on Saturday, October 14th. In addition, I note that although DG asserted that this Order was defective (due to the inclusion of the date of August 29, 1991), he did not state or claim that he did not understand the effect of the Revocation Order. Furthermore, the City subpoenaed three disinterested witnesses currently employed by the City who testified that on Wednesday, October 18, DG admitted to each of them (prior to DG's being called in off the job) that he (DG) had received notice on Saturday that his driver's license had been revoked.

The facts of record here, show that DG was on sick leave on Monday, October 16th, the first working day after Saturday, October 14th, and on Tuesday, October 17th the facts show that DG worked with Fred Johnston, a City DPW employe with less seniority than DG. On October 17th, DG was undisputedly assigned to the chipper truck with Johnston. I note that it was also undisputed that as a matter of practice, the City DPW employe with the greater seniority on any assignment, normally drives the City vehicle which is necessary to complete the assignment. In addition, I note that DG did not specifically deny driving the chipper truck on October 17th -- DG testified that he did "not recall" whether or not he drove the chipper truck that day. DG did specifically deny driving any City vehicle on October 18th.

The facts of this case clearly demonstrate, and I find that DG, knew of the full effect of the Order of Revocation he had received on Saturday, October 14th 5/ and that he should have notified the City that he could no longer legally drive any City vehicle at least from that date forward. DG did not do this. In addition, I find that DG drove the chipper truck on October 17th, knowing he could not legally do so. DG's assertion that he did not understand the many important official papers he received regarding the

5/ Whether DG received the corrected Order of Revocation on October 14th or on October 17th is not determinative here. I have credited the three employe witnesses who testified that DG admitted to them that he knew his driving privileges had been revoked by the Order he had received on Saturday.

terms of his Temporary Occupational License is not credible. It is also significant that DG did not specifically deny driving a City-owned vehicle on October 17th and that the undisputed employe practice is for the more senior DPW man to drive. In all of these circumstances, and in light of DG's employment history as well as the credited testimony of the three disinterested employe witnesses to whom DG admitted full knowledge of his license revocation, I believe that the City had just cause to discharge this employe. This grievance is denied and dismissed.

AWARD

The City did not violate the collective bargaining agreement when it discharged DG by letter dated October 27, 1989.

The grievance is, therefore, denied and dismissed in its entirety.

Dated at Madison, Wisconsin this 15th day of June, 1990.

By _____
Sharon Gallagher Dobish, Arbitrator