BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

LABORERS' INTERNATIONAL UNION OF NORTH AMERICA LOCAL NO. 113

and

PINELAWN MEMORIAL PARK

Case 4
No. 63147
A-6098

Appearances:

Andrea Hoeschen, Attorney at Law, Previant, Goldberg, Uelmen, Gratz, Miller & Brueggeman, S.C., appearing on behalf of the Union.

Sally Piefer, Attorney at Law, The Schroeder Group, S.C., appearing on behalf of the Employer.

ARBITRATION AWARD

The Union and Employer named above are parties to a collective bargaining agreement that provides for final and binding arbitration of certain disputes. The parties asked the Wisconsin Employment Relations Commission to appoint an arbitrator to hear and decide the grievance of Robert Brehmer. The undersigned was appointed and held a hearing on February 26, 2004, in Milwaukee, Wisconsin, at which time the parties were given the opportunity to present their evidence and arguments. The parties completed filing briefs on March 30, 2004.

ISSUE

The parties stipulated that the issue before the Arbitrator is:

> Was Bob Brehmer discharged for just cause, and if not, what is the appropriate remedy?

RELEVANT CONTRACT LANGUAGE

ARTICLE XII

MANAGEMENT RIGHTS

SECTION 1. The Employer shall have a free hand in the operation of its cemetery and shall have the right to employ any person subject to the provisions of this Agreement and discharge any and all persons employed by it so long as the discharge or other discipline is for just cause.

BACKGROUND

The Grievant is Robert Brehmer, who has been a laborer for 46 years at the cemetery owned by the Employer. The Tribute Companies own three cemeteries, including Pinelawn Memorial Park in the Milwaukee area where the Grievant worked. He was still in high school when he started working there in May of 1958. His father and grandfather had also worked many years at the same cemetery. Brehmer was a laborer. His job was digging graves, laying markers, landscaping and maintenance. He was terminated on December 4, 2003. The Union filed a grievance protesting the termination the following day. The Vice President of the Tribute Companies' cemeteries, Christine Toson Hentges, discharged the Grievant.

Hentges made the decision to terminate the Grievant along with Carolyn Schroeder, the office manager, and Hentges' father, William Toson. Hentges testified that the Grievant violated several rules noted in the employee manual which the Grievant had received. She testified that the Grievant was disciplined for following offenses:

- failure to meet established quality standards
- failure to meet production requirements
- lack of attention to job responsibilities
- failure to follow supervisor's instructions
- punching the time card of another employee or permitting any other person to punch your time card
- falsifying any records
- insubordination
- absence for a two-day period without a satisfactory explanation
- threatening, intimidating, coercing or interfering with employees or supervisors

Lashawn Sumpter works at the cemetery on the grounds crew. He had been there for two years and was assigned to work with the Grievant. He made several reports to Carolyn Schroeder, the office manager, about the Grievant. He complained that the Grievant was too slow in digging graves, that it took him about an hour to dig graves that should have taken about 20 to 25 minutes. Sumpter testified that the Grievant wanted to take his time, that he

didn't help laying markers and they did not get as many done as they could have. Sumpter complained about all of the Grievant's work, digging graves, filling them, laying markers, sod, etc. After digging a grave, the Grievant would leave instead of laying boards and fixing up the dirt. Sumpter testified that the Grievant did not help him lay markers or put seed down and level off the dirt around them. The Grievant did not refuse to do any work. While the Grievant was gone in the summer of 2003 on a workers' compensation injury leave after a tree fell on him, Sumpter worked with another employee and got more work done. When the Grievant returned, Sumpter thought that he wanted to be more careful and not get re-injured. The Grievant was assigned to set snow stakes in November, and Sumpter believed that the stakes were not set in the right places. He finished the job after the Grievant was discharged, and he thought that perhaps 100 of them were in the wrong place.

The Grievant made a map about 15 years ago to place snow stakes. He was primarily responsible for putting snow stakes in the ground. He did not do anything different in 2003 than prior years.

Sumpter talked with Schroeder almost every other day about the Grievant about his dissatisfaction with the Grievant's work. He also talked to Hentges and the Grounds Superintendent, Pat Ristow, about the Grievant. Schroeder acknowledged that before Sumpter's complaints, no one from the bargaining unit had complained about the Grievant. Ristow told Schroeder that the Grievant's attitude was horrible, that he was negative, and that he couldn't do anything with him. Ristow's employment was also terminated shortly before the Grievant's employment was terminated.

The Grievant was given a disciplinary notice on March 6, 2000, for not completing assigned work of staking out 2 graves, digging babyland, putting one marker together and putting out 20 scrolls. Only 10 scrolls were put on by the end of the day. Hentges considered this disciplinary action to be the offenses noted above of failure to meeting established quality standards and failure to meet production requirements.

The lack of attention to job responsibilities was not written up, Hentges acknowledged. There were conversations with the Grievant regarding his work and attitude. One occurred in October of 1999, where the Grievant was told that the amount of work was not adequate, that his attitude had to improve, and that he needed to work with the Grounds Foreman, Jesse Joers, and follow his directions. Joers wrote a note on October 11, 1999, stating that he approached the Grievant and another employee about how to install markers and the Grievant got upset, said it doesn't work, and was negative about everything. There was a new procedure put in place to keep the ground from settling, and the Grievant noted that the old procedure was simpler. Notes from October 8, 1999, show that the Grievant completed one marker and it took eight hours. Notes from October 1, 1999, show that the Grievant and another employee set four markers one day, five the next. Hentges thought they should get 12 to 15 markers installed in a day. Both the Grievant and another employee were criticized for not supporting the foreman, no enthusiasm, unwilling to take an extra step and unwilling to follow procedures. Most of these incidents were not written up and put into the Grievant's personnel file and no copies indicating discipline were given to the Grievant in these incidents.

All the employees on the grounds staff were admonished on September 28, 2000, for damaged or destroyed vases, granite markers and granite bases that were run over by mowers or trucks. On March 29, 2001, all members of the grounds crew were given a warning about their time cards after Hentges found them sitting around while still punched in. She considered that to be falsifying company records.

There was a procedure whereby if an employee was gone during the week, he was required to be there on Saturday. On November 16, 2001, the Grievant refused to work on a Saturday because he had a doctor's appointment for his diabetes. He told the management the reason that he could not work that Saturday. The Grievant was not given any written discipline for that incident. The Grievant was given a written warning on April 2, 1999, for unsafe procedures regarding the need for scaffolding.

The Grievant's prior performance appraisals show that he needed improvement in several areas. In 1997, the supervisor Matthew Bergs marked "needs improvement" for keeping work area neat and equipment clean, for completing plans and goals, for general use of time, for service oriented to customers, for volume of work completed, for attitude, people orientation, profit orientation and opportunity for development. The performance appraisal for 1999 shows similar results, with "needs improvement" added in categories of following company guidelines and procedures and working to improve job skills. In the 2000 performance appraisal, the Employer was concerned about the grounds crew taking exceptionally long breaks and noted it in that appraisal. Hentges said the Grievant was taking between 20 to 40 minutes for breaks instead of 15 minutes. The supervisor, Joers, also checked "needs improvement" in completing assignments on schedule, keeping work area and equipment clean, goal oriented, safety in the work place, leading by example, team oriented, supporting company, volume of work completed and attitude.

The Grievant's 2001 performance appraisal was filled out by two people, a supervisor, Robert Bidney, and Hentges' father, William Toson. Toson made a number of changes from Bidney's marks. The Grievant was marked for needing improvement in most of the same areas as previous years. Hentges prepared the 2002 performance appraisal and rated the Grievant more harshly in several areas, marking needing improvement in many more areas than past appraisals, such as oral communications, creativity, working to improve job skills, training of staff, committed to improving staff, team oriented, supporting and assisting management and competitiveness. Hentges objected to the grounds-versus-office mentality, the lack of communication from the Grievant, the failure to use hard hats and proper safety equipment. She expected the Grievant to help train new staff. She testified that the Grievant made it clear that he did not want to talk with her, and she had been told for years how much the Grievant despised her, her father, her family and the Company. Hentges made a notation on the appraisal regarding the Grievant's retirement drawing closer. This was the worst appraisal given to the Grievant.

The 2003 performance appraisal was quite different — the only mark for needing improvement was in keeping work area neat and equipment clean. The comments were quite positive. However, Hentges disputed the validity of this appraisal, testifying that the

supervisor, Ristow, failed to put any subjectivity into the appraisal, that he didn't have time to do it and marked everyone down the middle as meeting job requirements. Hentges disregarded this appraisal in deciding to terminate the Grievant. The Grievant said he met with Ristow and Hentges when receiving this performance appraisal and they all went over it from top to bottom. No one said anything at the time about it not being accurate. The Grievant may have been wrong about Hentges being present, as she was sure she was not present. She testified that she did not know when Ristow held the appraisal.

The Grievant's overall performance was rated by six evaluators as meeting job requirements in all appraisals submitted.

Hentges did not believe that the Grievant's performance improved after his 2002 evaluation, that it went down in quantity of work and his attitude created poor morale. She felt productivity was substandard compared to the company's other cemeteries and that the Grievant's performance affected the business. After he returned in September of 2003 following his injury, his performance continued to be unproductive, according to Hentges. During his absence for the injury, the grounds crew was more productive, the morale was better and the crew worked as a team. Hentges thought everything went downhill when he returned. Schroeder also concurred with Hentges that a lot more work got done while the Grievant was absent on workers' compensation leave, that the improvement in productivity was almost unbelievable.

On October 28, 2003, Hentges spoke with the Grievant about his possible retirement. She told him that the Company could not continue to accept his inadequate performance and that their operations were being affected. She told him that she felt there was a need to end his employment. She told him that he should retire by the end of the year, but he indicated that he did not want to retire and asked what would happen if he did not. She replied that he would be terminated. The Grievant was shocked by Hentges' statement that he should retire by the end of the year. She ended the meeting by asking that the Grievant get back to her to determine what the next step would be. Schroeder testified that performance was not the focus of this meeting, but that the Grievant's attitude and negativism was the emphasis in the meeting. The Grievant never contacted Hentges for another meeting, according to her. However, the Grievant testified that he stopped in to talk to her one day and told her that he would gladly meet with her anytime that his Union organizer could be there, that she should call him.

After that meeting, Hentges thought the Grievant's performance got worse, that the Grievant intentionally placed snow stakes incorrectly, knowing that his job was coming to an end. The Grievant disputed that and testified that he used the map like he always did. The Grievant believed he did the job to the best of his ability, but acknowledged that he may have slowed down as everyone does as they age. The Grievant has diabetes and was tired when he ended his workday. He was not aware that Sumpter did not like working with him until the arbitration hearing. He was not told by management of complaints about him.

In the middle of November in 2003, Hentges terminated Ristow and went to talk to the grounds crew. She told the Grievant that she was still waiting to hear from him about their next meeting, and the Grievant did not respond.

Before terminating the Grievant, Hentges reviewed his personnel file. She felt that the Grievant had been given some leeway because of his long service to the Company. She did not review the handwritten notes of Berg and Joers for verbal warnings to the Grievant when making her decision to terminate him because those notes were not in the personnel file. They were found later in preparation for the arbitration hearing.

When the Grievant was terminated, he was not given a written statement of any kind. Hentges' notes from the termination meeting on December 4, 2003, show that the Grievant had not complied with her request for another meeting because he was trying to set it up with a Union representative present. She told him that he talked negatively about her, her father and the Company, and that his negative attitude affected everyone around him, and that his lack of support for anything to do with her, the Company or Pinelawn was the reason she needed to terminate him immediately rather than wait until the end of the year. She told him his performance was poor and she couldn't allow him to work for the Company any more. Hentges was not aware that the Grievant said anything negative about the Company to customers, just to co-workers.

The Union asked for the reason for his termination and Hentges responded on December 9, 2003, that he was terminated because he was not capable of fulfilling his responsibilities, that he did not possess the skill, ability, mental or physical vigor necessary to perform all of the usual and regular types of work carried on in the cemetery. In response to the Department of Workforce Development, Hentges also stated that the Grievant no longer possessed sufficient skill, ability, mental or physical vigor to perform all of the usual and regular types of work carried on in a cemetery in accordance with the established work standards. She cited prior incidents that were factors in the decision to discharge him as his failure to comply with the Company's request to meet with him to discuss his future employment at the Company, complaints from co-workers about performance and poor attitude, and assignments not being completed. Hentges considered the Grievant's failure to meet with her further after being asked to on October 28th to be insubordination

The Union Business Manager, John Schmitt, represents the bargaining unit at Pinelawn Memorial Park and negotiated the last contract in August of 2003 with Hentges. Hentges asked Schmitt when the Grievant was going to retire, and he replied that he had no idea. She did not say anything else about him and did not mention his performance. She wanted only a one-year contract because she was hoping that the Grievant would retire in that year. Hentges stated that they had one-year contracts for the last three years. She said she told Schmitt that she wanted to know when the Grievant would retire because they were having problems and he said he would look into it.

William Toson, the President of the Company, offered the Grievant a package for early retirement in April of 2000. The Grievant declined the offer.

The Grievant never filed any grievances over performance evaluations or past disciplinary actions.

THE PARTIES' POSITIONS

The Company

The Company contends that the Grievant repeatedly and intentionally refused to complete tasks in a timely fashion, attempted to incite a slowdown, interfered with co-workers' performance of duties and was insubordinate. For more than five years, the Grievant challenged management's authority by refusing to perform assigned work, refusing to use more efficient processes, by standing around allowing others to perform assigned work and by urging a production slowdown.

The Company has the right to make reasonable work rules and has published an employee manual that prohibits employees from failing to satisfy quality standards or production requirements. It also prohibits the lack of attention to job responsibilities, failing to follow instructions, insubordination and threatening, intimidating, coercing or interfering with other employees or supervisors. The Grievant was disciplined on several occasions for failure to follow work rules and failure to meet production requirements. The Grievant did not grieve those disciplinary actions.

The Company notes that the Grievant was informed in five performance evaluations and meetings that his performance required significant improvement. He did not dispute the accuracy of those assessments of his performance and did not grieve his evaluations. He knew that the volume of work being completed was important to the Company and that his employment was in jeopardy. While the Grievant claims that the 2003 performance appraisal was a more accurate assessment of his performance, that was far from the case. Ristow was not meeting management's expectations of him – such as refusing to discipline employees such as the Grievant. The Grievant's poor performance, his unwillingness to perform assigned tasks, his loitering on the clock and his urging others to do as little as possible continued throughout 2003. The Grievant took maters into his own hands to protest things — by refusing to perform the work.

The Company asks the Arbitrator to reflect upon the testimony of Sumpter. This testimony was uncontroverted by the Grievant. Even the Grievant's own version of the facts do not bolster his position. His only defense was that he was doing his best. However, he did as little as possible and urged others to follow his lead. The Grievant did not dispute Sumpter's testimony regarding his attempts to incite a slowdown. Even if the Grievant did not know he was being regularly warned about his shoddy performance and poor attitude, there is nothing in the collective bargaining agreement that requires strict adherence to progressive discipline. The employee manual states that the policy of progressive discipline in no way alters the employer's right to discharge the employee at will nor does it require the employer to follow a progressive disciplinary process.

The Company argues that there is no response to the undisputed evidence that the Grievant routinely told the other groundsmen that it was not necessary that they work hard and that they should do the minimum amount of work possible. Encouraging a slowdown or telling

an employee to ignore management warrants discharge. Corrective discipline is ill-suited for employees who have engaged in slowdowns or intentionally tried to defeat an employer's new method of operation.

Finally, the Company asserts that the arbitrator should not substitute her judgment for the Employer's concerning the level of discipline. It is the sole function of management to determine the appropriate level of discipline. The discipline imposed is reasonable given the totality of the circumstances. Management was concerned about the other groundsmen and the impact the Grievant could have on them. The Grievant openly advocated for them to join him in doing as little work as possible. The economic impact of other employees joining the Grievant in a slowdown could be detrimental. No other employee had such a consistent problem or unwillingness to perform day-to-day tasks. The Grievant took no steps to improve his performance or attitude. The Company did not act arbitrarily, capriciously or discriminatorily when it terminated the Grievant for continued lack of performance and his attempts to encourage a production slowdown. The Grievant had been put on notice by disciplinary action and performance reviews that his conduct was not being condoned. The Company gave him the chance to improve but he did not take advantage of the Company's generosity over the years.

The Union

The Union argues the Grievant's work performance did not justify discharge. The Company cited no specific instances of incompetence by the Grievant and presented no evidence of the established work standards that he allegedly failed to meet. The Company relied almost entirely on the allegations of Sumpter. Schroeder acknowledged that there were no complaints about the Grievant until Sumpter started working a couple of years ago. None of Sumpter's complaints are documented. While Sumpter claimed that the Grievant took too long to dig graves, the Company provided no evidence that he took longer than other employees or that there were established work standards for the length of time to dig a grave. The Company presented no evidence that he neglected his duties or abused Company time. Sumpter's accusation that the Grievant placed snow stakes incorrectly in 2003 is suspect. The Company failed to explain why an employee with less than two years of seniority is more qualified that a 46-year employee who drafted the map for snow stakes in the first place. Sumpter said it should take only a few days to set snow stakes but conceded that they had other duties while setting snow stakes.

The Union asserts that the prior disciplines and evaluations do not lay the groundwork for termination because they were insignificant and not specific to the Grievant. Two of the disciplines were to the entire bargaining unit. Six different supervisors rated the Grievant as meeting expectations in his performance evaluations. Hentges dismissed the most recent evaluation and claimed the evaluator completed the evaluation randomly. However, it shows detailed, thoughtful comments and was reviewed with the Grievant and Schroeder who never disavowed the evaluation. The last evaluation was the most positive since 1997 and it was the

last word on the Grievant's performance before his termination. Hentges issued no warnings about the Grievant's performance between that positive evaluation and the October 28th meeting when she told him to retire or be fired.

While the Company also said the Grievant was insubordinate for failing to meet with Hentges to discuss his future employment, he testified that he told her he would meet with her at any time so long as his Union representative was present. Failing to schedule one's own termination meeting is not insubordination. Hentges issued no work order. Also, the decision to terminate him was made before the alleged insubordination.

The Company also claimed that the Grievant had a bad attitude and said unkind things about management, but it failed to prove those allegations. The only evidence was Sumpter's claim that the Grievant said that the recent generations of the Toson's were "bad people." Such gripes are concerted activity protected by the National Labor Relations Act.

The Union asserts that the Company relied on information at hearing that played no role in the decision to terminate the Grievant. Hentges conceded that the Grievant never received a disciplinary suspension, and that none of the documents in Company Exhibit 16 were in the personnel file she reviewed at the time of termination. The Company never warned the Grievant that he was at risk of termination. He had no recent discipline and no suspension in 46 years. Progressive discipline is inherent in just cause except in the case of cardinal infractions. The purpose of progressive discipline is to give an employee the chance to correct his behavior. However, the Company was tired of having the Grievant around and wanted him to leave. An employer's dislike of an employee does not excuse it from giving that employee a reasonable opportunity to avoid discharge. Even if the Company had shown that the Grievant had performance problems, his termination would be unjust because the Company did not communicate its complaints to him or give him an opportunity to avoid discharge.

The Union contends that the Company's proffered reasons for terminating the Grievant are pretext for age discrimination. Hentges said that the Company did not want the Grievant to drive away a new foreman, a younger man. Schroeder said the Grievant had an old way of doing things and didn't accept new ways of doing things. Sumpter's biggest complaint was that the Grievant was slow. He acknowledged that he may not be as fast as he was when he started 46 years ago, particularly since he has diabetes, but he works hard and is conscientious. Hentges asked Schmitt when the Grievant was going to retire.

The Grievant's years of service warrant reinstatement. The just cause requirement would demand that his years of service mitigate even proven misconduct.

DISCUSSION

The management rights clause of the collective bargaining agreement provides for a just cause standard for discipline and discharge. So much has been written about the just cause standard in the last 50 plus years that arbitrators seldom write about the guiding principles of

just cause anymore. However, some preliminary remarks are warranted in this case because the Company does not understand the concept of just cause itself. In fact, Hentges testified that the Company was an at-will employer, something clearly in conflict with the collective bargaining agreement. The Company is not an at-will employer with respect to those employees covered by the collective bargaining agreement, and it may not terminate those employees' jobs at any time, for any reason for no reason at all as it can for employees not covered by a contract.

The concept of just cause is a concept of fairness, that an employer is expected to play fair with an employee, but putting him or her on notice of wrongdoing, by giving him or her due process and a chance to be heard in the process, by giving him or her a chance to correct behavior, by warning the employee of the consequences of continued wrongdoing, by treating all employees in the same or similar manner, and by giving appropriate discipline (or matching the punishment to fit the crime). An employee's prior record and length of service are additional factors to be considered. Also, the burden of proof is on the employer to show that it had just cause for discipline.

There are a number of problems in this case and the Arbitrator finds that most of the elements that all arbitrators consider in discharge cases go against the Company. First of all, the Company's contention that the Grievant did not meet production standards is simply too vague because the Company never stated what standards it has. It never told the Grievant how much work he was expected to produce, whether it was the number of graves to be dug in a particular period of time, the number of markers to be set, the amount of time to set snow stakes or anything certain. It is not enough to say that an employee is not productive enough without some standards established. Otherwise, every employee would be at jeopardy without some standards which they must meet. The problem here is the vagueness. It may be true that the Grievant did not get as much work done as younger employees, but the Company never told him exactly what it expected out of him.

And just when did the Grievant become so non-productive that the Company needed to get rid of him? Was it the last year, following his workers' compensation injury? Was he not productive for the last 46 years? There is an employee performance appraisal from 1997 stating that he needed improvement in the volume of work completed, but it also said that he met job requirements. Subsequent appraisals were similar — except that in 2003, the appraisal did not rate him as needing improvement in the volume of work completed, it found him meeting job requirements in that area and in most areas. In fact, that appraisal was quite good and only noted that he needed improvement in keeping the work area neat and equipment clean. Now the Company tries to claim that this appraisal should be discounted because the supervisor paid little attention to the task and Hentges put no validity into it when deciding to terminate the Grievant. However, no one from the Company ever told the Grievant in 2003 that the performance appraisal was not valid. And no one disciplined him since 2000 for lack of production. The only disciplinary notice in the file is from March 6, 2000, regarding the lack of completion of tasks that should have been done.

There are no disciplinary notices that tell the Grievant what exactly he was doing wrong, what was expected of him and what the consequences could be if he did not change. This is a major flaw in the Company's case. In some cases, reasonable people could all agree that an employee does not have to be given notice of his wrongdoing in order to be discharged, such as cases involving violence toward others. However, in a case such as this, where an employee has worked for the Employer for 46 years, the employee deserves fair notice of what he was doing wrong and a chance to correct it. He never got such notice, so how could he correct it. I do not find the prior performance appraisals to be fair notice because the employee was never told that he had to improve his productivity or be disciplined and possibly terminated. Moreover, his overall rating was acceptable on those appraisals. There were no separate disciplinary notices to the Grievant involving his quantity or quality of work.

The Company did not believe that it had to give progressive discipline to the Grievant, but that would have been more appropriate in this case. If the Grievant did not change his behavior, the Company could have given stronger disciplinary measures and put the Grievant on clear notice that certain types of conduct would result in discharge. The Company never gave the Grievant a fair chance to change or correct behavior, probably because it never identified exactly what it expected out of employees.

It is not even clear why the Company discharged the Grievant. It has said various things at various times. In the October 28, 2003 meeting between Hentges and the Grievant, she told him that he would be terminated if he did not retire. But the focus of the meeting was about his attitude and negativism, not his lack of productivity. When the Grievant was terminated on December 4, 2003, he was not given any kind of written statement. Hentges stated that the Grievant had talked negatively about her, her father and the Company, that his performance was poor and that she could not allow him to work there anymore. None of this rises to the level of clarity expected in a termination. Was he fired for not being productive? Was he fired for not retiring? Was he fired because he didn't like the Toson family members? All of the above?

The Company continued to find reasons for the discharge as the Union pressed its case and the Department of Workforce Development asked for reasons. At the arbitration hearing, Hentges listed several offenses, such as failing to follow supervisor's instructions, insubordination, absence for a two-day period without explanation, etc. But since none of those were listed when he was being terminated, they are discounted at this time. Likewise, Exhibit #16 is discounted, because it was not considered when the Grievant was being terminated. The Company must have just cause for discipline at the time it terminates the employee, not find it later.

The Company even has a new theory about why it discharged the Grievant — that he attempted to incite a slowdown of production. This is a much overblown interpretation of Sumpter's testimony that the Grievant said to him to take his time setting markers, don't move too fast, make the work last. There is no other evidence on the record of any attempt to incite a slowdown, and even if Sumpter's testimony is true, it hardly rises to the level of inciting a slowdown. But even more troubling is the fact that the Company never stated this as a reason

for his termination until after the arbitration hearing in this case. The Company's late attempt to pile on a reason for to justify the discharge is indicative of how weak it's case is — it doesn't have a good reason for the discharge. No good reason, no just cause.

The grievance is sustained.

AWARD

The grievance is sustained. The Employer did not have just cause to discharge the Grievant, Robert Brehmer.

The Employer is ordered to immediately offer Robert Brehmer reinstatement to his former position or a substantially equivalent position, and to make him whole for all lost wages and benefits by paying to him a sum of money, including all benefits, that he otherwise would have earned from the time of his termination to the present, less any amount of money he has earned elsewhere. The Arbitrator will hold jurisdiction for the sole purpose of resolving any disputes that should arise over the scope and the application of the remedy ordered until July 30, 2004.

Dated at Elkhorn, Wisconsin, this 10th day of May, 2004.

Karen J. Mawhinney /s/
Karen J. Mawhinney, Arbitrator

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