

BEFORE THE ARBITRATOR

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In the Matter of the Arbitration of a Dispute Between

**TOWNE FORD INC.**

and

**TEAMSTERS LOCAL UNION NO. 43**

Case 3

No. 64880

A-6171

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**Appearances:**

Previant, Goldberg, Uelmen, Gratz, Miller & Brueggeman, S.C., by **Andrea F. Hoeschen**, on behalf of Teamsters Local Union No. 43.

Krukowski & Costello, S.C., by **Kevin J. Kinney**, on behalf of Towne Ford Inc.

**ARBITRATION AWARD**

Teamsters Local Union No. 43, hereinafter the Union, and Town Ford Inc., hereafter Employer, requested that the Wisconsin Employment Relations Commission provide a panel of Commission/staff arbitrators from which the parties could select an arbitrator to hear and decide the instant dispute. Thereafter, the Union and the Employer selected the undersigned, Coleen A. Burns, as arbitrator. Hearing was held on August 15, 2005 in Racine, Wisconsin. The hearing was not transcribed and the parties completed the submission of post-hearing briefs on September 7, 2005.

Based upon the evidence and the arguments of the parties, the undersigned makes and issues the following Award.

**ISSUES**

The Union frames the issues as follows:

Was Matthew Zanella terminated for just cause?

If not, what is the appropriate remedy?

The Employer frames the issues as follows:

Was Matthew Zanella terminated for just cause as defined in the collective bargaining agreement?

If not, what is the appropriate remedy?

The undersigned adopts the Union's statement of the issues.

### **CONTRACT PROVISIONS**

The parties have cited the following provisions of their 2005-2008 Agreement:

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#### **ARTICLE 4. GRIEVANCE PROCEDURE**

**Section 1.** The Union and the Employer agree that there shall be no strike, lockout or tie-up for the duration of this Agreement. Grievances shall be taken up between the Employer involved and the Union in accordance with the following procedure. A grievance is defined as any controversy between the Employer and the Union concerning compliance with any of the provisions of this Agreement.

If an employee has a complaint he shall first take the matter up with his Service Manager or his designee. He may request the Service Manager to send for his steward for the purpose of assisting in settling the complaint.

If such issue is not settled with the Service Manager, it shall then be considered a grievance, reduced to writing and signed by the employee and steward, and submitted to the Employer's duly authorized representative.

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#### **ARTICLE 5. DISCHARGE AND DISCIPLINARY CASES**

**Section 1.** Just cause warranting discharge shall be for reasons such as the following: proven dishonesty; willful or malicious destruction of company property; unprovoked physical violence upon another person upon company premises; drunkenness on the job; refusal to perform work assigned without just cause.

For less serious offenses, a repetition of which will constitute cause for discharge, there shall be progressive discipline, as follows: (1) first offense –

written warning, a copy of which shall concurrently be given to the steward of the employee and the union; (2) second offense – three day suspension; and (3) third offense – discharge.

Warnings or disciplinary actions for any offense shall not be considered in the taking of any future disciplinary action for any offense occurring more than nine (9) consecutive months after the giving of such warning or taking of such action.

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### **BACKGROUND**

Matthew Zanella, hereafter Grievant, has worked for the Employer for fourteen years. In May of 2005, and for the majority of his employment, the Grievant has been an Auto Technician.

On May 19, 2005, the Grievant briefly assisted another Auto Technician, Steve Duckworth, with work on a Ford Explorer. When Duckworth had the vehicle he had worked on an engine light problem and on the suspension. On Friday, May 20, 2005, the customer brought the Explorer back to the Employer's shop because of a noise problem. On that same date, Assistant Service Manager Andy Fox assigned the Grievant a Repair Order (RO) on this Ford Explorer. This RO indicates two concerns, *i.e.*, "GRINDING NOISE ON LEFT TURN" and "OTHER POSSIBLE NOISE, CLUNK, ON RIGHT RUN CHECK HISTORY." The driver of this Explorer was the sister of Employer salesperson, Marty McGee.

The time recording stickers for this RO establish that, on May 20<sup>th</sup>, the Grievant was punched on at 13.4 and off at 15.8. When the Grievant left work on May 20<sup>th</sup>, he had not diagnosed any noise problem. The time recording stickers for this RO establish that, on Monday, May 23, 2005, the Grievant was punched on at 08.0; punched off at 12.0; punched on at 13.4 and punched off at 15.8.

On or about 4:00 pm on May 23<sup>rd</sup>, the Employer's Parts and Service Manager, Robert Dresen, told Union Steward Steve Sundre to get the Grievant and come to the office. At the time that the Grievant was called to the office, he had not diagnosed the noise problem on the Explorer.

Sundre brought the Grievant to the office and a meeting ensued. This meeting was attended by the Grievant, Dresen, Sundre and Fox. During this meeting, Dresen told the Grievant that he was suspended until further notice.

On May 24, 2005, the Explorer RO that had been assigned to the Grievant was reassigned to Duckworth. Duckworth was punched on at 11:5 and out at 12.0; in at 12.5 and out at 14.8; in at 15.9 and out at 16.5. On May 24, 2005, Duckworth diagnosed and repaired a noise problem involving a wheel bearing.

On May 25, 2005, Dresen issued the following letter:

Due to the events of Friday, May 20<sup>th</sup> 2005 and Monday May 23<sup>rd</sup> 2005, your employment at Towne Ford Inc. has been terminated. This is in accordance with Article 5 Section 1 (Refusal to perform work assigned without just cause) of the Union Contract. Please make arrangements with me for removal of personal property from the premises.

The Grievant has one prior discipline; which was imposed eight years ago. It is not evident that Dresen was aware of, or gave any consideration to, this prior discipline.

On or about May 25, 2005, a grievance was filed alleging that "On or about 5-25-2005 I was terminated unjustly." The remedy requested in this grievance was "to be reinstated immediately and made whole for my losses." The grievance was processed through the parties' contractual grievance procedure and, thereafter, submitted to arbitration.

### **POSITIONS OF THE PARTIES**

#### **Employer**

Work now, grieve later is the rule of the shop. The Grievant did not file a grievance over the work assignment. Rather, the Grievant went on a mini-strike by sitting on a repair order for over eleven (11) hours, while being paid \$20.83 per hour, completing a warranty repair that involved 45 minutes of actual work time. When the Grievant was suspended, his work was reassigned and completed in less than three (3) hours.

Service Manager Dresen and Assistant Service Manager Fox testified straightforwardly about the Monday afternoon meeting. Dresen began the meeting by asking the Grievant why he was refusing to work on the vehicle. Dresen and Fox both recalled that the Grievant immediately launched into a tirade regarding his assignment to the vehicle. Dresen and Fox both testified that, after the Grievant was done speaking, Dresen asked him again directly "if he was refusing to work on the vehicle" and his response was "yup."

Sundre, who was present at the meeting, testified, on several occasions, that "my brain hadn't clicked on" or that "my brain had clicked off." Several parts of Sundre's testimony belie earlier testimony and, as with the testimony of the Grievant, only make sense if lined up with Dresen's testimony.

The Grievant has every reason to be untruthful regarding statements made at the Monday meeting. The testimony of Dresen and Fox is credible, while the Grievant's is not.

The Grievant and the Union Steward agree that failing to do work was just cause for discharge. The Grievant may now regret what he did, or said, but his failure to use the grievance procedure cannot be condoned. If the Grievant's conduct were to be condoned, any

employee receiving a repair order that the employee did not like could waste time until the Employer is forced to reassign the vehicle.

The collective bargaining agreement specifically states that refusing to perform work is just cause warranting discharge. The grievance must be denied.

### Union

The Grievant has explained, in clear detail, the work he performed on the vehicle on May 20 and 23<sup>rd</sup>. The Employer's witnesses engaged in baseless speculation when they testified that the Grievant did nothing to repair the Explorer. The Employer had no choice to speculate because, although Dresen had the initiative to surreptitiously photograph the Grievant's work area; management did not bother to ask the Grievant what he was doing.

The Employer identified nothing that the Grievant should have done differently to diagnose and fix the vehicle. Complaints about job assignments neither warrant discipline nor prove misconduct warranting discipline. The Grievant would have been cheating himself if he had decided to loaf, rather than fix the vehicle, because bonus money is earned on the basis of the volume of work performed.

Consistent with other mechanics, the Grievant normally documented repairs on the job tickets after completing the job. The Grievant did not document his work on the work ticket because the Employer fired him before he finished the job.

The Employer intimated that the vehicle problem was so easy to diagnose that the Grievant's failure to diagnose indicates that the Grievant must have been refusing to work. The Employer, however, did not discipline the mechanic who initially failed to diagnose and fix the repairs.

The Grievant would have to be stupid to declare to management that he was refusing work. Union Steward Sunde testified that the Employer never asked the Grievant if he was refusing to work on the vehicle. The Grievant's notes, which were the only contemporaneous notes of the meeting, reflect that the Employer never asked him if he was refusing to work on the vehicle. When Dresen later tried to confirm the Grievant's refusal to work, the Grievant immediately denied ever refusing to work.

Under the collective bargaining agreement, it is not misconduct to say one is refusing to work; it is misconduct to actually refuse to perform work. The overwhelming weight of the evidence demonstrates that Zanella did not refuse to work. Rather, the Grievant did what he was assigned to do by taking numerous steps to try to diagnose and fix the noise in the vehicle and he replaced the rear liftgate.

Dresen and Fox had no evidence that the Grievant actually refused to work. They were frustrated that he had not succeeded in fixing the vehicle; that he complained about fixing the

vehicle; and they needed a basis to get rid of him, so they accused him of saying he was refusing to work.

The Employer has the burden of proof. The grievance should be sustained. The Grievant should be reinstated and made whole.

### DISCUSSION

Many of the facts are in dispute. On direct examination, Dresen recalled that, prior to 4:00 p.m. on Friday, May 20, 2005, the Grievant approached Dresen with the RO on the Ford Explorer; showed Dresen the RO; and stated that he should not have been given the RO because it been with another Tech and that giving the RO to the Grievant sucked because this other Tech had done the good work. Dresen, who interpreted the Grievant's statements to be a complaint that the other Tech had cherry picked the work in order to be in a position to earn incentives, recalled that he then responded that the Grievant had to fix the vehicle and that the Grievant would be paid for fixing the vehicle. According to Dresen, he indicated that, if the Grievant could prove his complaint, then the hours would be adjusted accordingly and the Grievant then said he had to visit his chiropractor and walked away.

On direct examination, the Grievant recalled that he saw Dresen shortly before 4:00 p.m. on Friday, May 20th; that Dresen asked the Grievant what he had found; that the Grievant responded that he was not sure; that he had heard a grinding noise; that he had not been able to find it; and that the Grievant questioned why he was doing the job anyway. On cross examination, the Grievant further recalled that he told Dresen that he was unhappy that the vehicle had been assigned to him and that it should have gone back to Duckworth.

McGee recalls that, about 12 or 12:15 pm on May 23<sup>rd</sup>, he observed the Grievant as he returned from a test drive and asked about his sister's Explorer. According to McGee, the Grievant responded that someone else had worked on the vehicle and that it was not fair that he was working on it when someone else got paid. McGee recalls that he responded that he did not care; he just wanted the vehicle fixed.

Dresen recalls that, at about 11 or 11:15 pm. on May 23<sup>rd</sup>, he overhead McGee yell "what's going on" to the Grievant, but that he could not hear the Grievant's response. Fox recalls that, close to lunch on May 23<sup>rd</sup>, he overheard McGee asking the Grievant about the vehicle, but did not hear the Grievant's response.

According to the Grievant, he complained to McGee about Duckworth on May 20<sup>th</sup> and that McGee's testimony was true, except that the conversation occurred on May 20<sup>th</sup> and not on May 23<sup>rd</sup>. The Grievant recalled that McGee yelled at the Grievant while he was at the time clock on May 23<sup>rd</sup>, but did not otherwise relate the content of this conversation. McGee did not testify to having had two conversations with the Grievant.

Dresen states that, on Monday, May 23<sup>rd</sup>, he did not know what had been assigned to the Grievant that morning or what the Grievant was working on that morning, but that after he overheard McGee yelling at the Grievant, Dresen saw the Explorer parked in the stall and knew that it was the same car that had been discussed on Friday. Dresen recalls that he then walked over to Fox; that Fox told Dresen that the Grievant was playing a game; and that Dresen then told Fox to keep an eye on the Grievant and to let Dresen know what Fox sees.

Dresen recalls that, when he first observed the Explorer, it was backed into a flat stall with no hoist. Dresen states that, shortly before noon, he observed this vehicle leaving and that it returned about 12:10 or 12:15. Dresen recalls that, after this vehicle returned, it was parked in a stall with a hoist, but in such a position that it could not be lifted. According to Dresen, this vehicle was in the same position as it had been at 12:15 P.M.; that he could not believe this; and that at approximately 2:15 p.m. and 4 p.m, he took photos of the vehicle's position. According to Dresen, he observed the Grievant non-stop from approximately 2:15 pm to 4 pm.; that, while he observed the Grievant, the Grievant was wearing MP3 headphones, talking, laughing and cleaning his area; that the Explorer remained in the same position; that he never observed the Grievant touch the Explorer; that, before 4 pm, he observed the Grievant go upstairs; that he followed the Grievant and told the Grievant that the Grievant was not going to leave early or Dresen would write him up. In cross examination, Dresen recalled that the Grievant responded that he was not leaving early and had no intention of leaving early.

According to Fox, he gave the Explorer RO to the Grievant on Friday and Monday; that he did not recall the Grievant saying anything when he received the RO; and that the Grievant never complained to Fox about the Explorer. Fox states that on a carryover (CO) RO, such as the Explorer's, he tries to give the RO to the same Technician, which in this case would have been Duckworth, because that Technician would know the vehicle and should have fixed it the first time, but that if that Technician is tied up or otherwise not available, then it is assigned to another Technician. According to Fox, he wanted to return the vehicle to Duckworth, but Duckworth was too busy with other work. Auto Technician Knuth states that, although it is hard for one Technician to go over the repair of another Technician, it is not unusual for a CO to be reassigned to another Technician. Maintaining that, in this case, the Explorer should not have been assigned to the Grievant, Sundre acknowledges that Technicians do follow behind one another.

Fox confirms that the Grievant did the recall work on Monday, May 23<sup>rd</sup>, and claims that this work should have been finished within one hour, plus or minus 15 minutes. Fox states that McGee did not complain to Fox, but that by noon on Monday, May 23<sup>rd</sup>, Fox had become concerned about the length of time that the Grievant had the Explorer. Fox states that, close to lunch on Monday, May 23<sup>rd</sup>, Fox had a discussion with Dresen in which Fox stated that there might be an issue about the Grievant getting the work done because the Grievant was taking a lot of time to diagnose the problem. According to Fox, he saw the Grievant standing there and thought that the Grievant probably was not getting the work done. Fox, who does not claim to have continually monitored the Grievant's activities, states that he never saw the

Grievant rack the Explorer; that, when he saw the Explorer on May 23<sup>rd</sup> it could not have been racked because it was not in the right position; and that, on May 23<sup>rd</sup>, he observed the Grievant at his tool box; wearing headphones, walking around, cleaning his area, and looking at his computer. Fox confirms that he did not ask the Grievant what the Grievant was doing on the Explorer.

At hearing, the Grievant recalled that, after he received the RO on Friday, May 20<sup>th</sup>, he road tested the Explorer to check the noise; then raised it on the hoist and spun the tires by hand; he thought Duckworth may have over adjusted the emergency brake so he tried to readjust the brake; that, when he did another road test, the noise was still there; that he raised the Explorer on the hoist, looked at the brakes and removed the tires; that he saw a shiny spot on the backing plate, so checked to see if the right parts had been installed; and that after he determined that the right parts had been installed, he asked Auto Technician Mark Knuth to accompany him on a test drive of the Explorer to listen for noise. Parts Department employee Tom Lafevre confirms that, on Friday, May 20<sup>th</sup>, the Grievant went to the Parts Department to verify that the previous Technician had the right parts for the Explorer.

According to the Grievant, Knuth asked him to explain the situation and the Grievant gave Knuth the background, including that Duckworth had put on brakes. On cross examination, the Grievant recalled that he told Knuth that he was unhappy about having Duckworth's car.

Knuth confirms that he went with the Grievant to test drive the Explorer on the afternoon of May 20<sup>th</sup>. According to Knuth, the Grievant asked him to listen for a noise that was coming from the rear; that Knuth asked the Grievant what he was looking for and what he had done. Knuth further recalls that, during this conversation, the Grievant indicated that the Explorer had been in earlier for some type of noise; that Duckworth had had it and now the Grievant had to figure out what to do with it; and that the Grievant wondered why he had the vehicle.

According to Knuth, the noise was not there initially, but became louder as they drove the road test; that he could tell that the noise was from the rear of the vehicle; and that they could not isolate the noise from the road test. Knuth recalls that, when they returned from the road test, he went back to work; noticed the Grievant looking around; and then said to the Grievant, go over what was done and check the SSM and TSV. The Grievant recalls that he dropped Knuth off and returned the vehicle about ten to four, at which time he had the conversation with Dresen, described *supra*.

The Grievant states that when he returned to work on Monday, May 23<sup>rd</sup>, he received the ticket on the Explorer for a clunk, grinding noise and safety recall. The Grievant recalls that he backed the Explorer into the stall area and, with some assistance by Knuth, performed the recall repair work of replacing the brackets on the hinges on the lift gate. According to the Grievant, this repair procedure included removing glass, defective brackets, glue and debris; putting on primer and epoxy; curing; and reinstalling window interior trim. The Grievant



maintains that, while curing, he cleaned his area and checked the TSV and service messages for possible explanations for the noise that he had not yet diagnosed. The Grievant states that, after finishing the recall repair, he took another road test to refresh his recollection of the noise; went to lunch and, hoping to find a match to his noise, looked at bulletins on Ford's website. The Grievant recalls that, on Monday, he was on the computer for two to three hours looking for information to diagnose the Explorer's noise. According to the Grievant, it is difficult to determine the exact amount of time that he spent on the recall repairs because he was also working on the noise problem, but that the recall repairs involved more than two hours of work.

According to the Grievant, he did not have any conversation with management on May 23<sup>rd</sup> until he met Dresen while the Grievant was coming out of the bathroom at about 4 p.m. The Grievant initially recalled that Dresen made the comment "Don't even think about leaving early or I will write you up for that too" and that the Grievant responded that he was staying and not leaving. Subsequently, the Grievant recalled that Dresen said "Don't even think about leaving work early or I'll fucking write you up too?" At hearing, the Grievant stated that, on May 24<sup>th</sup> he made written notes regarding the events of May 23<sup>rd</sup>. These written notes include the following:

. . . WHEN EXITING THE BATHROOM IN THE UPSTAIRS BREAK AREA, MY SERVICE MANAGER WAS IN THE UPPER BREAK AREA HAVING A SMOKE BREAK. (4:00 P.M. APPROX.) THE ONLY WORDS SPOKE TO ME WERE "DON'T EVEN THINK ABOUT LEAVING BEFORE 4:30 OR I'LL FUCKING WRITE YOU UP FOR THAT TOO." I EXPRESSED TO HIM THAT I HAD NO INTENTION OF LEAVING AND THAT I WAS GOING TO BE THERE TO GET MY FULL EIGHT HOUR DAY IN. I ALSO TOLD HIM THAT I DID NOT KNOW WHAT HE WAS TALKING ABOUT. BUT TOLD HIM TO DO WHATEVER YOU GOT TO DO. . . .

According to the Grievant, on Monday, he had the Explorer on the hoist once, with the vehicle running, and when he lowered it down, he asked Knuth to ride with him. Knuth confirms that, on Monday morning, he assisted the Grievant with recall repair and that, after lunch, he rode with the Grievant on a test drive; guessing about 1:30 p.m. According to Knuth, when he asked the Grievant what he had found on Friday, the Grievant responded nothing. Knuth states that, during the Monday test drive, the noise did not happen until the car had warmed up; that there was a second noise; and that both noises were from the rear.

At or about 4 pm on Monday, May 23<sup>rd</sup>, Dresen told Sundre to bring the Grievant to the office and told Fox to come to the office. Dresen claims, and Sundre and Fox agree, that Dresen did not explain why he was calling them into the office. The Grievant states that he had attempted to diagnose the Explorer's noise problem, but had not been able to determine the problem by the time that he was called into the office on May 23<sup>rd</sup>.

Dresen, Fox, Sundre and the Grievant agree that they had a meeting in the office. According to Sundre, shop gossip gave Sundre an indication of the purpose of the meeting and that, since Dresen does not call Sundre in for idle conversation, he knew something was up.

On direct examination Dresen recalled that, as he faced the Grievant, he asked why the Grievant was refusing to work on the Explorer and that the Grievant responded by stating that he should not have had to do the work; that another Technician should have done the work; that he did not think they gave Duckworth hard work; and that he was sick of picking up others pieces. Dresen further recalled that the Grievant's complaints went on for several minutes and then Dresen asked the Grievant "So you are refusing to work on the vehicle?" and the Grievant responded "yup." According to Dresen, he then told the Grievant that he was suspended until further notice. Dresen claims that Sundre stated that Dresen should have gone another way; that another Technician should get the job and that Fox said nothing.

On direct examination, Fox recalled that Dresen said why are you not working on the Explorer and that the Grievant responded that he is receiving all the "shit" or "crap" work; why was he picking up all the mistakes; and that he was tired of it. Fox further recalled that Dresen then asked the Grievant if the Grievant was refusing to do the job; the Grievant responded "yup;" and then Dresen suspended the Grievant.

Sundre recalls that people started talking in the meeting before everyone was situated and that it took a while for his brain to engage. Initially Sundre recalled the following: Dresen stated what is going on between you and Andy; what is the problem; that the Grievant responded that he was trying to repair the car; that Dresen told the Grievant that the Grievant was suspended; and that Dresen would get back to the Grievant. Sundre also recalled that Dresen was upset over the car in question and how it was being repaired.

When asked if Dresen asked the Grievant if he was refusing to work on the Explorer, Sundre stated that he did not hear it. Dresen also stated that the Grievant never said that he did not work on the Explorer or any words to that effect. When asked if it were possible that Dresen asked the Grievant if he were refusing work, Sundre responded if it did happen, then the Grievant would not be foolish enough to say he was refusing work and that the Grievant did not use any word that was refusing. According to Sundre, employees do not refuse work and know not to do that.

Sundre recalled that, for the part of the conversation that he was there, the Grievant spent time describing what he did to the vehicle and that the Grievant had a defensive reaction; indicating that he had received the car after another Technician had worked on it and that it should not have been assigned to the Grievant. Subsequently, Sundre stated that the Grievant did not go into detail regarding what he had been doing and that he recalled the Grievant saying that he had the wheels off several times and was researching the problem on OASIS. Sundre also recalled that the Grievant said he should not get the vehicle; that it should be assigned to Duckworth; and that, maybe, the Grievant stated that he was sick of cleaning up other people's messes. Sundre states that Fox did not talk during this meeting.

At hearing, the Grievant initially recalled that he came into the office; that Dresen spoke first; stating "I don't know what's going on" or "I don't know what's with you and Andy" and that then Dresen stated you are suspended. According to the Grievant, Dresen did not ask any other question, but that after Dresen stated that the Grievant was suspended, the Grievant questioned Dresen's actions; stated that he was a team player; complained about Duckworth and the type of work that the Grievant was always given; and stated that it was not right to have this meeting because this should not have happened. The Grievant states that Dresen did not ask the Grievant if he was refusing to work on the Explorer and that the Grievant did not say he was refusing to work on the Explorer.

In subsequent testimony, the Grievant recalled that Dresen said until he figured out what was going on and knew the situation, the Grievant was suspended; that the Grievant did not know why Dresen was doing this, but assumed it was because the vehicle was not finished. The Grievant stated that, after he was suspended, there was further conversation and that the Grievant voiced displeasure because the suspension was not justified. According to the Grievant, he questioned Fox to confirm that the Grievant did not complain about his work; told Dresen that he was sick of being a whipping boy; that the work should have gone back to Duckworth and not assigned to the Grievant; that he was sick of picking up pieces for others; and that the meeting was very short. The Grievant also recalled that Sundre stated that this should not have happened or things should have happened differently. The Grievant did not claim that, during the meeting of May 23<sup>rd</sup>, he described any of the work that he had performed on the Explorer.

At hearing, the Grievant stated that his written notes of May 24<sup>th</sup> contain a better recollection of the May 23<sup>rd</sup> meeting. With respect to this meeting, the written notes state:

AT APPROX 4:15 ON MONDAY THE 23<sup>RD</sup> OF MAY, 2005, I WAS CALLED INTO AN OFFICE FOR A DISCUSSION WITH ROB DRESEN (SERV MGR) ANDY FOX (ASST DISPT.), STEVE SUNDRE (STEWARD) AND MYSELF. ROB THEN INFORMED ME THAT UNTIL HE FIGURED OUT WHAT WAS GOING ON AND WHAT TO DO ABOUT THE SITUATION, I WAS SUSPENDED INDEFINITELY. I VOICED MY DISPLEASURE ABOUT THIS DECISION BASED ON THE FACTS THAT I HAVE ALWAYS BEEN A TEAM PLAYER, I TRY TO DO WHATEVER IS ASKED OF ME WITHIN MY ABILITIES, AND THAT I THOUGHT THIS ACTION WAS NOT JUSTIFIED. I EVEN GOT ASST. SERV MGR/DISPATCHER ANDY FOX TO AGREE THAT I NEVER COMPLAIN ABOUT WHAT I AM GIVEN TO DO AND I JUST DO IT, WHETHER I AM HAPPY ABOUT IT OR NOT. OTHER EMPLOYEES WILL BITCH AND COMPLAIN AND GET TREATED BETTER THAN OTHERS AND NOW THAT I AM BEING SUSPENDED, I TOLD ROB DRESEN I AM SICK OF BEING YOUR WHIPPING BOY. END OF MEETING.

These notes do not contain any claim that the Grievant described any of the work that he performed on the Explorer.

Fox recalls that, about 20 minutes after the meeting, he had a conversation with Sundre to ask him what was happening because Fox had never seen this type of thing before. Fox further recalls that Sundre responded the work should have been given to another Tech; that Fox responded that he needed to get the work done; and that Sundre stated that it would be hard for the Union to fight on this one. Sundre states that, after the meeting with Dresen, he did not have a conversation with Fox and further states that he never told Fox that the Union would have a hard fight.

### Conclusion

The Grievant's statements have been contradicted by three witnesses, *i.e.*, Dresen, Fox and McGee. By his own admission, the Grievant's written statement of May 24<sup>th</sup> does not relate everything that was said during the meeting of May 23<sup>rd</sup>, but rather, is what stuck in his mind when he was told that he was suspended. The Grievant's written statement includes the statement: I EVEN GOT ASST. SERV MGR/DISPATCHER ANDY FOX TO AGREE THAT I NEVER COMPLAIN ABOUT WHAT I AM GIVEN TO DO AND I JUST DO IT, WHETHER I AM HAPPY ABOUT IT OR NOT." This statement is inconsistent with Sundre's testimony that, at the meeting of May 23<sup>rd</sup>, Fox said nothing. Upon consideration of the record as a whole, the undersigned is persuaded that the Grievant does not have a reliable recollection of the events of May 23<sup>rd</sup>.

Dresen's testimony regarding the meeting of May 23<sup>rd</sup> is consistent with that of Fox. Sundre did not expressly deny that Dresen asked the Grievant "So you are refusing to work on the vehicle?" or that the Grievant responded "Yup." Given Sundre's statement that it took a while for his brain to get engaged, neither his statement that he did not hear Dresen ask the Grievant if he was refusing to work on the Explorer, or Sundre's failure to confirm that Dresen asked the Grievant "So you are refusing to work on the vehicle?" and that the Grievant responded "Yup" provide a reasonable basis to credit the Grievant's testimony over that of Dresen.

Crediting Dresen's testimony, the undersigned is persuaded that, at the meeting of May 23<sup>rd</sup>, Dresen asked the Grievant why he was refusing to work on the Explorer. It may be, as the Union argues, that at that time, Dresen's belief that the Grievant had been refusing to work on the Explorer was speculative. However, at that point in the meeting, Dresen provided the Grievant with an opportunity to explain that he had not refused to work on the Explorer. Crediting Dresen's testimony, the undersigned concludes that the Grievant did not respond by explaining that he had been working on the Explorer, but rather, the Grievant responded by complaining about the Explorer work assignment, *e.g.*, that the Grievant should not have been assigned to work on the Explorer; that Duckworth should have been assigned to work on the Explorer; that Duckworth was not being given the hard work; and that the Grievant was sick of picking up other's pieces. Crediting Dresen's testimony, the undersigned is further

persuaded that Dresen then asked the Grievant "So you are refusing to work on the vehicle?" and that the Grievant responded "Yup."

Under Article 5, Section 1, of the parties' agreement, the Employer has just cause to discharge an employee for "refusal to perform work assigned without just cause." At the meeting of May 23, 2005, the Grievant had not yet diagnosed the Explorer noise problem. Thus, regardless of the diagnostic work that he had previously performed on the Explorer, at the time of the meeting on May 23<sup>rd</sup>, the Grievant had not completed his work assignment on the Explorer.

As Sundre acknowledged at hearing, the Employer's Auto Technicians do not refuse work and know that they are not to refuse work. The Grievant acknowledges that he was familiar with the discharge and discipline language of the contract and states that he knew that refusal to perform work was an immediate dismissal issue.

According to Sundre, if work assignment is grieved, normally the reason is hazard or skill level. It is not evident that the Grievant did not have the skill to diagnose the Explorer's noise problem. Nor is it evident that this diagnosis involved a hazard. The Grievant's complaints to Dresen about his work assignment do not provide the Grievant with justification to make a refusal to perform the assigned Explorer work.

By responding to Dresen's question "So you are refusing to work on the vehicle?" by stating "Yup," the Grievant made a refusal to perform work assigned without just cause. Regardless of the Grievant's prior employment or disciplinary record, under the language agreed to by the parties, the Employer has just cause to discharge the Grievant.

Based upon the foregoing, and the record as a whole, the undersigned makes and issues the following

**AWARD**

1. Matthew Zanella was terminated for just cause.
2. The grievance is denied and dismissed.

Dated at Madison, Wisconsin, this 6<sup>th</sup> day of December, 2005.

Coleen A. Burns /s/

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Coleen A. Burns, Arbitrator

CAB/gjc  
6928

