THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

BSA / LB&B JOINT VENTURE

and

MACHINISTS LOCAL LODGE 1115 OF DISTRICT LODGE 66, IAMAW

Case 1
No. 68786
A-6363

(AAA 51 300 L 00287 09 – Lorain Hanson Discharge)

Appearances:

District Lodge 66, IAMAW, 1307 Market Street, La Crosse, Wisconsin 54601, by **Mr. Rick Mickschl,** Directing Business Representative, appearing on behalf of Machinists Local Lodge 1115.

Wyrick, Robbins, Yates & Ponton, LLP, 4101 Lake Boone Trail, Suite 300, Raleigh, North Carolina 27607-7506, by **Mr. Benjamin A. Thompson**, Attorney at Law, appearing on behalf of BSA/LB&B Joint Venture.

ARBITRATION AWARD

On April 6, 2009, Machinists Local Lodge 1115 (hereinafter referred to as the Union) and BSA/LB&B Joint Ventures (hereinafter referred to as the Employer or the Company) jointly requested the appointment of Daniel Nielsen as arbitrator of a dispute concerning the termination of Lorain Hanson from her job as a bus driver at the Company's operation at Camp McCoy, Wisconsin.[1] A hearing was held in La Crosse, Wisconsin on June 30, 2009, at which time the parties were afforded full opportunity to present such testimony, exhibits, other evidence and arguments as were relevant to the dispute. The hearing was transcribed and a transcript was submitted on July 16. The parties submitted post-hearing briefs, which were exchanged through the Arbitrator on August 28, 2009, whereupon the record was closed.

[1] The selection was initially made through the procedures of the American Arbitration Association, and the parties subsequently transferred administration of the case to the Wisconsin Employment Relations Commission.

Now, having considered the evidence, the arguments of the parties, and the record as a whole, the undersigned makes the following Award.

ISSUES

The parties agreed that the issues before the arbitrator are:

1. Did the Company have just cause to terminate the Grievant, Lorain Hanson?

2. If not, what is the appropriate remedy?

RELEVANT CONTRACT LANGUAGE

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ARTICLE 3 - MANAGEMENT RIGHTS

Section 1. Except as specifically limited or modified by the provisions of this Agreement, the Company has and shall retain the exclusive right of management of its operations and the direction of its employees including, but by no means limited to, the right to plan, train, direct, and control all Company operations and the employees assigned thereto; to maintain order and efficiency; the right to hire, schedule and assign job duties, approve vacation time usage, suspend, layoff, promote, demote, transfer, discipline, and discharge employees; to adopt, amend, and enforce work and safety rules and procedures, including drug and alcohol policies: to determine the number of hours per day or per week: to increase, decrease, or discontinue operations in whole or in part; to determine the job classifications and qualifications of employees assigned thereto: to establish and enforce standards for the quality and quantity of work required to be performed in all jobs; the right to determine what work and functions in the Company's business will be performed by independent contractors, and to require overtime work to fulfill necessary contract requirements.

The foregoing enumeration of the Company's rights shall not be deemed to exclude other preexisting rights or customary functions of management which do not conflict with the provisions of this Agreement.

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ARTICLE 12 – GRIEVANCE PROCEDURE

Section 1. A grievance is defined as a dispute involving the interpretation or application of a provision of this Agreement.

Section 2. An employee and/or a steward meeting with a supervisor or manager in accordance with the steps outlined in this grievance procedure may do so without loss of pay. Employees and/stewards will not be compensated for time spent investigating grievances. A grievance shall be processed in accordance with the following steps in the grievance procedure outlined below:

Step 1. A grievance shall be first presented to the employee's supervisor within five (5) work days of the date of occurrence which is the basis of the grievance. The supervisor, the employee, and the steward, if requested, will discuss the issue and attempt to adjust the matter. A steward will be provided when requested by the employee. The supervisor will provide an answer to the employee within five (5) work days of their discussion.

Step 2. If the grievance remains unresolved, the grievance will be presented in writing to the Department Manager within five (5) work days of the supervisor's answer in Step 1 on a grievance form that indicates the Articles and Sections of the Agreement allegedly violated, the date the grievance is written, the facts behind the grievance, the date of the occurrence, and the remedy requested. The Department Manager will meet with the employee and a union steward to discuss the grievance and will provide a written reply within five (5) work days of their meeting.

Step 3. If the grievance remains unresolved, then the grievance will be presented to the Project Manager within five (5) work days of the Department Manager's response. The Project Manager and the District Business Representative and/or the Grand Lodge Representative of the International Union will meet within fifteen (15) work days to discuss the grievance. The Project Manager will provide a written answer to the grievance within ten (10) work days of their meeting.

Step 4. If the grievance still remains unresolved, the grievance may be submitted to arbitration provided such submission is made within twenty (20) work days of receipt of the third step reply. The party requesting arbitration shall request a panel of seven (7) arbitrators from the American Arbitration Association (AAA) and will notify the other party of such action.

Section 3. Within ten (10) work days of receipt of the panel from AAA, the arbitrator will be selected by the parties alternately striking names with the last remaining name on the list representing the arbitrator who is selected.

The arbitrator shall not have the authority to add to, subtract from, modify or alter any of the terms of this Agreement. The arbitrator shall limit his decision to the interpretation of the Agreement and to a settlement of the particular grievance under consideration.

The arbitrator's decision shall be final and binding on both parties. Expenses and preparation of their case shall be borne by the party calling their witnesses and the preparing (sic) their case. Any filing and processing fees required by the AAA shall be paid by the party requesting arbitration. The expenses associated with a place for holding the hearing shall be shared equally between the parties. The expenses for the arbitrator shall be paid by the non-prevailing party to the arbitration.

Section 4. Any grievance not appealed from one step to the next step of the grievance procedure within the allocated time limits shall be deemed settled on the basis of the last answer provided by the Company. The time limits are of the essence and may be extended only by mutual agreement between the parties in writing, or verbally with immediate written confirmation.

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ARTICLE 14 - DISCIPLINE AND DISCHARGE

Section 1. The Company may establish standards of conduct i.e. rules, and procedures for the protection of the rights of employees, the preservation of the Company and Government's property, and for orderly and efficient operations. It is understood that the Company may add to or amend such standards or rules and procedures from time to time as may be necessary. The Union shall be furnished a copy of any such changes at least five (5) days before they become effective, except in cases of safety rules.

Section 2. The parties recognize the issuance of progressive warnings may occur for violations of any rule for progressive discipline, and not for violations of the same rule. It is understood that discipline administered for just cause by the Company may be subject to the grievance procedure. A steward will be provided for an employee during a disciplinary interview.

Section 3. Although some standards or rules involve behavior so serious that discharge for just cause may be appropriate for the first violation, in the event an employee may violate a rule which violation is cause for progressive disciplinary action, the following procedure will be followed:

a. Oral Warning - A Disciplinary Action Form will be completed for documentation.
b. Written Warning
c. Discharge

Section 4. A reprimand issued pursuant to the above procedure shall be cancelled after twelve (12) consecutive months providing an additional reprimand has not been issued to the employee. Thereafter, for example, a warning no. 3 becomes no. 2, and no. 2 becomes no. 1.

ARTICLE 15 – SAFETY AND HEALTH

Section 1. The Company will continue to make reasonable provisions for the safety and health of its employees during the hours of their employment. The Company further agrees that it will remain in compliance with all applicable laws and regulations pertaining to safety.

Section 2. Protective devices, apparel and other equipment necessary to protect the health and safety of employees will be provided by the Company. The Union recognizes the duty of employees to cooperate with the Company in its safety and health program, to adhere to all of the Company's safety rules and procedures, and to properly use all of the safety equipment provided by the Company. Failure to do so may result in discipline up to and including discharge.

Section 3. The Company will maintain a Safety Committee in the Department of Logistics at Fort McCoy to both foster and improve the safety program. One member of the TMP bargaining unit will be appointed by the union to serve as member of the DOL Safety Committee. The DOL Safety Committee will meet no less than quarterly, or as circumstances arise.

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BACKGROUND

The Company is a joint venture under contract to the military to provide logistical support at Fort McCoy, Wisconsin. The Company succeeded VT Griffin Service, Inc., as the vendor in 2008. In early July, 2008, the Company and the Union executed a Bridge Agreement, by which the Company assumed most of the terms of the collective bargaining agreement between Griffin and the IAMAW. The Union immediately gave notice of termination of that agreement and requested bargaining over a new agreement with the Company. On September 1, 2008, the parties executed a full collective bargaining agreement. Included in that agreement were provisions recognizing the Company's right to make work rules, and to impose discipline for just cause. At the Company's request, the discipline provision was amended to eliminate any reference to suspensions, as the Company, unlike Griffin, used a three step system of progressive discipline, without a suspension between the steps of written reprimand and discharge. In the course of the negotiations, the Company complied with the Union's information request for copies of all current employment policies and rules, but there was no discussion of the substance of any work rules.

The Grievant, Lorain Hanson, was employed by Griffin as a bus driver. When the Company took over the logistics contract, it interviewed the former Griffin employees who were interested in staying on, and the Grievant was among those hired. She attended a new employee orientation session at which, among other things, she was shown copies of the Company's rules and procedures, including the safety rules, to review. She also received a new hire packet, and signed a statement acknowledging receipt of the rules.

Among the rules the Grievant signed for were those entitled "Work Rules/Disciplinary Policy" which distinguished between two categories of offenses. In the first category were those infractions that would be subjected to progressive discipline under a three step procedure. Progressive discipline began with a documented verbal counseling. A second offense would result in a written warning. A third offense would lead to discharge. In the second category of offenses were those that result in immediate discharge, without any prior counseling or warning. According to the policy, examples of violations that will result in immediate discharge include "At-fault motor vehicle accident with vehicle/bodily injury damage equal to or greater that $500 (per Company Safety Policy 7.001)." Company Safety Policy 7.001 was a fourteen page document, dated April 6, 2006, stating in part that the Company has a zero tolerance policy for at-fault motor vehicle accidents, and defining "at-fault" as an accident that "could reasonably have been avoided through normal measures or through awareness that all employees are expected to maintain on a continuous basis." A "not at fault" accident was defined as one in which an "uncontrollable external factor influenced a given situation that an employee could not reasonably be expected to control." Under the policy, an at-fault accident resulting in less than $500 damage would result in a written warning, while damage exceeding $500 would result in immediate discharge.

One of the duties of a bus driver is to wash the bus at the end of the day. Late in the afternoon of January 10, 2009, the Grievant returned from a bus run, and pulled her bus around to the wash bay. The wash bay was set up as a drive-through, but the entrance door on the bay had been broken for several days. The Company had not given drivers any special instructions on how to deal with the situation. Given that they could not drive through the bay, the drivers drove to the rear and backed into the bay. The on duty dispatcher had apparently been called out on a taxi run, so there was no other Company employee on the premises, and the Grievant backed in without having a spotter. As she backed in, she hit a concrete block supporting a vacuum used to clean buses, scraping the rear of the bus, and slightly bending a metal frame surrounding the radiator door. She immediately reported the accident, and submitted to the required drug and alcohol screening. She also cooperated with the police and Company investigations into the accident and provided written statements. In explanation of the accident, she stated that the sun was low in the sky and directly in her eyes, and that the contrast with the darkened bay made it difficult to see as she backed up.

The Company secured an estimate of the damage to the bus, and the estimate came in at $1,180.00. This seemed high, so a second estimate was secured. The second estimate was $1,035.00. Citing the Company rule providing for the discharge of an employee who had an at-fault accident resulting in damage of $500 or more, the Company terminated the Grievant on January 29, 2009. The Union filed the instant grievance challenging the validity of the work rule and the discharge. It was not resolved in the lower steps of the grievance procedure and was referred to arbitration.

The bus itself remained in service at all times after the accident, and was not repaired for several months. The wash bay was closed after the accident, until the front door was fixed and drivers could once again drive through, rather than backing into it. Additional facts, as necessary, are set forth below.

THE POSITIONS OF THE PARTIES

A. The Position of the Company

The Company takes the position that the Grievant was discharged for just cause. There is no question but that the Grievant was guilty of an avoidable accident, which caused more than $500 in damage to her assigned bus, damage that the Company is responsible for. The Grievant had participated in safety training, during which she was advised to use a ground guide when backing the vehicle. She was also trained that if she encountered a potentially dangerous situation, she should stop the vehicle, rather than proceeding. While she claims that no other employee was readily available to act as a spotter, she could have stopped and waited for the dispatcher to return. Instead, she elected to back into the wash bay on her own, with the predictable result of an accident. She was plainly guilty of an at-fault accident, and the cost of that accident exceeded $500.

The Company has a rule that an at-fault accident exceeding $500 in damage will be grounds for discharge. This rule was promulgated in accordance with the collective bargaining agreement's provisions that the Company has the right to make and enforce work and safety rules. The contract recognizes that failure to follow the rules is cause for discipline, and contains an express agreement by the Union that employees are obligated to follow the Company's safety rules and procedures. During negotiations over this contract, the Company provided the Union with a copy of its rules, including those for which progressive discipline was not required. Among those offenses is "…[a]t-fault motor vehicles accident with vehicle/bodily injury damage equal to or greater than $500…" This rule was in effect before negotiations, during the Bridge Agreement, and following the contract settlement. The Union never sought to negotiate a change in this rule, and did not challenge it. For her part, the Grievant signed an acknowledgement that she had received a copy of the rules, including this one. Thus, this rule was known to both the Union and the employee. It was promulgated in accordance with the reserved rights of management under the collective bargaining agreement. The rule was applied as written to a situation to which it was directly applicable.

The Union's argument that a rule must somehow be referenced or adopted in the collective bargaining agreement has no support in arbitral precedent, and is contrary to the language of the collective bargaining agreement. The contract states that management has the right to make and enforce rules. This language would be meaningless if the Company had to negotiate approval of every rule on an individual basis. Such a system would be contrary to the normal mode of operations for most businesses, and would be utterly impractical. The arbitrator must reject the Union's absurd contention, and should instead find that the avoidable accident rule is valid and enforceable.

The rule against avoidable accidents is reasonable, particularly in light of the Company's operations. The Company is responsible for a large fleet of vehicles, including passenger vehicles. Motor vehicle safety must be a particular concern for this company and its employees. That is why the collective bargaining agreement has a specific acknowledgement of the employees' obligation to follow safety rules and procedures, and of the Company's right to discipline those who do not, "up to and including discharge." That is why employees are trained on safety procedures, including the use of spotters. Given all of this, it is natural that the Company would have to distinguish between minor accidents and major accidents, and to promulgate rules providing different penalties for each category. A $500 threshold is a reasonable basis for this distinction, and the Union and the employee both knew that this was where the Company had drawn the line.

Finally, there is no evidence that the Company has applied its disciplinary policies in an uneven or disparate fashion. The Union provided no evidence of other major avoidable accidents which did not result in discharge. The Union did provide testimony to the effect that another employee who had an avoidable accident with damage of less than $500 had not been forced to pay for the repairs, as the rules suggest he must. However, that employee and the Grievant are not similarly situated. On its face, his situation was less serious. He received a written reprimand, in accordance with progressive discipline, because the policy calls for progressive discipline in cases of minor accidents. The Grievant was discharged, because the policy requires termination in cases of major accidents. The disciplinary policy was, in both cases, applied as written. As for the repayment obligation, the second employee could not say whether the lack of a demand for reimbursement was due to his having filed a grievance, or to a delay in the Company's investigation, or to some other factor. All he knew was that he had not, as of the time of this hearing, been required to reimburse the Company for the damage he did. That fact says nothing at all about the validity of the discipline imposed on the Grievant.

The Company established that there was a valid rule in place, calling for discharge in cases of avoidable accidents causing more than $500 in damage. The rule is reasonably related to the legitimate business concerns of the Company. The Union and the employee both knew of the rule. The Grievant had been trained in how to avoid an accident such as this, and she ignored her training. Thus she was solely responsible for the damage to the bus, damage which greatly exceeded $500. There is no evidence that this rule is not uniform, nor that any similarly situated employee has been treated more favorable than the Grievant. For all of these reasons, the arbitrator must conclude that the Grievant was terminated for just cause, and the grievance should be denied.

B. The Position of the Union

The Union takes the position that the Company lacked just cause to discharge the Grievant, and that she should be reinstated and made whole for her losses. The charge against the Grievant is that she was at fault for the accident, but the evidence clearly shows that the Company itself bears much of the blame. Moreover, the rule under which the Company claims to have the right to discharge the Grievant is unilateral and unreasonable on its face.

The Company seeks to place the blame for this accident entirely on the Grievant, and ignores its own culpability. Specifically, the front door of the wash bay had been inoperable for several days. Under normal circumstances, with both doors operating, there is very little clearance for buses pulling into the bay. With the front door broken, drivers were required to engage in the inherently riskier maneuver of backing a bus into the narrow opening at the rear of the bay. This is obviously an

invitation for an accident, yet the Company took no action prior to this incident. While the Company claims that it had no ability to repair the door, it had the ability to close the bay, which is what it did after this accident occurred. At a minimum, it could have ordered drivers to use spotters when backing into the bay. It did not. Yet it now seeks to have the arbitrator assign sole responsibility for these events to the Grievant. That simply ignores the Company's own central role is setting the stage for the accident.

The Union points out that the rule relied upon by the Company was never discussed in negotiations, and never agreed to by the Union. It was one of many Company policies and procedures that were in place before collective bargaining, many of which were inconsistent with the eventual labor agreement. The mere fact that the Company provided copies of these policies to the Union in bargaining cannot be viewed as agreement or acquiescence on the Union's part. Simply put, it is not the Union's burden to propose acceptance of the Company's rules and procedures in bargaining. If the Company wanted the Union's agreement, it had the responsibility to seek it. Lacking any discussion, the policy of firing an employee for an accident over $500 cannot be reconciled with the actual terms of the contract, requiring just cause for discipline. The Union points out that it objected to these rules two days before this accident took place, further demonstrating that it never waived its right to challenge the Company's rules.

The Grievant scraped a panel on the bus. All buses have scrapes, and there is no evidence that other employees have been discharged for this. The claim that these particular scrapes cost the Company over $1000 is difficult to credit. The Union observes that photos of the bus before and after it was repaired indicate that rust spots, unrelated to the accident, which were removed and repainted, giving rise to the suspicion that the cost of repairs was inflated. In any event, the actual conduct of this employee cannot be grounds for summary termination under any reasonable interpretation of just cause. Accordingly, the grievance should be sustained, and the Grievant should be reinstated and made whole for her losses.

DISCUSSION

The Company maintains two rules on at-fault accidents. Either rule would apply where a driver has been involved in a motor vehicle accident, which would have been avoidable by the reasonable use of "normal measures" by the driver. The rules are distinguishable on the basis of the amount of loss from the accident. If the loss is less than $500, the driver is automatically issued a written warning. If the loss is $500 or more, the driver is automatically fired. The Company had these rules in place when it was awarded the contract at Fort McCoy, and prior to the negotiation of the first contract with the Union.

The Grievant had a preventable accident, and the damage from that accident exceeded $500. Notwithstanding a certain amount of fencing between the parties at the hearing, it is clear that the Grievant was aware of the Company rules prior to her accident. It is also clear that the accident was avoidable, although that issue is discussed in somewhat greater detail below. The issues in this case, then, are whether the automatic discharge rule itself is valid, under the Company's right to "to adopt, amend, and enforce work and safety rules and procedures"[2/3] and, if so, whether there is any peculiarity in the facts of this case that would make the application of the rule, as written, inconsistent with the just cause standard for discipline.

A. The Reasonableness of the Rule

With respect to the reasonableness of the rule, certainly any employer would seek to deter employees from carelessness in the operation of motor vehicles, and rules imposing discipline for an avoidable accident are common across industries. The subject matter of the rule is, on its face, reasonable. The tension between the rule and the just cause standard arises from the automatic discharge penalty incorporated into the rule, based upon the dollar amount of loss. There are two difficulties with this. First, as a practical matter, it is virtually impossible for an employee to control or modify his or her behavior so as to fall under the written reprimand version of the rule rather than the discharge version of the rule.[4] Using this case as an example, the Grievant scraped the back of her bus on the concrete block base for a vacuum. The bus was marred, but not damaged, at least in terms of its capacity to operate normally. It remained in service and was not repaired until several months after the accident. The Company's own managers were surprised by the cost estimate for repair, and obtained a second estimate to double-check before proceeding with discipline.[5]

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[2] The Company makes much of the fact that this rule was included in the information provided during negotiations, and that the Union made no objection at that time. However, in the absence of contract language specifically requiring that the reasonableness of a rule be challenged at the time of issuance, a Union generally has the right to wait until the rule is applied to a concrete set of facts before bringing a grievance.

[3] For its part, the Union suggested that the rule could not be valid unless it first was negotiated with or agreed to by the Union. This ignores the clear language of the agreement, recognizing the inherent right of the Company to make and enforce reasonable rules.

[4] The collective bargaining agreement acknowledges that some offenses call for summary discharge, but I note that it couches that in terms of "*behavior so serious* that discharge for just cause may be appropriate for the first violation..." The distinction between a reprimand and summary discharge in the avoidable accident rules does not turn on behavior.

[5] This is not intended as a criticism of the managers or their process. It merely highlights the difficulty of estimating a dollar figure for repairs, even after the damage is done.

The second and related problem with the rule is that it attempts to displace the factors customarily considered in a just cause analysis with a single factor. Many employers have rules or standards which may cause discharge for even a single violation, because the employee's conduct is so egregiously at odds with the mission or interests of the employer that it cannot be tolerated. Here, the difference between a written reprimand and an automatic discharge has no relationship to the actual conduct of the Grievant. It has no relationship to the Grievant's prior record of service, or any of the other factors that traditionally weigh on an employer's penalty determination. The penalty is determined solely by the cost to the Company, and that cost is set at a fairly low level. The outcome of misconduct is always a legitimate factor in setting the penalty, but it is not the only factor. The Company has the right to set a loss threshold, even a relatively low threshold, beyond which discharge for a first offense may lead to discharge, but there is a difference between a threshold and a trigger. If the Company wishes to have $500 serve as a trigger for discharge, overcoming the contract's promise of just cause and general commitment to progressive discipline, it is incumbent upon it to prove why that amount is intolerable for any employee, no matter what the circumstances, prior record or length of service, while $495 is not.[6] Otherwise the distinction contained in the rule is simply arbitrary.

B. The Application of the Rule

In addition to the difficulties posed by a rule in which the penalty is not related to any factor within the employee's control, the application of the rule in this instance presents problems under a just cause standard. There is certainly a measure of negligence in what the Grievant did. She could have backed into the bay without striking the concrete blocks, as she and other drivers had done in the preceding days while the bay doors were broken. As I concluded above, this was plainly an at-fault accident for her. It was also, however, an accident for which the Company shares some responsibility. The collision hazard posed by backing a bus into a narrow bay is obviously higher than driving straight into the bay. The reason the Grievant undertook the maneuver was that, up until the time of this accident, the Company required the drivers to wash the buses at the end of the day, and made no accommodation for the fact that the wash bay was not functioning properly. The Company did not provide any guidance to the drivers indicating that this was a situation calling for the use of spotters, or exactly how they should deal with this heightened-risk situation, yet they argue in support of the termination on the grounds that this was an inherently risky maneuver.[7] If so, it was an inherently risky maneuver undertaken at their behest.

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[6] In the food retailing industry, for example, consumption of product without first paying for it is typically considered grounds for discharge, without regard to the dollar amount. The widespread acceptance of that rule is based on evidence of the sizable losses in the industry due to shrinkage, as well as the element of intentional misconduct inherent in the behavior.

[7] I also note that the Grievant testified, without contradiction, that one reason she didn't think to wait for the dispatcher to return and act as a spotter was that it was the end of the shift, and employees had been directed not to incur overtime.

Again, the Grievant was clearly at fault for this accident, but she was not solely at fault. The penalty of discharge effectively places the entire responsibility on her and ignores the fact that the hazard she encountered was on the premises used by the Company, known to the Company, and not in any way addressed by the Company.[8] While this does not excuse her own negligence, it does serve to mitigate the offense, as does the fact that the Grievant was conceded by all to have been a good employee.

C. Conclusion and Appropriate Remedy

The Grievant was guilty of negligence in backing her bus into a concrete block base in the bus wash building in January of 2009. She is thereby exposed to discipline under the Company's rules providing penalties for at-fault accidents. The rule nominally provides a penalty of discharge for a first offense if the dollar amount of the damage meets or exceeds $500. That portion of the rule exceeds the Company's right to make and enforce reasonable work rules, in that it hinges the penalty on a factor that is not reasonably related to the actual behavior and record of the employee, and attempts to displace just cause and progressive discipline as the standards for evaluating penalties.

In evaluating the Grievant's conduct, I conclude that the penalty of discharge is excessive. I base this conclusion in part on the fact that the Grievant was a good employee with a clean record, but primarily on the fact that the hazard leading to the accident was well known to the Company, and yet the Company took no steps to abate the hazard or to instruct its drivers in how to address the hazard. The penalty does not account for the shared nature of the responsibility in the case. Accordingly, I am directing the Company to replace the notice of discharge with a written reprimand, and to reinstate the Grievant to her former position, and to make her whole for lost pay and benefits as a result of the discharge, with offsets for interim earnings.

On the basis of the foregoing, and the record as a whole, the undersigned makes the following

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[8] A repair order was put in to the base DPW, seeking the repair of the door. This did nothing to address the hazard while they waited for the repairs to be conducted.

AWARD

The Company had just cause to discipline the Grievant, Lorain Hanson, but the Company did not have just cause to terminate the Grievant. The appropriate remedy is to immediately:

1. Remove the reference to a discharge from the Grievant's record, and replace it with a notice of written warning;

2. Reinstate the Grievant to her former position, without loss of seniority or benefits by reason of the discharge; and

3. Make the Grievant whole for her lost wages by virtue of the discharge, less any interim earnings or other traditional offsets.

The arbitrator will retain jurisdiction over this matter for the sole purpose of resolving disputes, if any, over the remedy. If the arbitrator's retained jurisdiction is not invoked within sixty days from the date of this Award, it will lapse. If either party invokes the arbitrator's retained jurisdiction within the sixty day period, the period of retained jurisdiction will be extended for the time necessary to resolve the dispute.

Dated at Racine, Wisconsin, this 2nd day of November, 2009.

Daniel Nielsen /s/
Daniel Nielsen, Arbitrator

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