

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

KENOSHA COUNTY

and

LOCAL 70, AFSCME, AFL-CIO

Case 277
No. 68718
MA-14325

(Employee J.Z. Termination)

Appearances:

Ms. Lorette Pionke, Senior Assistant Corporation Counsel, Kenosha County, 912 – 56th Street, Kenosha, Wisconsin 53140, appeared on behalf of the County

Mr. Nick Kasmer, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 8450 82nd Street, #308, Pleasant Prairie, Wisconsin 53158, appeared on behalf of the Union

ARBITRATION AWARD

On March 3, 2009 Local 70, AFSCME, AFL-CIO and Kenosha County filed a request with the Wisconsin Employment Relations Commission, seeking to have the Commission appoint William C. Houlihan, a member of its staff, to hear and decide a grievance pending between the parties. Following appointment, a hearing was conducted on June 25, and July 17, 2009 in Kenosha, Wisconsin. No formal record of the proceedings was taken. Briefs and reply briefs were filed and exchanged by October 5, 2009.

This Award addresses the termination of employee J.Z.

BACKGROUND AND FACTS

J.Z., the grievant, has been employed by the County for 20 years. The grievant worked as a Mechanic for approximately 13½ years and following that served as a truck driver for approximately 6½ years as of the date of his discharge. His formal discipline record consists of a 1 day suspension for insubordination in 1996.

In 2002 the grievant was driving a truck for the County. He was assigned a new truck, and, as is common, had modifications made. Many drivers make modifications to their assigned trucks in order to facilitate use and to make the vehicle more comfortable. It is common to add cup holders, radios, tool boxes, shovel holders. In modifying his truck the grievant modified the sander, the air intake for the Air Conditioner, and added a paddle to move gravel and salt faster. Additionally, the grievant modified the detent for the box lever, which encases the single control stick which operates the truck box, the blade, and salt spreader.

The truck assigned the grievant has a control stick, which has the appearance of a joy stick with a control handle. The handle has controls for the blade and salt. To operate the box it is necessary to pull up on the pistol gripped stick and either raise or lower the box. It requires an effort of about 3-4 pounds to raise the stick. If the stick is released it automatically returns to the safety lock position. This automatic return is designed as a safety feature to prevent the inadvertent raising or lowering of the box. The grievant disabled the automatic return feature of the control stick. He did so by spot welding a steel plate across the bottom of the return, blocking the stick from returning to the locked position. The result was that the operator was no longer obligated to lift the joy stick each time he/she sought to raise or lower the box. While it is common for drivers to have modifications made to their trucks, it is not common for drivers to disable safety features.

Modifications require employer approval. As a practical matter there is minimal oversight relative to the modifications. Furthermore there was testimony that certain safety features have been modified. Such things as disconnected back up horns, lights taped, and pedals with pads missing were alleged to have occurred. The County has disconnected the manufacturer installed light indicating the box is up, in all vehicles, viewing it as detrimental to safety.

Following the set up, the grievant drove his truck on a daily basis. At times co-workers would use the truck, but it was primarily assigned to him. On December 17, 2007 the grievant's truck was sent for repair work. There was evidently an issue involving a co-worker driving the truck, and three repairs were identified. The three requested repairs included "needs stay back sign", "detent for box lever missing. Raises without lifting + almost hit power lines.", "spinner has no medium speed its either slow or fast". Glen Fenske, the Foreman in charge of Maintenance testified that he regarded the detent as a safety issue. The truck repairs began on or about December 17, 2007 and were completed on January 15, 2008. The truck was not taken out of service during the repair period. The Mechanic who performed the work noted his work next to each repair entry. Next to the stay back sign, he noted "Installed". Next to the detent entry, he noted, "Is o.k.". Next to the spinner entry he noted, "Try it for now. Computer was reset." The Mechanic did not disturb the weld. Rather, he signed off on it. The repairs, as described above, were approved.

The grievant continued to drive his truck, with the modification. He was not disciplined or warned.

Sometime subsequent to the repair the grievant met with his immediate supervisor, Randy Teodoro. It was Teodoro's testimony that he told the grievant "...that you can't be doing that stuff, it's a safety issue..." and told the grievant "...to knock it off..." According to Teodoro, the grievant explained that the modification made it easier to raise the box, and that Teodoro replied that the grievant was not free to modify the truck without approval.

In May of 2008 another co-worker of the grievant's drove his truck and inadvertently raised the box. She was upset over the incident and expressed her displeasure around the shop in a voice loud enough for others, including Glen Fenske, to hear. On May 19, 2008 the truck was referred for repairs. Four items were noted for attention. One of those was, "Detent for Box Control lever is missing - Dangerous ! Please Fix !" The repairs were completed by June 6, 2008. The Mechanic who performed the repairs entered the following note: "Repaired detent on box control". The two spot welds holding the plate were removed, and the safety function was returned to its original state.

The grievant was off work on sick leave during this period. He was having shoulder surgery. He was off for a significant period of time, returning briefly in August, and fully in September.

There was a Safety Committee meeting, attended by labor and management representatives, conducted in May of 2008. During the course of the meeting the modified truck was raised. The consensus was that it was an inappropriate modification, and Daniel Stoen, Union Secretary, was asked to speak to the grievant about it. It was the testimony of an employer witness that Stoen was asked to speak to the grievant because the grievant was off work on sick leave. It was Stoen's testimony that he was asked to talk to the grievant as a friend, and that the employer wanted to avoid confrontation.

That same day Stoen, accompanied by Mark Montague, Union President, talked with the grievant and, according to Stoen, advised the grievant that the box had been repaired and "... strongly recommend you do not alter that in any way again." Following the conversation, Stoen reported back to Fenske and Bill Schenning, the Highway Superintendent, that the two had talked.

Following his return to work, the grievant made a plastic shim that conformed to the curve of the control grip, and could be slid over the detent to keep the handle from returning to the safety position. It was a portable version of the welded plate. He inserted the shim at the beginning of the shift and removed it at the end of the day. It was the grievant's testimony that he made and used the shim because it put a strain on his shoulder to raise and lower the lever repeatedly through the day.

On November 20 Fenske walked by the parked truck and noticed the boot which surrounds the controller was missing. As he inspected, he determined that the detent was again not working. The truck was subsequently parked for repairs and the plastic shim was discovered. Fenske subsequently confronted the grievant and asked if he had made the shim. The grievant replied that he had. The grievant was placed on administrative leave.

Following a review of the events, Ray Arbet, Director of the Department of Public Works terminated the grievant by the following letter. The letter summarizes the work rules in play, the basis for the discharge, and further describes the positioning and use of the controls.

FROM: Ray Arbet
Director, Department of Public Works

DATE: 12-17-08

SUBJECT: "Safety issue" Discipline Decision

CC: Mark Montague, Local 70
Robert Riedl, Director — Division of Personnel Services

I. Description of Events:

Here is a description of the events that necessitated the 12-9-08 Pre-Disciplinary Hearing:

"On Wednesday, December 3, 2008, the Highway Division notified Personnel that they had recently discovered that truck 13 OT had been tampered with thereby bypassing a safety feature. The safety device prevents the truck box from inadvertently raising without the drivers knowledge during operation. Truck 13OT is assigned to J.Z. It is important to note that in December of 2007 Mr. Z. bypassed this same safety device, was verbally counseled and directed by supervision to not again engage in this type of conduct, and specifically not to bypass safety devices. In May of 2008, this same device on truck 13OT was found to have been destroyed by use of a welding torch. Mr. Z at the time was off work on an extended sick leave and was not questioned. The truck was repaired and put back into service in good working condition. Mr. Z. returned from a leave briefly in late August and then again in late September 2008. In late November 2008, the shop foreman discovered the safety device had again been tampered with and bypassed by use of some plastic shims. Highway supervision discussed this recurring problem and decided to notify the County's risk manager. The risk manager ordered the truck be removed from service until repaired and asked that Mr. Z. be questioned. Mr. Z. admitted to two supervisors that he indeed tampered with and bypassed the safety device on his assigned truck. He was then provided orders to assist a coworker with janitorial duties.

A short time later Mr. Z. was sent home on administrative leave. The shop foreman accompanied union president Mark Montague over to the truck to show him what Mr. Z. had done. The shims were missing. The truck had been tampered with again."

II. Work Rules Violated:

Upon reviewing all information available to me from the Pre-Disciplinary Hearing and further investigation, I find that the following work rules have varying degrees of applicability:

Kenosha County Uniform Work Rules (2007)

- **Work Habits #5** Employees shall be considered insubordinate if they refuse assigned work or refuse to follow a legitimate order of supervision or management.
- **Work Habits #10** Employees shall not abuse, misuse or destroy any County property or the property of other employees, clients, vendors, or the public. Employees found to have done so may, as part of the disciplinary action, be required to repair or replace the property involved.
- **Work Habits #14** Employees must work safely at all times and immediately report any injury or accident to their supervisor or management.
- **Work Habits #16** Employees shall obey all safety rules and wear protective equipment provided, and shall not engage in conduct which creates a safety hazard.
- **Work Habits #17** Employees must report all property and equipment damage to their supervisor or management.
- **Work Habits #21** Employees must comply with all federal or state codes, local ordinances, and regulations that govern their respective departments.
- **Department #12** Sabotage, including deliberate abuse or destruction of County property.
- **Department #15** Theft, damage, or misappropriation of property of another employee, the County, the public or any person under the County's care, control or custody. Employees found to have done so may, as part of the disciplinary action, be required to replace the property involved.
- **Department #23** Any conduct by an employee that may have the effect of unnecessarily disrupting the workplace.

Kenosha County Public Works Division of Highways Work Rules:

Rule #2 - Each vehicle/equipment operator shall be responsible for identifying needed repairs or servicing of the vehicle/equipment, tagging the vehicle/equipment and fueling the vehicle/equipment when it is returned to the garage. Upon returning a vehicle/equipment to the garage, the operator shall clean the cab area of any trash or personal items.

III. Discussion

To summarize, although Mr. Z. had not been previously, formally disciplined for this type of activity - on a prior occasion, when it became known that he had tampered/disabled this specific safety device, he was verbally instructed by Supervision to never again engage in this type of activity.

He did, again disable the same safety device.

It is noteworthy that one of the tampering incidents — was discovered by a co-worker when they were required to operate Mr. Z's vehicle and they unintentionally raised the box because the safety lock had been disabled.

I wanted to fully understand how this safety device worked - given information brought up at the hearing indicating that most other vehicles do not have this specific safety device.

I examined five different vehicles that do not have this safety device and manipulated the levers and noted two key points:

1. **Single Function Lever:** The lever used to raise the box (in all other vehicles examined) - were all "single-function". In other words, they can only raise or lower the box - you'd only normally have your hand on them if you intended to activate the box.
2. **Passive Design:** Because you'd only normally have your hand on this lever if you intended to activate the box - it is "passively" designed, so that when at rest, it defaults to a neutral position.

The lever in Mr. Z's vehicle is designed significantly different:

1. **Multi-Function Lever:** The lever that activates the box - is also used to control other plow functions. In other words, an operator needs to have their hand on this lever to activate other vehicle features - completely unrelated to box operation.

2. **Active Design:** Specifically because this lever controls more than one vehicle feature — it is designed with an active safety feature. In normal use, it is expected that an operator will use this lever to activate multiple vehicle features - and it is for this reason that is designed to positively/actively default to a locked neutral position to prevent unintentional box activation.

There is a very significant potential for causing bodily harm to the motoring public and/or co-employees - in addition to secondary property damage by disabling this device. The County is not in the position to await such an event before taking action to prevent occurrence.

By admittedly, intentionally disabling an engineered safety device, Mr. Z. - in varying degrees, violated the ten work rules cited.

IV. Conclusion

Taking everything into consideration, it is my conclusion that Mr. Z's employment with Kenosha County be terminated.

ISSUE

The parties could not stipulate to an issue.

The County regards the issue to be:

Whether the County of Kenosha had just cause to terminate J.Z., and if not, what is the appropriate remedy?

It is the view of the Union that the issue to be decided is:

Did the County violate the collective bargaining agreement between itself and the Union when it terminated J.Z.?

If so what is the appropriate remedy?

I believe the evidence and argument support the County's statement of the issue.

RELEVANT PROVISIONS OF THE COLLECTIVE BARGAINING AGREEMENT

ARTICLE I – RECOGNITION

Section 1.2 – Management Rights. Except as otherwise provided in this agreement, the County retains all the normal rights and functions of management and those that it has by law. Without limiting the generality of the foregoing, this includes the right to hire, promote, transfer, demote or suspend or otherwise discharge or discipline for proper cause; . . .

. . .

Section 3.5 – Work Rules and Discipline. Employees shall comply with all provisions of this Agreement and all reasonable work rules. Employees may be disciplined for violation thereof under the terms of this Agreement, but only for just cause and in a fair and impartial manner. When an employee is being disciplined or discharged, there shall be a Union representative present and a copy of the reprimand sent to the Union.

**Kenosha County Discipline Policy
Report #139**

. . .

Purpose

The intent of this discipline policy is to ensure that unacceptable conduct and performance issues are addressed promptly and appropriately. It provides employees with notice when performance standards are not met or when standards of conduct are violated. This discipline policy also advises the employee of the action needed to improve the deficiency and a time table for improvement. Discipline shall be respectful and equitable and discipline measures shall all be appropriate to the infraction.

This policy, which applies to all Kenosha County employees, has two main purposes:

- To set guidelines of what the County considers to be minor and major behavior and performance deviations from the work rules, and
- To establish procedures for dealing with inappropriate behavior and performance issues.

. . .

Policy

The art of discipline is intended to be positive in nature and attempts to correct unacceptable employee actions. This attempt may include counseling sessions, personal improvement plans, and other help with the purpose of improving the behavior of an employee that may be detrimental and disruptive to the effective operations of a department, division and/or work program.

. . .

Progressive discipline is basically a series of disciplinary actions, corrective in nature, starting with a verbal or written reprimand. Each time the same or similar infractions occur, more stringent disciplinary action takes place. . . . To definitely establish that an infraction did occur means that a supervisor must be able to sufficiently substantiate the occurrence of any infraction.

After the infraction has been established, then an assessment of the type of corrective action required is made, taking into account the previous disciplinary actions that have been taken, if any. It does not necessarily mean that an employee is required to violate the same rule or have the same incident occur in order to draw upon previous corrective disciplinary actions.

If there is a general pattern in the employee's behavior previous disciplinary actions can be used in determining the next level of progressive discipline. . . .

Where the County believes there has been a serious offense, suspension and/or termination may be the first and only disciplinary step taken. Any step of the disciplinary process may be skipped at the discretion of Kenosha County after investigation and analysis of the total situation, past practice, employee's record and circumstances.

Upon taking any disciplinary action, with the exception of discharge, the employee must be notified at that time that any continued involvement in that particular negative behavior will result in progressive disciplinary action up to and including discharge. The various levels of discipline are: verbal reprimand, written reprimand, suspension, demotion, and discharge.

Procedure

. . .

Levels of Disciplinary Action

Verbal Reprimand

A verbal reprimand defines an inappropriate action or omission which includes a warning that the incident is not to be repeated. A verbal reprimand, when required, shall be given orally by the employee's immediate supervisor. . . .The employee must be told clearly, as is required at other disciplinary levels, what the infraction is, how to correct the problem and explicitly inform the employee what further disciplinary action may result for failure to comply with recommended corrective action.

. . .

Written Reprimand

A written reprimand may follow one or more verbal reprimands issued to an employee for a repeated offense. . . .The written reprimand shall be issued to the employee by the immediate supervisor in a private meeting. . . .The supervisor shall explain the reasons for the issuance of the written reprimand; again, suggestions for correcting the behavior are issued together with a warning of what discipline, up to and including dismissal may be taken in the future if behavior or performance does not improve.

Written reprimands will remain valid for one year. Examples of first offense written reprimands (but not limited to those listed) are:

. . .

- Insubordination such as talking back to a member of management

. . .

Suspension

A suspension is a temporary removal of the employee from the payroll. A suspension may be recommended when lesser forms of disciplinary action have not corrected the employee's behavior. Suspensions may also be recommended for first offenses of a more serious nature. A suspension will remain valid for an employee's entire length of employment.

Suspensions may be imposed on an employee for repeated offenses when verbal reprimands and written reprimands have not brought about corrected behavior, or for first offenses of a more serious nature. Examples of some of the more serious infractions (but not limited to those listed) are:

- Major deviations from the work rules, including a violation of safety rules

...

Discharge

Discharge may be recommended for an employee when other disciplinary steps have failed to correct improper action by an employee, or for first offenses of a serious nature. Examples of some of the more serious infractions (but not limited to those listed) are:

- Having any measurable level of alcohol or drugs while on the job
- Possession of an unauthorized weapon or firearm while on the premises
- Insubordination
- Physical or sexual assault
- Theft of County property or funds
- Sleeping while on duty
- Offduty misconduct
- Sexual harassment or discrimination
- Acts of fraud or dishonesty
- Consistently failing to meet performance expectations
- Isolated mistake with major consequences or potential liability.

POSITIONS OF THE PARTIES

It is the position of the County that the grievant was discharged for insubordination. He was told not to modify the safety device after the weld was removed. He knew that he was not to have the safety device disabled, but made and used the shim anyway. The grievant met with two supervisors who warned him about removing the safety device. He was also counseled by two of his co-workers, who represented the Union.

By continuing to disable the safety device the grievant put himself and his co-workers at risk. The county characterizes the act of making and using a shim as an act of sabotage. It is the view of the County that the safety violation was so serious as to warrant discharge. The County dismisses Union testimony that drivers modify safety devices, in that management was unaware of such modifications.

The County recites Arbitrator Daugherty's seven standards for discharge articulated in GRIEF BROS. COOPERAGE CORP. 42 LA 555 and concludes that all seven standards were satisfied in this proceeding.

It is the view of the County that the grievant persisted in violating the various safety rules in the face of warnings. Progressive discipline was not in order in this instance.

It is the view of the Union that there was no cause for the discharge of J.Z. It is the view of the Union that most of the County's perceived work rule violations are not at issue, that the grievant was not disciplined for the initial welding of the box control, and that both the County and other County Highway employees have made modifications to Highway trucks.

The Union reviews the various work rule violations cited in the discharge letter and argues that most are inapplicable.

The Union points out that the grievant was not disciplined for welding the box such that the safety device was inoperable. The weld was a more serious modification of the truck than was the shim. It did damage the truck, yet was not treated as particularly serious.

The Union points to testimony that county employees have made safety related modifications to trucks as has the County itself, without disciplinary consequences. It is the view of the Union that the grievant has been singled out for discipline.

It is the view of the Union that the level of discipline is too severe. There was no accident as a consequence of the use of the shim. There was no progressive discipline. The grievant is a 20-year employee.

DISCUSSION

The facts are not in dispute in this proceeding. The grievant spot welded the plate that disabled the safety device. He admitted as much when confronted with the weld. When the truck was referred for repair, the Mechanic apparently felt the weld did not create a safety hazard and did not remove it. The grievant was subsequently advised not to modify the safety device by his supervisor, and continued to operate the vehicle with the welded plate. When the weld was subsequently rediscovered, it was removed. The grievant was out on leave at the time. The grievant subsequently made and used the shim. When it was discovered, he admitted that he had made and used it.

I believe the employer is entitled to have safety devices installed and operational. It is within the province of the employer to direct employees to leave those devices intact. I believe that the grievant intended the shim to bypass the safety feature to make it easier for him to operate the dump. It is not clear whether or not the shim was a self accommodation to his surgically repaired shoulder. If so, he could have approached his employer about an appropriate accommodation.

The real question in this proceeding is whether or not the employer was free to proceed to termination without the progressive discipline commonly employed and institutionalized into this relationship by Policy #139.

The essence of the employer claim in this matter is that the grievant was insubordinate in his behavior and the violation was so severe that progressive discipline is not warranted. My review of the facts do not support this claim.

The background to this dispute includes the testimony of Union witnesses that certain safety features are either disabled or ignored. This is hardly shocking in a Highway Department. To constitute an immediately dischargeable offense, the grievant's actions must fall well outside the workplace norm.

The truck was referred for repair in December, 2007. It appears from the repair request that a co-worker "...almost hit power lines." This would appear to be a serious incident. Fenske testified that he regarded the matter as serious. However, that concern was evidently not shared by the Mechanic, who did not remove the weld. The truck was not taken out of service during the period of repair. The Mechanic instead indicated the detent "is OK". Someone signed off on the repair. There was no follow up. There was no discipline. There was no formal warning. The lack of follow up and formal warning is inconsistent with the employers claim that the matter is so serious that progressive discipline was unwarranted.

I believe that Teodoro told the grievant that he was not free to modify the truck as he had. At the time it appears that neither Teodoro nor Fenske were aware that the weld was still in place. It also appears that the grievant knew that his supervisors had made clear to him that the weld modification was not "OK". Notwithstanding the meeting the grievant continued to drive his modified truck.

In May of 2008 another co-worker had an incident with the truck, was upset, and reported the matter. The truck was repaired and the matter was taken up at a safety committee meeting. The result of the safety committee meeting was that two Union officers were to talk with the grievant. There was no formal discipline. There was no formal notice. No member of Management even talked with the grievant. This was the second incident involving the welded modification of the truck. This was the second incident of a co-worker who experienced a safety related event. This incident followed a management counseling session. If this was regarded as so serious a safety matter as to warrant discharge the failure of Management to directly address the matter is inexplicable.

The grievant returned to work in the fall and crafted the shim. When it was discovered, he admitted it was his. Unlike the weld, the shim was an effort to modify the safety feature for the grievant and remove it to avoid the incidents that led to the previous repairs. In that respect it reflected an effort to restore the safety feature for others. Unlike the previous incidents, there was no workplace incident that prompted employer review.

I do not believe these facts support discharge. The grievant was on notice that he was not to modify the safety feature. Under these circumstances I believe the employer could have warned the grievant and administered some level of discipline. However, discharge is unwarranted. The Discipline Policy (Report #139) refers to a written warning in its treatment of insubordination. It refers to a suspension in its treatment of a major deviation from work rules, including a violation of safety rules.

If anything, the safety violation was less serious than those which had prompted little or no employer reaction. Neither the December nor the May incident prompted so much as a written warning. In both instances, co-workers experienced adverse workplace consequences. In those instances, the truck had been permanently modified. The employers' contention that the violation is so serious as to warrant discharge is inconsistent with its own behavior throughout this period.

The employer asserts that the discharge was for insubordination. The classic definition of insubordination is:

Insubordination A worker's refusal or failure to obey a management directive or to comply with an established work procedure. Under certain circumstances, use of objectionable language or abusive behavior toward supervisors may be deemed to be insubordination because it reveals disrespect of management's authority. Insubordination is considered a cardinal industrial offense since it violates management's traditional right and authority to direct the work force.

Arbitrator Joseph F. Gentile in *KAY-BANNER STEEL PRODUCTS* (78 LA 363) states that the proven facts of "a classical case of insubordination" include: "(1) the Grievant was given orders, (2) the Grievant refused to obey the orders, (3) the orders came from the Grievant's supervisors, who were known to him, (4) the orders were reasonably related to his job and within the language of the contract, (5) the orders were clear, direct, and understood by the Grievant, (6) the Grievant was forewarned of the possible and probable consequences of his continued actions by specific reference to the contractual guidelines. . .and (7) the Grievant was neither insulated nor protected from possible disciplinary action by his role as a representative of the employees. . ." (*Roberts' Dictionary of Industrial Relations Fourth Edition*, Roberts, Harold S., 1996, BNA, p. 349).

Key to all definitions of insubordination is the concept that a worker has refused an order of a supervisor. This is reflected in Policy #139 in the example provided under written reprimand. If the employer regarded the Teodoro meeting as one in which a directive was issued, its silence in May, 2008, is unexplained.

I do not think the claim of insubordination supports this discharge. While it may have been unwise for the grievant to ignore Stoens' advice, it was not insubordinate. Stoen is a Union official. He is not a supervisor, authorized to direct the grievant's work. The men

talked during a time when the grievant was off work. The only person who issued what might be construed as an order was Teodoro. While it is not precisely clear what Teodoro said, it is clear that his remarks referred to the weld. It is also clear that the grievant drove the truck with the weld intact following his exchange with Teodoro. When the weld was rediscovered, following a safety incident, there was no adverse consequence to the grievant. The incident did not result in a meeting with Management or a warning. If the employer regarded this as an incident of insubordination which could have contributed to an accident, it did little to put the grievant on notice of that fact.

The County is no doubt frustrated with the grievant's dogged refusal to accept good advice. If the matter is serious, it should be so treated. If the grievant is under a work order the order should be clear, direct and understood, including the consequences for his failure to obey.

AWARD

The grievance is sustained.

REMEDY

The employer is directed to reinstate the grievant, and to make him whole for any losses he has sustained as a result of the discharge. The employer is free to offset the back pay with interim earnings and Unemployment Compensation, if any. The employer is also directed to remove reference to the discharge from the employee's file.

JURISDICTION

I will retain jurisdiction over this matter for a period of 60 days from the date of this Award to resolve any dispute arising from the remedial order. The jurisdictional period may be extended by mutual agreement of the parties.

Dated at Madison, Wisconsin, this 23rd day of November, 2009.

William C. Houlihan /s/

William C. Houlihan, Arbitrator

WCH/gjc
7505