

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between
PROFESSIONAL TRANSIT MANAGEMENT OF WAUKESHA, INC.

and

AMALGAMATED TRANSIT UNION LOCAL 998

Case 1
No. 69518
A-6396

(grievance concerning the discharge of P_ F_¹)

Appearances:

Ms. Summer H. Carlisle, Attorney, Hawks Quindel, S.C., 700 West Michigan, Milwaukee, Wisconsin 53201-0442, appearing on behalf of the Union.

Mr. John Ravasio, Attorney, Professional Transit Management, 6405 Branch Hill-Guinea Pike, Suite 203, Loveland, Ohio 45140, appearing on behalf of the Employer.

SUPPLEMENTAL ARBITRATION AWARD

The Union and Employer, above, are parties to a collective bargaining agreement covering calendar years 2006-2009 (Agreement). At their joint request, the Wisconsin Employment Relations Commission designated Daniel Nielsen of its staff as the arbitrator regarding the above grievance dispute. When Arbitrator Nielsen became unavailable to hear the case on the established hearing date, at the parties' joint request the Commission designated the undersigned Marshall L. Gratz to serve as the arbitrator.

A hearing in the matter was conducted at the UW-Waukesha on May 6, 2010, briefing was completed on July 6, 2010, and the Arbitrator issued his Award in the matter on September 28, 2010, ruling as follows on the issues submitted by the parties:

1. The Employer, Professional Transit Management of Waukesha, Inc., did not terminate the Grievant, P_ F_ for just cause. The Employer did have just cause to discipline the Grievant, but termination was an unreasonable penalty in the circumstances.

¹ For privacy reasons, Grievant is referred to throughout this Award by use of her initials.

2. As the remedy, the Employer shall, within 10 calendar days of the date of this Award, offer to immediately reinstate the Grievant, P_F_, to a bus operator position equivalent to the position she held prior to her discharge, without loss of seniority, but without backpay.

3. The Arbitrator reserves jurisdiction for a period of sixty (60) calendar days from the date of this Award (or for such additional period as the Arbitrator may order within that period), to resolve, at the request of the Union or the Employer, any dispute that may arise as to the meaning and application of the remedy ordered in 2., above.

4. The Union's requests for relief besides those noted in 2 and 3, above, are denied.

By e-mail message on October 1, 2010, the Employer wrote the Arbitrator as follows:

Mr. Gratz,

In accord with your reservation of jurisdiction, the Company has a few questions.

1. We understand that the Grievant is to be reinstated and we have already begun working on that process. However, the Award is unclear with regards to the number of disciplinary points that the Grievant will have when she begins working again.

As you know, at the time of termination (Sep '09) the Grievant had accumulated 15 points over the previous 12 months. The Performance Code calls for points to be subtracted after 12 months from the occurrence. However, the Company would argue that this condition is a result of continuous job performance, while the employee is able to 1) move past 12 months and subtract points, 2) but is also subject to being disciplined and accruing more disciplinary points.

Since Sep '09, this Grievant has no work performance record while going through the arbitration process. The Company respectfully requests that she begin her reinstatement with the same 15 disciplinary points. She would then have the opportunity to work and gradually subtract those points. The alternative of reinstating an employee with zero points, who reached the threshold of possible termination (15 points) through multiple safety related violations, seems unreasonable.

2. Your remedy orders reinstatement "without loss of seniority." The question is whether we are to honor all of the Grievant's seniority as of her termination Sep 8, 2009, or should also add on all time since then as further accrued seniority.

Thank you, Mr. Gratz.

John Ravasio, for the Company

The Arbitrator responded by e-mail on October 1, 2010, that he would await the Union's response before responding to the Employer's message, above.

The Union responded by e-mail on October 4, 2010, as follows:

Mr. Gratz,

The Union respectfully asserts that Ms. Fisher should be reinstated with 0 disciplinary points. Mr. Ravasio points out that the "performance code calls for points to be subtracted after 12 months from the occurrence." In fact, the performance code explicitly states:

[A]t the end of a twelve (12) month period from the occurrence of a particular rule violation, the violation points accumulated for that particular rule violation will be subtracted from the employee's total violation point accumulation.

It is neither appropriate nor relevant for the Company to assert its interpretation that the annual subtraction under the performance code "is a result of continuous job performance." Pursuant to your award, Ms. Fisher was suspended for an entire year without pay. The Company's late attempt to interpret the performance code in a way that further penalizes Ms. Fisher is particularly hypocritical in light of the Company's assertion throughout the entire grievance and arbitration process that it dealt with Ms. Fisher in such a way that was "entirely in keeping with the Performance Code." (Tr. 91). Furthermore, the Union strongly disagrees that reinstating Ms. Fisher with 0 points "seems unreasonable." The Company created performance code establishes the practice of deducting points on a rolling 12 month basis. Quite simply, the Company can't have it both ways - either follow its own performance code or don't.

Further, the Union asserts that your award reinstating Ms. Fisher "without loss of seniority" means that Ms. Fisher must be reinstated with the same seniority she would have had if she had not been suspended for the last year. Article 14, Section 2 of the collective bargaining agreement states that "the date of hire shall be the employee's position on the seniority list." Article 14, Section 4

states "It is understood and agreed that disciplinary suspension will not impair seniority rights." Ms. Fisher was hired October 1990; pursuant to your award, she received a one year disciplinary suspension. Her seniority remains intact and dates back to October 1990.

You have determined that Ms. Fisher is to be sufficiently punished for her accumulation of 15 violation points by a year's suspension. Finding that the Company had just cause to discipline Ms. Fisher and not awarding back pay should be the full extent of Ms. Fisher's discipline. Loss of seniority or return to work with a year's stale disciplinary points represents the imposition of penalties that are beyond the arbitration award.

Thank you,

Summer Carlisle on behalf of ATU, Local 998

Because neither party has requested an opportunity to submit evidence in addition to that received at the May 6, 2010, hearing, the record for determination of the issues raised by the Employer's October 1, 2010, message, above, consists of the evidence received at the May 6 hearing, together with the written post-hearing arguments submitted by both parties prior to issuance of the September 28 Award, plus the arguments communicated in the parties' respective e-mail messages noted above. The post-Award dispute was therefore fully submitted and ready for resolution by the Arbitrator on October 4, 2010.

SUPPLEMENTAL ISSUES

The Arbitrator finds that the parties' post-Award communications referenced above present the following issues for determination pursuant to the jurisdiction reserved by the Arbitrator in para. 3 of the September 28, 2010, Award:

1. With what violation points accumulation is the Employer to treat the Grievant as having when it reinstates her as directed in the September 28, 2010, Award?
2. With what seniority is the Employer to treat the Grievant as having when it reinstates her as directed in the September 28, 2010, Award?

PORTIONS OF THE AGREEMENT

Article 2: Management's Rights

The employer will exercise the exclusive right, except as specifically limited by this agreement, . . . to determine the qualifications for rules and regulations governing the operation of its business and conduct of its employees; to

determine and enforce discipline for violations of rules and other misconduct while on duty; to discipline, suspend or discharge employees; to take whatever steps are necessary to insure that all service is provided. The employer will notify the union president or union steward of any new or changed work rules that affect the working conditions of any union member before being posted and prior to the effective date. The Union shall have the right to challenge any rule or regulation.

ARTICLE 9: DISCIPLINE

Section 1

The right of discipline belongs to and remains with the employer. Employees covered by the agreement shall have the right to be heard in accordance with the grievance procedure provided in Article 10. If the discipline charges are not sustained, the employee's discipline record shall be cleared of the charges and in the case of any wage loss, shall be reimbursed for such loss.

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Article 14: SENIORITY, LAYOFF, AND RECALL

Section 1.

The Employer agrees to recognize seniority and it shall apply in layoffs, recall, vacation picks from the Employer's vacation schedule, and the bidding of runs. Separate lists shall be maintained for full time and for part time employees. Full time seniority shall always be considered to take precedence over part time seniority.

Section 2.

The date of hire shall determine the employee's position on the seniority list. When more than one employee is hired on the same date, the number on the employee's application shall determine the position (the lower the number, the higher the position on the seniority list).

Section 3.

The Employer shall furnish semi-annually (January 1 and July 1) a seniority roster of all bargaining unit employees to the Waukesha representative of the Union. The list shall be kept up-to-date and posted where it may be viewed by the employees.

Section 4.

An employee shall lose their seniority rights as follows:

- a. Quits.

- b. Discharged.
- c. Failure to report to work within (7) working days upon recall from layoff.
- d. No work is performed for the Employer for one (1) year and is not on an Employer approved absence or military leave.

It is understood and agreed that disciplinary suspension will not impair seniority rights.

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PORTIONS OF THE EMPLOYER'S EMPLOYEE PERFORMANCE CODE

INTRODUCTION

Professional Transit Management of Waukesha, Inc. (PTMW) is committed to providing reasonable work rules with progressive discipline to govern the conduct and performance of its employees. This code is designed to inform and instruct the employee as to what is expected from them in the day to day execution of their job. PTMW is committed to progressive discipline so those employees are continually reinstructed in the performance of their duties, thus remaining an integral part of the company.

All employees are subject to the rules contained in the general section of the code.

Specific rules governing performance in various job classifications are also provided within this code.

Whenever an employee is subject to discipline, the employee's total work record, including all violations will be reviewed before determining any penalty. Penalties for violations of multiple rules occurring during the same time period will be dealt with at the discretion of management. This code is not intended to provide rigid discipline guidelines on both management and the employee when discipline is warranted. As stated, the employee's total work record and the seriousness of the violation will always be considered.

Each employee is responsible for learning and understanding the rules and discipline contained in this code.

SECTION I - ADMINISTRATION OF THE CODE

Violation points will be awarded for infractions of the various rules contained in this code.

The assignment of violation points is designed to administer progressive discipline and to provide a means for judging the employee's overall performance.

An employee may become subject to discharge when either of the following occurs:

1. The employee's disregard of a particular rule warrants the penalty of discharge as specified in the code, or
2. The employee accumulates enough violations points (15 or more) that he/she has, because of repeated violations of the code, reached the level which subjects them to discharge.

Whenever an employee accumulates 8 (eight) or more violation points, he/she shall be provided with a letter from their immediate supervisor advising him/her that subsequent rule violations could result in the suspension and/or discharge of the employee.

Whenever an employee accumulates twelve (12) or more violation points, he/she shall be provided with a letter from the general manager advising him/her that subsequent rule violations could result in the suspension and/or discharge of the employee. A copy of the letter will be placed in the employee's personnel file.

Violation of rules, which occurred twelve (12) months prior or more in the past, will not be considered in determining progressive discipline for similar violations of the same rule. At the end of a twelve (12) month period from the occurrence of a particular rule violation, the violation points accumulated for that particular rule violation will be subtracted from the employee's total point accumulation.

There are some violations, as identified in the code, which will not warrant progressive discipline but rather immediate dismissal. The code is not intended to identify every possible infraction. The employee is always expected to perform in an appropriate and mature manner. Any employee who engages in any illegal, dishonest, or other inappropriate action not specifically identified in this code may be subject to discipline or discharge.

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When an employee has accumulated any violation points and has gone 6 (six) months without any performance code violations, 2 (two) violation points shall be subtracted from the employee's total point accumulation. In no case,

however, shall the reduced point total be less than 0, i.e. no credits (- 1 or -2 as the point accumulation).

SECTION II - PENALTIES

The following penalties shall be assessed for violations of the code:

1. Termination: The involuntary severance of an employee. The employee will be paid for all time worked up to notification of termination or date of investigatory suspension.
2. Suspension: Unpaid layoff of 1 (one) or more days on which an employee is scheduled to work but ordered not to.
3. Reprimand: A written communication to an employee (with a copy in the employee's personnel file) advising of a deficiency in his/her performance.
4. Caution: An oral communication advising the employee of a performance code deficiency.
5. Violation Points: A numerical value assessed in conjunction with the above penalties used to evaluate the employee's overall performance.

Performance code infractions and their associated maximum penalties are classified into 5 (five) categories reflecting the seriousness of the infractions. The categories and penalties for repeated violations are:

CLASS 1- Violations for which an employee may be terminated.
First offense = Termination

CLASS 2- Serious violations of the performance code.
First offense = 3 (three) day suspension, plus 5 (five) violation points.
Second offense = Termination

CLASS 3- First offense = Reprimand plus 2 (two) violation points.
Second offense = 1 (one) day suspension plus 3 (three) violation points.
Third offenses and subsequent offenses until maximum point accumulation is reached = 3 (three) day suspension plus 4 (four) violation points.

CLASS 4 - First offense = Caution plus 1 (one) violation point.
Second offense = Reprimand plus 2 (two) violation points.
Third offense = 1 (one) day suspension plus 2 (two) violation points.
Fourth offense and subsequent offenses until maximum point

accumulation is reached = 1 (one) day suspension plus 4 (four) violation points.

CLASS 5 - First offense = Caution.

Second offense = Caution, plus 1 (one) violation point.

Third offense = Reprimand, plus 1 (one) violation point.

Fourth offense and subsequent offenses until maximum point accumulation is reached = Reprimand, plus 2 (two) violation points.

Infraction for which the associated penalties are not covered above will be specifically outlined in later sections of the code.

In all cases, the employee's overall performance will always be reviewed when discipline is involved by examining the accumulated violation points to determine their overall status with PTMW. As a result, penalties may be modified, increased or decreased, to reflect the current situation and the employee's overall performance

SECTION III - GENERAL RULES AND REGULATIONS

The following shall be considered Class 5 Violations:

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Preventable Accidents

An accident in which the employee did not do everything that could be reasonably expected to avoid the accident.

First Offense = Caution plus 2 (two) violation points

Second Offense = Reprimand plus 4 (four) violation points

Third offense = 3 (three) day suspension plus 6 (six) violation points

Fourth Offense = termination

Note: Accidents of a serious nature may result in omitting the first, second and/or third steps indicated in preceding paragraph. An accident may be considered serious when damage of \$250 or more results.

SECTION VI - SPECIFIC RULES AND REGULATIONS

The rules and regulations contained in this section are those which are specific to a classification of employees.

RULES LISTED BELOW ARE APPLICABLE TO BUS DRIVERS:

Listed by class of violation, they are:

...

CLASS 3

...

b. Failure to make stops and pickups

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BACKGROUND

The Employer is a private company which, under contract with the City of Waukesha, Wisconsin, manages the Waukesha Metro transit system. The Union has represented a bargaining unit of full-time and part-time bus operators of the Employer since approximately 1985. (tr. 138, ex. 1, p. 3). The parties' latest agreement covers calendar years 2006-2009, and the parties stipulated that the Agreement provisions governing wages, hours and working conditions have remained in effect during the course of the contract hiatus thereafter. (tr. 3).

The Company has, pursuant to Agreement Art. 2, promulgated an Employee Performance Code (Code) which establishes a discipline system under which employees accumulate points for violations of the Code. Portions of that Code are set forth above.

Until her discharge, the Grievant, P_ F_, had been continuously employed by the Employer as a bus operator for approximately one month less than 19 years. (tr. 106).

On September 8, 2009, Director of Transit Operations, Tracy Harrington, issued an employee discipline notice to the Grievant imposing the termination at issue in this arbitration. That notice specified the following bases for the termination:

Preventable Accident - 2nd within 6 months. Employee has accumulated 16 violation points - per Section 1 of the Performance Code, 15 or more points is cause for termination. . . . Miscellaneous Information: Employee termination for repeated code violations resulting in 15 or more points.

Attached to the notice was a September 2, 2009, Accident Review Board determination regarding the accident referenced above. That determination read, in pertinent part, as follows:

The accident you were involved in on 8/19/09 has been determined "preventable" following a review by the Accident Review Board.

The National Safety Council has defined a "preventable" accident as one wherein the driver did not do everything reasonable to have prevented it.

Circumstance:

You were driving bus #142 on Route 6. You were at West High School, turning left from the main drive onto the drive in front of the school building. There was a barricade there to block traffic from using the driveway. You reported the sun was shining in your eyes and you did not see the barricade as you made your turn. There were no injuries.

The Review Board commented:

- 1) It is the responsibility of the bus operator to adjust to traffic and weather conditions including sun glare.
- 2) Collisions with fixed objects are preventable.

Waukesha Metro Transit expects all employees to make safety their top priority.

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A timely grievance was initiated and advanced through the Agreement grievance procedure, requesting that Grievant be made whole on the grounds that termination was an excessive penalty in the circumstances and that "These violations you described did happen but were not serious enough to warrant termination. Discipline was way too heavy-handed." The grievance was processed without resolution through the pre-arbitral steps of the Agreement grievance procedure. Harrington's Step 3 management response read, in pertinent part, as follows:

On Tuesday, October 6, 2009, we met on the Step 3 grievance submitted by former operator P_ F_. As discussed in that meeting, Ms. F_ was terminated for excessive points violations on September 8, 2009. Subsequent to that meeting, on October 9, 2009, Waukesha Metro Transit received a Last Chance Agreement proposal from Local 998.

Waukesha Metro Transit has reviewed all circumstances relating to Ms. F_'s performance history and termination. In the past year, Ms. F_ has had repeated safety related violations, including:

-Use of cell phone while operating Metro bus - the third violation occurred on school property and the uniformed officer who reported this stated that the bus was traveling at excessive speed through the school parking lot while the driver talked on her cell phone

-Failure to stop at railroad crossing -- two incidents, occurring approximately one month apart for the CDL disqualifying violation

-Failure to make a customer requested stop -- the caller who reported this stated that the driver missed her stop because she had been on her cell phone. While Metro couldn't verify this allegation, the driver admitted that she had been distracted and had missed the passenger stop, leaving this woman and her infant daughter off in the roadway

-Two preventable accidents in less than 4 months -- the second of which occurred on school property

For each violation, Ms. F_ was issued discipline as outlined in the Performance Code. Discipline was progressive, Ms. F_ having been issued a suspension in March 2009 after her third cell phone violation. Management attempted to enlist Ms. F_'s help and cooperation in turning around her performance in a meeting with her in April to discuss the potential for further discipline including termination if she continued to exhibit unsafe behaviors. During and subsequent to this meeting, Ms. F_ indicated no desire or willingness to accept responsibility and change her pattern of unsafe behaviors. The two preventable accidents occurred after this meeting.

Ms. F_'s termination was based on her accumulation of 15 or more violation points, most of which were for safety related violations. It is clearly stated in the Performance Code that an accumulation of 15 or more violation points is grounds for discharge. Not only was Ms. F_'s termination in keeping with our Performance Code, it is also in keeping with past practice and in accordance with our responsibility to provide a safe workplace for all employees.

Upon review of your proposed Last Chance Agreement and the discussions at the meeting on Tuesday October 6, 2009 your request to have Ms. F_'s employment reinstated has been evaluated. In the final analysis, Waukesha Metro believes that reinstating this employee would expose the employee, our passengers and the community to significant risk. Therefore, the Step 3 grievance and Last Chance Agreement submitted on behalf of Ms. F_ is denied.

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It is undisputed that, during the 12 month period preceding the date of her discharge, the Grievant had accumulated 15 violation points, as listed in the table below.

Incident Date	Discipline Notice Date	Violation	Violation Points Assessed	Other Discipline Imposed
9/10/08	9/12/08	Use of cell phone while operating a bus	2	Reprimand
1/15/09	1/19/09	Unsafe act: rolling stop at a railroad tracks	1	Caution
2/19/09	2/19/09	Unsafe act: rolling stop at a railroad tracks	2	Reprimand
3/11/09	3/11/09	Use of cell phone while operating a bus	2	1 day suspension
4/6/09	4/8/09	Failure to make a stop -- validated customer complaint	2	reprimand; Director Harrington also spoke with Grievant on 4/8/09 about the missed stop and to reinforce cell phone policy and how this impacts her job (ex. 23 back of p. 4, and ex. 24)
5/21/09	5/26/09	Preventable Accident	2	caution
8/16/09	9/8/09	Preventable Accident	4	discharge
		Total:	15 violation points	

The Employer acknowledged that its assertions in both its employee discipline notice of termination and in its Step 3 Grievance response, above, that Grievant had 16 points as of the date of her discharge were incorrect. (tr. 88-89).

DISCUSSION

The September 28, 2010, Award held that, "[t]he Employer did have just cause to discipline the Grievant, but termination was an unreasonable penalty in the circumstances." As the remedy, the Employer was directed, within 10 calendar days of the date of the Award, "to offer to immediately reinstate the Grievant, P_ F_, to a bus operator position equivalent to the position she held prior to her discharge, without loss of seniority, but without backpay."

As a result of that Award, the Grievant is generally to be treated as if she was on an unpaid disciplinary suspension from the date of her discharge until the date on which she is reinstated as required by the Award, but no later than a date 10 calendar days after September 28, 2010.

Violation Points Accumulation Upon Reinstatement

It is undisputed that the Grievant committed rules violations that had accumulated 15 violation points within the meaning of the Employer's Employee Performance Code in the rolling 12-month period ending on the date of her discharge.

That Code includes the following provision establishing the rolling 12-month period:

Violation of rules, which occurred twelve (12) months prior or more in the past, will not be considered in determining progressive discipline for similar violations of the same rule. At the end of a twelve (12) month period from the occurrence of a particular rule violation, the violation points accumulated for that particular rule violation will be subtracted from the employee's total point accumulation.

The Employer would have the Arbitrator toll the rolling 12-month period referenced in the above Code paragraph for the period of time that the Arbitrator has concluded she is to be treated as if on an unpaid disciplinary suspension in this case.

Significantly, the Code paragraph quoted above contains no provision for an exception for absences due to unpaid disciplinary suspensions. Furthermore, various of the disciplinary records that were received into evidence in this matter include subtractions of points after exactly 12-months had passed from the date the subtracted points were assessed, despite the fact that the employee had been absent from work on unpaid disciplinary suspension on one or more days during that 12-month period. (e.g., ex. 5, p. 1 re 3-5-09; ex. 37, p. 33 re 2-26-09; and ex. 38, p. 47 re 1-28-05).²

It therefore appears that there is no basis either in the Code language or in the history of its administration for tolling the Code's specific and express provision for a rolling 12-month period, as regards a disciplinary suspension.

While the Grievant's disciplinary suspension in this case is far longer than any of the others reflected in the employee records in evidence, the Arbitrator concludes that the same principle should nonetheless be applied to the Grievant's disciplinary suspension in this case.

Therefore, in accordance with the clear language of the Code, because each of the Grievant's violations listed in the table, above, "occurred twelve (12) months prior or more in the past," the violation points associated with each of those particular rule violations are to be "subtracted from the employee's total point accumulation." Accordingly, upon being reinstated, the Grievant is to be treated as having an accumulated violation point total of zero points.

² At ex. 38 p. 46 the employee had 2 points subtracted on 6-22-07 that had been assessed on 6-20-06, but between those two dates the employee had been suspended for a total of three days.

Seniority Upon Reinstatement

Agreement Art. 14 Sec. 2 defines seniority as based on the employee's "date of hire." Agreement Art. 14, Sec. 4, specifies the circumstances under which employees shall lose seniority rights as including "Discharged" (Sec. 4.b) and "No work is performed for the Employer for one (1) year and is not on an Employer approved absence or military leave." (Sec. 4.d.) Section 4 concludes with the statement that "[i]t is understood and agreed that disciplinary suspension will not impair seniority rights."

While it is true that the Grievant was discharged, the September 28, 2010, Award determined that the Employer did not have just cause for the imposition of the discharge penalty. On that basis alone Grievant cannot be treated as having been "discharged" within the meaning of Art. 1, Sec. 4.a.

It is also true that the Grievant performed no work for the employer for one (1) year, and that she was "not on an Employer approved absence or military leave during that time period." However, as noted above, as a consequence of the September 28, 2010, Award, she is to be treated as if she was on a disciplinary suspension throughout that absence. The Arbitrator finds the more specific Sec. 4 provision regarding the effect of a disciplinary suspension controlling over the more general provision of Sec. 4.d. regarding the effect of an absence from work for one year when not on an Employer approved absence or military leave.

It follows that the Grievant's disciplinary suspension from the date of her discharge through the date on which the Award requires her to be reinstated "shall not impair [her] seniority rights." Accordingly, the reference to "without loss of seniority" in the September 28, 2010, Award requires the Employer to treat the Grievant's seniority as based on her original date of hire, unaffected by her absence from work resulting from her discharge.

SUPPLEMENTAL DECISION AND AWARD

For the foregoing reasons and based on the record as a whole, it is the SUPPLEMENTAL DECISION AND AWARD of the Arbitrator on the SUPPLEMENTAL ISSUES noted above, that:

1. The Employer is to treat the Grievant as having an accumulated violation point total of zero points when the Employer reinstates her as directed in the September 28, 2010, Award.

2. The Employer is to treat the Grievant as having seniority based on her original date of hire, unaffected by her absence from work resulting from her discharge, when the Employer reinstates her as directed in the September 28, 2010, Award.

3. The Arbitrator reserves jurisdiction for a period of sixty (60) calendar days from the date of the September 28, 2010 Award (or for such additional period as the Arbitrator may order within that period), to resolve, at the request of the Union or the Employer, any dispute that may arise as to the meaning and application of the remedy ordered in para. 2. of that Award or as to the meaning and application of paras. 1 and 2, above.

Dated at Shorewood, Wisconsin, this 5th day of October, 2010.

Marshall L. Gratz /s/

Marshall L. Gratz, Arbitrator