IN THE MATTER OF THE ARBITRATION

between

CLEVELAND-CLIFFS STEEL LLC INDIANA HARBOR

and

UNITED STEEL, PAPER AND FORESTRY, RUBBER, MANUFACTURING, ENERGY, ALLIED INDUSTRIAL AND SERVICE WORKERS INTERNATIONAL UNION, LOCAL 1011

OPINION AND AWARD

RONALD F. TALARICO, ESQ. ARBITRATOR

GRIEVANCE NO. WR-20-08

Case 118

GRIEVANT

Hugh McCafferty

ISSUE

Discharge

VIDEO HEARING

April 8, 2021

APPEARANCES

For the Company
Christopher W. Kimbrough, Esq.
Senior Representative,
Labor Relations

For the Union
Jacob Cole
USW Staff Representative

ADMINISTRATIVE

The undersigned Arbitrator, Ronald F. Talarico, Esq., was mutually selected by the parties to hear and determine the issues herein. A video evidentiary hearing was held on April 8, 2021, at which time the parties were afforded a full and complete opportunity to introduce any evidence they deemed appropriate in support of their respective positions and in rebuttal to the position of the other, to examine and cross-examine witnesses, and to make such arguments that they so desired. The parties presented oral closing arguments, after which the record was closed. No jurisdictional issues were raised.

PERTINENT CONTRACT PROVISIONS

ARTICLE THREE – HEALTH, SAFETY AND THE ENVIRONMENT

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Section K. The Union's Right to Participate in Accident Investigations

1. **When an accident occurs that results, or could have resulted, in a serious injury, the Company will immediately notify the Union Co-Chair of the Joint Safety Committee who will have the right to immediately visit the accident scene, or to assign another Union member of the Joint Safety Committee to visit the accident scene, consistent with his/her safety. The Joint Safety Committee will investigate all such accidents and prepare an accident report. The Company will provide the Joint Safety Committee with full access to the accident site and any information relevant to understanding the causes of the accident, including the right to review any relevant audio and/or video recordings that may exist.**

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ARTICLE FIVE – WORKPLACE PROCEDURES

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Section J. Management Rights

The management of the plants and the direction of the working forces, including the right to hire, transfer and suspend or discharge for proper cause, and the right to relieve employees from duty, is vested exclusively in the Company.

In the exercise of its prerogatives as set forth above, the Company shall not deprive an Employee of any rights under any agreement with the Union.

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BACKGROUND

The Employer is Cleveland-Cliffs Steel LLC – Indiana Harbor ("Company"). The collective bargaining representative, United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union ("Union"), is the exclusive bargaining agent for production, maintenance, office, technical, clerical and railroad employees of the Company, excluding only managers, confidential employees, supervisors and guards as defined under the National Labor Relations Act. The Company and Union have been parties to a series of collective bargaining agreements over the years, the most recent of which is effective September 1, 2018, through September 1, 2022.

The Grievant, Hugh McCafferty, was hired in October 1999 and at all times pertinent to the within matter held the position of Operating Technician West Rail (Locomotive Operator). The Union filed the instant grievance protesting the Grievant's discharge for his alleged violation of a Last Chance Agreement ("LCA") dated July 1, 2016.

On March 23, 2016, the Company suspended the Grievant, subject to discharge, due to him "running the derail at West Point on March 10, 2016 and again on March 16, 2016." A derail is a safety device which is placed on a railroad track so that an engine, or railroad cars that are being moved by an engine, are pushed off the rail so as to not travel further, thus reducing the possibility of an employee being struck by the locomotive while they are working on or near the protected rail. A derail is also put into place to protect against hazards, such as collisions with plant assets and locomotives in the area owned by third parties. The suspension letter cited violations of the following rules:

ROSR1 1-19 Never move, remove, or run over a safety device.

ROSR1 1-41 Locomotives are required to operate under restricted speed. Restricted speed is a speed that will permit stopping within half the range of vision, short or train, engine, obstruction, railroad car, men or equipment fouling track, any signal, sign requiring a stop, derail or switch, lined improperly, but not exceeding 10 mph.

AM PCR #2 The following offenses are among those which may be cause for discipline up to and including suspension preliminary to discharge:
P. Neglect or carelessness in the performance of duties assigned or in the use of Company property.

The Company converted the suspension to a discharge effective April 1, 2016, but the parties subsequently negotiated and executed the LCA, which returned the Grievant to work under the following conditions:

> On March 23, 2016, Hugh McCafferty, Check No. 24993 was properly suspended and subsequently discharged on April 1, 2016 for the violation of ROSR1 1-19 (Never move, remove, or run over a safety device); ROSR1 1-41 (Locomotives are required to operate under restricted speed); and ArcelorMittal Personal Conduct Rule 2P (Neglect or carelessness in the performance of duties or in the use of Company property); as well as his overall work record.
>
> Although the Union and Company recognize that cause existed for his suspension, the Company has decided to return Mr. McCafferty to work on a last chance basis. This last chance reinstatement will provide him with one final chance to prove that he can become

a responsible employee of the Company. This return to work is conditioned upon strict observance of the following terms:

...

D. Mr. McCafferty will be found in violation of this Last Chance Agreement and be subject to immediate suspension preliminary to discharge without protections of the special Justice and Dignity Procedure outlined by the Collective Bargaining Agreement if within a period of two (2) years after the date of signing this document he violates any other Company rules or regulations.

E. Mr. McCafferty will be found in violation of this Last Chance Agreement and be subject to immediate suspension preliminary to discharge without protections of the special Justice and Dignity Procedure outlined by the Collective Bargaining Agreement if within a period of five (5) years there is subsequent suspension-discharge action taken against him for any repetition of the conduct which led to this suspension-discharge action.

...

G. This Last Chance Agreement represents a **final chance at employment** for Mr. McCafferty and is being made in full and final settlement of grievance # TR-16-4. **The terms of this agreement will be expressly adhered to.** Failure to meet any of the conditions set forth above or any repetition of the conduct which led to this suspension/discharge action will be cause for Mr. McCafferty's immediate termination. The terms of this Last Chance Agreement shall not constitute a precedent and shall be relied upon or cited by either party in any other situation.

H. In the event it is determined that Mr. McCafferty violated this agreement, he will have no right to challenge said termination and the Union will take no action to reverse or otherwise modify Mr. McCafferty's termination, other than to dispute the facts upon which the termination was based. The parties further agree that in the event of a breach of this agreement, an arbitrator's jurisdiction will be limited to a finding of fact and should a finding of fact be made, the Arbitrator will have no authority to modify or vary the discipline imposed by the Company.

...

The incident leading to the Grievant's alleged violation of the LCA occurred on September 14, 2020. On that date, the Grievant was operating locomotive 1013, which was a light engine with no cars attached to it at the time. The locomotive was traveling northwest to

the #3 Steel Producing Scrap Track Crossing. The Grievant was seated inside the cab and, before reaching the railroad crossing, he stopped the locomotive.

While the locomotive was stopped, a delivery truck was approaching the crossing from the left and perpendicular to the Grievant's line of travel. The Grievant again began moving his locomotive toward the crossing. The delivery truck stopped in the foul of the crossing as the Grievant accelerated toward the crossing. Just before he reached the crossing, the delivery truck began moving again. The Grievant just missed hitting the cab of the delivery truck but did strike the bed of the truck on the passenger side.

The Company conducted a preliminary investigation at the scene of the accident. The Company attempted to notify the Union Safety Advocate, via text message, to participate in the preliminary investigation. However, the Union Safety Advocate had the volume lowered on his phone and did not immediately receive the message from the Company. He stated via text message, "Sorry Tommy had my volume down while I was driving home give me a call when you can. I hate not having overtime to be around when things like this happen." The Company and the Union collaborated on the final investigative report, as is their usual practice.

On September 18, 2020, the Company sent the following letter to the Grievant:

> You are hereby notified that you are suspended for five (5) days, effective the date of this letter, and at the end of that period, you are subject to discharge.
>
> This action is being taken against you for violation of the terms and conditions of your Last Chance Agreement. Specifically, you violated several Plant Safety Procedures and Plant Personal Conduct Rule 2.P., which states in pertinent part:
>
> 2. The following offenses are among those which may be cause for discipline, up to, and including, suspension preliminary to discharge:
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> P. Neglect or carelessness in the performance of duties assigned or in the use of Company property.

The Union subsequently filed the following grievance:

> **Statement of the Grievance: The Company unethical and improperly conducted an accident investigation on 9/14/20 by not notifying the Union Co-chair of the Joint Safety Committee nor did the company have any Union Officials present at the accident investigation site. The Company only had non-BU employees present at site and the Union claims it was conducted unfairly, improperly and not in accordance to the BLA.**
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> **The non-BU employee Saham Paniagua entered the Preliminary report but he wasn't even present at the accident site and was the author of the report that included blame on the Employee and an Equipment Damage Dollar amount. The Company took written and verbal statements from the Employees without the Griever present and failed to informed the Employee he may request the Griever be present.**
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> **Also improperly sent the Employee for a Fitness to Work Evaluation (FTW) without speaking to the Employee per the check list to justify impairment or proper cause for the FTW evaluation, which the company already admitted to not properly conducting and not speaking to the Employee at the 9/18/20 meeting.**
>
> **The company also improperly finalized the Equipment Damage Incident Report #10246 on 9/17/20 updated by Joshua R. Coy with proper consent of Employees involved and the Union Officer. Furthermore the company failed to get due process to Mr. Hugh McCafferty when the Union requested that the Equipment Damage Incident Report #10246 be properly amended for the factual accounts of the incident and proper consent of approval has been given to finalize the Incident Report by the involved Employees and Union Officer.**
>
> **The Company held a Pre-Disciplinary Hearing on 9/18/20 at 11:30 a.m. at the Main Office LR Conference Hearing Room (to see if discipline is warranted) but terminated the meeting prematurely when the Union had more input into the Hearing. Also the meet was held by the company as a technicality to try to justify issuing discipline in the form a Five (5) day pending discharge because immediately after LR walks out the Hearing the Manager issues Mr. Hugh McCafferty a Discipline**

Statement in the form of Five (5) days Pending discharge. Which supports the Union's claim that the meeting was just a technicality and the company already had a preconceived notion to issue the Discipline Statement of a Five (5) days Pending Discharge no matter the outcome of evidence/testimony presented at the Hearing.

ISSUE

Whether the Grievant violated the terms of his Last Chance Agreement? If not, what should be the appropriate remedy?

POSITION OF THE COMPAY

The most important rule of operating a locomotive is to protect the lead of the engine. This is highlighted in the Grievant's training. The Grievant failed to be in a position in the cab to have a full view of the crossing to be able to slow down or stop if necessary. This lack of effort and attention is not consistent with an employee who is working under the terms of an LCA.

The entire purpose of the safety rule requiring the operator to be able to see the road crossing is to ensure that the operator is in a position to see if there is a pedestrian or vehicle in the crossing. The operator must be able to see where he is going.

It is common sense that an operator must pay attention to where he is going. Obviously the Grievant was not looking out the window at the crossing. He began moving the engine while the truck was moving into the foul of the crossing. His speed accelerated until the engine struck the Central Spares truck. Had the Grievant been paying attention we would not be in arbitration.

The Union wishes to blame the truck driver. This case is not about what the truck driver did wrong. Although the truck driver also was in the wrong, this does not absolve the Grievant

of his responsibilities. Protecting the lead of the engine was the Grievant's responsibility. This responsibility is not diminished by the fact that the Grievant may have had the right of way.

The Grievant violated the LCA by failing to position himself well enough to see the road crossing and failing to protect the lead of the locomotive, despite being required to do so. There are only two possible explanations: (1) the Grievant purposefully struck the truck; or (2) the Grievant was not paying attention to where he was going.

The Union claims the Grievant was not allowed due process because a proper investigation was not conducted. As Company Safety Representative Joshua Coy testified, this is not the case. The Company is responsible for conducting the initial investigation. Mr. Calhoun and Mr. Piotrowski both testified that they always contacted the Union Safety Advocate to participate in the preliminary investigation. This has always been accepted by the Union until recently. Furthermore, the Company and Union get together to do the final investigation report.

This is a simple case. The Grievant admitted he was supposed to protect the front of the locomotive. He admitted he never saw the Central Spares truck. By failing to protect the point of the locomotive, he failed to follow the most important rule of operating a locomotive: protect the lead of the engine. There is a common theme in the Grievant's prior derailments that led to the LCA – he did not pay attention to where he was going. Had he been paying attention, we would not be in arbitration.

The issue is whether the Grievant violated the terms and conditions of the LCA. He certainly did. He failed to protect the lead of the locomotive by either striking a derail or striking a truck. The grievance should be denied in its entirety.

POSITION OF THE UNION

The Union takes the position that the grievant was discharged without cause. None of the seven tests of just cause have been satisfied by the Company.

First, the Grievant was not adequately warned of the consequences of his conduct. Letter E of the LCA states that Grievant will be in violation of the LCA for any repetition of the conduct that led to his suspension/discharge action. Yet, in 2018, two years after execution of the LCA, the Grievant violated a safety rule and was not discharged even though he was clearly negligent and careless.

Second, the Company's rule is not reasonable. SJP 14 is not applicable. The engine was not pulling a train and it was not a road crossing as defined in the procedure. The Company took statements from all employees and none of them ensured that vehicular traffic was not present. Vehicle and pedestrian crossings are to be identified by stop signs and cross bucks. Neither were present at the intersection on the day of the accident.

Third, management did not investigate before issuing discipline.

Fourth, the investigation was not fair and objective. The Company did not follow the BLA with regard to Article 3, Section K1. Not one call was made to the Union co-chair as required when an accident is deemed serious. Not only did the Company not abide by the BLA but they also did not follow their investigative process as outlined in the health and safety standards guide 1.3. Not all parties were notified. Only the Company was present. 6.1 states that a senior manager must be at the site to oversee a serious incident. No senior manager was present.

Fifth, the investigation did not produce substantial proof of guilt. The Company cited irrelevant procedures. HS 604 says employee must be prepared to stop. The Grievant's hands were either on or near the brake.

Sixth, the rules were not evenly applied without discrimination. The truck driver violated two Cardinal rules: not respecting traffic rules and will respect rail priority; and stay out of close clearances. He clearly was not abiding by this one because he was hit by a train. Yet he is still working.

Seventh, the penalty was not reasonable. The Grievant, as shown in the video, was clearly looking ahead and around at the time of movement. He was clearly prepared to stop as his hands were on the controls which defeats the Company's claim of neglect.

The Grievant was neither neglectful nor careless and did not violate his LCA. The Union asks that the Grievant be reinstated and made whole and the discipline removed from his personnel file.

FINDINGS AND DISCUSSION

It is important to state at the outset the scope of review of the grievance before me. At the time of his discharge the Grievant was working under the auspices of a "Last Chance Agreement" dated July 1, 2016. In general, a Last Chance Agreement is precisely what its name connotes, i.e., a last chance for an employee to salvage their employment, which would otherwise be lost, and to continue to hold gainful employment subject to certain expressed conditions. These agreements are being used more and more frequently by employers. They represent a trade-off: the employee gets something he or she was not entitled to prior to the agreement, continued employment, in return for relinquishing certain employment rights. For

example, when considering whether there is just cause for discharge under such agreements, arbitrators do not apply the same due process considerations or procedural protections as with a normal discharge or disciplinary matter. In fact, the second paragraph of Grievant's Last Chance Agreement specifically provides as follows:

> Although the Union and Company recognize that cause existed for his suspension, the Company has decided to return Mr. McCafferty to work on a last chance basis. This last chance reinstatement will provide him with one final chance to prove that he can become a responsible employee of the Company. . . .

Accordingly, by agreement (which is essentially a modification of the collective bargaining agreement), the parties have established an automatic and immutable penalty. As such, there is no authority for an arbitrator under such circumstances to require the application of progressive discipline or consider any mitigating factors. The sole question to be decided is whether the Grievant violated his or her Last Chance Agreement, and if that is answered in the affirmative then the discharge must be upheld.

In the instant case the LCA, at paragraph two, specifically requires "strict observance" of its terms. Likewise, Section G of the LCA states, in bolded words for emphasis, "**[t]he terms of this agreement will be expressly adhered to.**" Having established these clear principles of strict observance and express adherence to the terms of the LCA, attention is turned to Sections D and E, which set forth the violations that would trigger the Grievant's violation of the LCA and subsequent discharge.

The Union and Company appear to be in agreement, correctly so, that Section D is inapplicable. Section D provides that the Grievant will be subject to suspension preliminary to discharge "if within a period of two (2) years after the date of signing this document he violates any other Company rules or regulations." The LCA was signed on July 1, 2016. The incident

leading to the Grievant's discharge occurred on September 14, 2020 – clearly more than two years after execution of the LCA. Therefore, the Grievant cannot be discharged pursuant to the terms of Section D.

Section E is the relevant provision and contains the terms to which the Grievant is subject in this matter. Section E creates a window of five years from execution of the LCA in which the Grievant is subject to the terms of the LCA. The LCA was executed on July 1, 2016. The incident leading to the Grievant's discharge – striking the delivery truck with the locomotive – occurred on September 14, 2020, a date obviously within the five-year window since execution of the LCA. Accordingly, the Grievant's conduct on September 14, 2020, must be examined per the provisions of Section E.

Section E states that the Grievant will be found in violation of the LCA, and therefore subject to discharge, "for any repetition of *the conduct which led to this suspension-discharge action.*" (emphasis added). Therefore, it is necessary to determine what the *conduct* of the Grievant was in March 2016 that led to the execution of the LCA on July 1, 2016.

The conduct of the Grievant leading to the execution of the LCA is set forth in the Company's March 23, 2016, letter to him, the relevant portion of which is set forth hereinabove. This is the letter imposing the Grievant's suspension subject to discharge. In this letter, the Company specifically states that the *conduct* of the Grievant consisted of "running the derail at West Point on March 10, 2016 and again on March 16, 2016." A derail is a safety device that is placed on the railroad tracks so that wayward engines are pushed off the rail before striking a person or another locomotive.

The Company's March 23, 2016, letter specifically cites the following rule as having been violated by the Grievant: "ROSR1-19 Never move, remove, or run over a safety device."

The "safety device" in the Grievant's case was the derail. Furthermore, the Grievant was also apparently traveling over a restricted speed, as the Company also cited a violation of the following rule: "ROSR1-41 Locomotives are required to operate under a restricted speed. . . ."

As discussed above, Section E of the LCA mandates that the Grievant is subject to discharge if he engages in "any repetition of the *conduct* which led to this suspension-discharge action." (emphasis added). Therefore, the Grievant's *conduct* on September 14, 2020, must have been a repetition of his 2016 *conduct* that led to the execution of the LCA in order to trigger his discharge under the LCA.

Upon review of the record, it is clear that on September 14, 2020 the Grievant did not repeat the *conduct* that led to the execution of the LCA on July 1, 2016. Per the Company's March 23, 2016, letter, the conduct of the Grievant in the prior incident was running over a safety device (the derail) and failing to operate under a restricted speed. However, on September 14, 2020, the Grievant *did not* run over a safety device and *did not* fail to operate under a restricted speed. Rather, the Grievant on that date is alleged to have failed to properly view the railroad crossing in order to ensure that it was clear of pedestrians or vehicles, which it was not. The failure to properly view the crossing was the *conduct* of which the grievant was allegedly "guilty." However, that was not the same *conduct* exhibited by the Grievant in March 2016. The Grievant did not run over a derail, as he did in 2016. The Grievant did not operate over a restricted speed, as he did in 2016.

The Company may argue that the conduct of the Grievant was the same in both 2016 and 2020 because in both cases he violated Plant Personal Conduct Rule 2.P, which states in pertinent part:

2. The following offenses are among those which may be cause for discipline, up to, and including, suspension preliminary to discharge:

P. Neglect or carelessness in the performance of duties assigned or in the use of Company property.

However, "neglect or carelessness" was not the *conduct* of the Grievant in the two instances. The Grievant may, and probably was, neglectful and careless in his conduct in both 2016 and 2020. But the *conduct* in 2016 consisted of running over a safety device and operating over a restricted speed. The *conduct* in 2020 consisted of failing to properly observe the crossing and striking the delivery truck. The LCA, at Section E, clearly states that the Grievant will be discharged pursuant to the LCA if he repeats the *conduct* that led to his suspension-discharge action in 2016. That he did not do. Accordingly, the Grievant did not violate the terms of the LCA and cannot be discharged pursuant to the LCA.

I would also note that almost any type of *conduct* could be considered "carelessness," e.g., putting on one's PPE equipment in a sloppy manner. However, I doubt seriously that either party contemplated that such "misconduct" would violate the LCA and cause the Grievant's discharge. Rather, "misconduct" must more precisely be of the type that precipitated the LCA in 2016. By contrast, Section D of the LCA specifically references a violation of "any *other* Company rules or regulations" – a much broader spectrum of potential misconduct.

Having found that the Grievant cannot be discharged based upon a violation of the LCA, the question nevertheless remains whether the Company still had "proper cause" to discharge him pursuant to Article Five, Section J of the collective bargaining agreement – Management Rights.

Discharge is recognized to be the extreme industrial penalty since the employee's job, seniority, and other contractual benefits and reputation are at stake. Because of the seriousness of this penalty, the burden is on the employer to prove guilt of wrongdoing. Quantum of proof is essentially the quantity of proof required to convince a trier of fact to resolve or adopt a specific fact or issue in favor of one of the advocates. Arbitrators have, over the years, developed tendencies to apply varying standards of proof according to the particular issue disputed. In the words of Arbitrator Benjamin Aaron, on some occasion in the faraway past, an arbitrator referred to the discharge of an employee as "economic capital punishment." Unfortunately, that phrase stuck and is now one of the most time-honored entries in the "Arbitrator's Handy Compendium of Cliches." However, the criminal law analogy is of dubious applicability, and those who are prone to indiscriminately apply it in the arbitration of discharge cases overlook the fact that the employer and employee do not stand in the relationship of prosecutor and defendant. The basic dispute is still between the two principals to the collective bargaining agreement. In general, arbitrators use the "preponderance of the evidence" rule of some similar standard in deciding fact issues before them, including issues presented by ordinary discipline and discharge cases such as within.

As found above, the Grievant did not engage in the same conduct on September 14, 2020, as he had engaged in 2016. The Grievant in 2016 ran over a safety device and failed to operate under restricted speed. On September 14, 2020, the Grievant failed to observe a delivery truck in the crossing and struck the driver's side bed of the truck.

Clearly there was some degree of negligence on the part of the Grievant in striking the delivery truck. There is no suggestion by any party that the Grievant intended to strike the truck. He was either not properly positioned in the cab to see the delivery truck, or simply did not look

in the direction of the truck. But the fact that the Grievant struck the delivery truck indicates that he was careless and negligent. His negligence led to his acceleration toward the railroad crossing without ensuring that the crossing was clear. The Grievant did not fulfill his duty of care.

Furthermore, all parties are fortunate that the Grievant's locomotive struck only the bed of the delivery truck on the passenger side. Had he struck the cab on the passenger side of the truck, the driver could have been seriously injured or perhaps even killed. A catastrophe was narrowly averted.

However, several mitigating factors exist. First, the Grievant was not solely to blame for the incident. It is undisputed that the driver of the delivery truck bears a significant amount of blame for stopping his truck in the railroad crossing. Had he not done so, the Grievant's negligence would have had no impact. Second, the Grievant is a long-term, 20-plus-years employee. There is no evidence that, prior to the 2016 and 2020 incidents in the instant case, the Grievant's work performance was substandard or that he was prone to carelessness.

Finally, a significant issue of disparate treatment exists when one compares the carelessness of the truck driver to that of the Grievant. The record amply demonstrates the truck driver was at least equally to blame for the incident, if not more. The fact that he only received a very minor suspension compared to the Grievant suffering the ultimate punishment of discharge cannot be rationally explained simply on the basis that the Company believed this infraction by the Grievant violated his LCA and thus warranted discharge. Regardless of the severity of the Grievant's punishment the truck driver certainly deserved a much more serious penalty--- assuming the Company truly believed this was a serious incident. Apparently it did not.

These mitigating factors weigh against a finding that the Company had "proper cause" to discharge the Grievant. Therefore, the Grievant's discharge cannot be upheld. However, there are aggravating factors which lead to the conclusion that back pay cannot be awarded.

First, as noted previously, the Grievant's negligence could have led to an extremely serious outcome. Had the delivery truck not moved, the Grievant would have struck the cab of the truck in lieu of the bed. This could have had catastrophic consequences in the form of death or serious injury to the driver of the delivery truck.

Second, although it has been found that the Grievant did not violate the LCA, he nevertheless was working under the terms of an LCA that was executed due to prior incidents of carelessness. Specifically, the Grievant was careless when he ran over a derail on two occasions in March 2016. While the 2016 and 2020 incidents do not necessarily establish a pattern of negligence and carelessness on the part of the Grievant, given his 20-plus years of service, the 2016 incident and resultant LCA cannot be discounted. The LCA should have informed the Grievant that he must be more careful in carrying out the duties of his job. Instead, the Grievant was again careless.

AWARD

The grievance is sustained in part. The Grievant shall immediately be reinstated to his former position but without the payment of any lost wages or benefits.

Jurisdiction shall be retained in order to ensure compliance with this Award.

Date: 5-12-21
Pittsburgh, PA

Ronald F. Talarico, Esq.