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| **IN THE MATTER OF THE ARBITRATION** | ) | **OPINION AND AWARD** |
| | ) | |
| **between** | ) | **RONALD F. TALARICO, ESQ.** |
| | ) | **ARBITRATOR** |
| **CLEVELAND-CLIFFS STEEL LLC, INDIANA HARBOR** | ) | |
| | ) | |
| **and** | ) | Case 120 |
| | ) | |
| **UNITED STEEL, PAPER AND FORESTRY, RUBBER, MANUFACTURING, ENERGY, ALLIED INDUSTRIAL AND SERVICE WORKERS INTERNATIONAL UNION, LOCAL 1010** | ) | |

**GRIEVANT**

Bennie Newcomb

**ISSUE**

Discharge

**VIDEO HEARING**

May 25, 2021

**POST-HEARING BRIEFS**

Briefs Received by June 4, 2021

**APPEARANCES**

**For the Employer**
Christopher W. Kimbrough, Esq.
CLEVELAND-CLIFFS STEEL, LLC
INDIANA HARBOR

**For the Union**
Michael P. Young
Staff Representative
USW DISTRICT 7, SUB-DISTRICT 5

## ADMINISTRATIVE

The undersigned Arbitrator, Ronald F. Talarico, Esq., was mutually selected by the parties to hear and determine the issues herein. An evidentiary video hearing was held on May 25, 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. Post-hearing briefs were received from both parties by June 4, 2021, at which time the record was closed. No jurisdictional issues were raised.

## PERTINENT CONTRACT PROVISIONS

### ARTICLE THREE, SECTION B

#### The Right to a Safe and Healthful Workplace

**1. The Company will provide safe and healthful conditions of work for i0ts Employees and will, at a minimum, comply with all applicable laws and regulations concerning the health and safety of Employees at work and the protection of the environment.**

...

### ARTICLE FIVE, 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.**

...

## OTHER PERTINENT DOCUMENTS

### Personal Conduct Rules

...

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

...

**R. Use of profane, abusive, or threatening language/behavior towards supervisors or other employees or officials of the Company or any non-ArcelorMittal personnel.**

...

### Fair & Equal Treatment Policy

...

**B. Non-Discrimination and Anti-Harassment Policy**

**ArcelorMittal is committed to a work environment in which all individuals are treated with respect and dignity. Each and every employee has the right to work in a professional atmosphere that promotes equal employment opportunities and prohibits discriminatory practices, including harassment. Therefore, ArcelorMittal expects that all relationships among persons in the workplace will be business-like and free of bias, prejudice and harassment. In accordance with these commitments, it is the policy of ArcelorMittal to forbid sexual and other forms of unlawful harassment, as well as any inappropriate or unprofessional conduct, whether or not such conduct rises to the level of unlawful harassment. ArcelorMittal will not tolerate any conduct that violates this policy; anyone found to be in violation of this policy will be subject to discipline, up to and including discharge.**

...

## BACKGROUND

The Employer is Cleveland-Cliffs Steel LLC, Indiana Harbor ("Company"). The Union, the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, Local 1010 ("Union"), is the exclusive collective bargaining representative for, inter alia, all production and maintenance employees at the Indiana Harbor plant. The Company and Union are successor parties to a collective bargaining agreement effective September 1, 2018. The Grievant, Bennie Newcomb, had 18+ years of service at the time of his discharge, and at all times pertinent to the within matter held the position of Utility Person – Labor Grade 1.

The Union filed the instant grievance protesting the Grievant's discharge for allegedly threatening coworkers and thereby violating the Company's Fair & Equal Treatment Policy and Personal Conduct Rules. Grievant's co-workers were referred to as "Employee A," "Employee B," "Employee C," etc. during the arbitration in order to maintain their anonymity. Their actual identities are known to the Arbitrator. The events giving rise to Grievant's discharge culminated on June 15, 2018. On that date, Employee A left his work station, without the permission of his supervisor, and went to the Company's Main Office Building to speak with Cherree Leffel, the Company's Senior Representative of Labor Relations at the Indiana Harbor facility. Ms. Leffel advised Employee A that he could be disciplined for leaving his work area without permission. Employee A acknowledged Ms. Leffel's warning but told her that he had to wait for a day when Grievant called off work because he did not want Grievant to know he was speaking with her.

Employee A told Ms. Leffel that Grievant was threatening him and other employees and that he was concerned for his safety and the safety of his family due to Grievant's threats.

Employee A also told Ms. Leffel that other coworkers were willing to provide statements regarding Grievant's threats. Ms. Leffel then instructed Plant Protection to gather written statements from the six employees who were allegedly threatened by Grievant. Employees A, B, D and F provided written statements that day. Employee C provided a written statement on June 18, 2018. Employee E did not provide a written statement. However, on June 20, 2018, he verified as accurate a statement drafted by Ms. Leffel. In addition to the written statements, Ms. Leffel interviewed Employees A, B and C as part of her investigation and prepared notes of the interviews.

Employee A informed to Ms. Leffel that, on June 14, 2018, he was in the labor trailer with Grievant and several other employees. He stated that Grievant made a comment that he would "take care" of a broken chair in the trailer once and for all and then threw it outside. He also said he would "take care of all of you mother fuckers." Employee A told Ms. Leffel that Grievant "is always talking about cutting someone's throat and I believe he would do it." He stated Grievant threatened to cut the throat of anyone sitting in his chair. He said in April or May of 2018 Grievant stated "that he got a new rifle and he could sit up on the bridge and snipe people. He said that there were a couple of people here he would like to take out."

Ms. Leffel's notes also indicate that Employee A told her Grievant carries a knife and sharpens it every day at his locker "like he is trying to intimidate us by doing it in front of us." He said he is concerned for his own safety and the safety of his family and that he does not feel safe coming to work due to Grievant's threats. Employee A said, "I am afraid he will go after my family, that he might find out where I live and do something to them. When [Grievant] talks and says he is going to do something like that, I believe it. He is always talking about cutting

someone's throat and I believe he would do it. . . . I think he is capable of doing these types of things."

Ms. Leffel's notes of her interview of Employee B indicate that he was present with Employee A in the labor trailer on June 14, 2018, during the broken chair incident. He said Grievant stated "I'll take care of this, I'll show all of you mother fuckers." Employee B told Ms. Leffel that he heard Grievant say "that if anybody touches my stuff he would cut the mother fuckers." He stated Grievant has a rifle and he heard Grievant say "he could probably snipe some of us from the bridge. He said he could probably get some of us mother fuckers from the bridge." Employee B said Grievant has a knife, pulls it out in front of his coworkers, and makes comments about slitting peoples' throats if they touch his stuff or sit in his chair. He stated Grievant "gets agitated so quickly."

Ms. Leffel's notes of her interview with Employee C indicates he has heard Grievant say that "if he was on the bridge that he would snipe these guys (referring to his co-workers). He said that there are people in here (the room) that I would love to snipe." He stated Grievant "has a quick temper."

Ms. Leffel did not interview Employee D. However, Employee D provided a written statement. In the statement, Employee D wrote, "This department has become a hostile area to where it's hard to be safe. . . . Far as [Grievant] I've only heard him talk about having guns and how he can use them when he want to and how he want to. He also stated it was a few people out here he wouldn't mind getting at but didn't state no names toward me." Employee D wrote, "I like to come to work and go home safe and sound but now I'm unaware how my days will end up."

As noted, Employee E verified as accurate a statement drafted by Ms. Leffel. In the statement, he recounted the incident with the broken chair in the labor trailer on June 14, 2018. He verified as accurate that "[a] couple weeks ago [Grievant] had his knife out with the blade open and put it up by the side of his neck and said that he would cut [Employee F's] throat." He alleged Grievant "points his finger in a gun symbol and acts like he is shooting" at other employees. Finally, Employee F provided a statement in which he wrote that Grievant has said he is "going to cut peoples throats and snipe employees from the bridge."

Ms. Leffel interviewed Grievant during the course of her investigation. Grievant unequivocally denied making any of the threats attributed to him, as he also did at the arbitration hearing. He denied threatening to shoot employees from a bridge, cut people with a knife for touching his belongings, or slit employees' throats. Significantly, Ms. Leffel testified that during her interview Grievant got very angry and agitated and his face turned red. She testified that in all her years of conducting employee interviews, and also as a former prosecutor, she never saw anyone being interviewed get this angry. She also testified that she did not find any improper motivation on the part of Employees A and B because they had worked only a very short time with Grievant yet they had come to be truly concerned about their safety.

On June 20, 2018, the Company suspended Grievant subject to discharge, alleging he made threats that violated of the Fair & Equal Treatment Policy and the Personal Conduct Rules. On July 20, 2018, Grievant's suspension was converted to a discharge. On June 21, 2018, the Union filed the following grievance:

> **"<u>Statement of Grievance</u>: Grievant protests the companies [sic] intent to discharge notification dated June 20, 2018.**
>
> **<u>Contract Provision cited</u>: Article 5 J**

...

**Remedy requested: Cease & Desist. Make employee whole for all benefits and job rights lost."**

Following the discharge, the Company gave Grievant an opportunity to return to work by attending and completing an EAP program. Grievant testified at the arbitration hearing that he completed the EAP program. However, after completing seven (7) EAP sessions, he stopped attending and failed to complete the program.

Grievant also underwent a psychological assessment following his discharge. The evaluation consisted of a psychiatric interview and forensic psychological and cognitive testing by Dr. Alexander E. Obolsky, M.D. to determine if he posed a threat to the safety of his coworkers should he be returned to work. Dr. Obolsky's report (Fitness for Duty and Dangerous Evaluation Assessment) contained, inter alia, the following conclusions:

**"In conclusion, Mr. Newcomb exhibits a life-long, severe, and pervasive condition of mental ill-being, including hypomanic and depressive episodes, anxiety associated with multiple environmental stressors, and a mild neurocognitive disorder with behavioral disturbances.**

**As such, his significant cognitive deficits are permanent and reasonably expected to worsen over time. Mr. Newcomb's mood disorder contributes to his cognitive decline. Although Mr. Newcomb has denied alcohol misuse, the pattern of his cognitive deficits and various physical conditions (e.g. fatty liver, atherosclerosis, and elevated liver enzymes) make the presence of long-standing alcohol misuse highly probable.**

**As time progresses, Mr. Newcomb is increasingly likely to behave in extreme, reckless, unpredictable, and erratic manner. He is likely to experience scattered thinking, exhibit brash and impetuous actions and moods with outbursts of momentary anger. These episodes have a reasonable probability to lead to dangerous behavior against other people and property.**

**It is my opinion held with a reasonable degree of forensic medical and psychiatric certainty that Mr. Newcomb's mild neurocognitive disorder with behavioral disturbance, bipolar disorder, and anxiety disorder increase the probability of dangerous behavior.**

**It is my opinion, held with a reasonable degree of forensic medical and psychiatric certainty that Mr. Newcomb currently is not fit to perform the regular duties of an utility person."**

On April 12, 2019, the Company made its final decision on Grievant's employment. The Company concluded that Grievant's behavior was unacceptable and that there was proper cause for his suspension and subsequent discharge.

## ISSUE

Whether the Employer had proper cause to suspend and subsequently discharge Grievant? If not, what should be the appropriate remedy?

## POSITION OF THE COMPANY

The contends it had proper cause to suspend and discharge Grievant. Arbitrators have held that "threats may provide proper cause for discharge regardless of the employee's years of service or discipline record." Arbitrators have further explained that the standard to be applied in threat cases is "whether a 'fair reading' of the language 'would reasonably tend to threaten or intimidate another employee.'" The emphasis is placed on the objective perception of the reasonable observer.

Grievant had multiple instances of making threats to coworkers from April 2018 through June 2018. The language used by Grievant, together with his demeanor as described by

disinterested observers, should leave no doubt of the reality and gravity of Grievant's threat of physical injury.

Grievant made several comments over a two-month period that caused safety concerns for his coworkers. He threatened to shoot his coworkers, cut them, and snipe them from a bridge. Grievant is aggressive and easily agitated. In short, his statements, along with the context of his actions, raised significant concerns about his stability and the threat he posed to his coworkers.

Although the coworkers did not testify at hearing, Arbitrator Bethel in *Bethlehem Steel Corporation and USW Local 6787* noted that witnesses did not testify because the company was precluded from calling bargaining unit employees, and the union did not call them for obvious reasons. Thus, the drafters of the labor agreement knew there would have to be reliance on hearsay testimony. The drafters of the basic labor agreement in the instant case likewise knew there would have to be reliance on hearsay testimony. The fact that the Union did not call them as witnesses shows that they would not have spoken favorably on Grievant's behalf.

Article Three, Section B of the BLA requires the Company to provide safe and healthful working conditions. There were six employees that spoke to the Company about Grievant making threats to them. Grievant would have the arbitrator believe that all six were lying. This defies logic. The more likely explanation is that Grievant made the threats but it attempting to downplay his statements as "mill talk."

The Union argues that the complainants were being driven by an instigator. However, several witnesses heard Grievant make the threats. Furthermore, the Union's argument that one coworker was instigating does not match the facts of the case. First, as Ms. Leffel explained, the

culminating event that caused Complainant A to report the threats was the June 14 incident and Grievant's behavior with the chair.

Second, Ms. Leffel has 20 years of experience conducting investigations. She gave extra weight to the statements of Complainant A and Complainant B because they had spent no more than 60 workdays with Grievant. In this short period of time, both were concerned for their safety. Ms. Leffel also testified Grievant turned bright red and was extremely angry during the investigation. Ms. Leffel testified this was the first time someone reacted as Grievant did to her questioning.

Finally, the Union alleges any statements made by Grievant were simply "mill talk." However, as Ms. Leffel explained, during orientation she tells all new hires that there is no such thing as "mill talk," and they are expected to follow the Personal Conduct Rules.

It is clear Grievant violated Plant Rule 2.R by using abusive or threatening behavior/language towards coworkers and violated the Fair & Equal Treatment Policy by exhibiting inappropriate or unprofessional conduct. A violation of either of these is dischargeable.

At hearing, Grievant stated that he completed the EAP program. This was not true. Grievant also maintained he had a clean disciplinary record. This, too, was untrue, as grievant has been working on J&D for an absenteeism discharge since 2010.

If the arbitrator finds the Company did not have just cause to discharge Grievant, his psychiatric condition should be taken into account. Grievant would not be able to perform the tasks required of him and his condition will only worsen over time.

The grievance should be denied in its entirety.

## POSITION OF THE UNION

The Union argues the Company did not have proper cause to discharge Grievant. Complainant E was a known instigator that enjoyed keeping the department at odds. His actions never weighed in the decision to discharge Grievant. The witness statements are prejudiced in that they were written with so-called facts told to them by Complainant E and not what they heard themselves. All evidence in this case points to Grievant being railroaded by the Company based on hearsay and shop talk by coworkers.

Two questions remain unanswered. If Grievant was a serious threat, why was a police report not filed? Why didn't the doctors report this dangerous person to law enforcement? The answer is because it was not as serious as alleged. Grievant is an 18-year employee with no citable disciplinary history. The written statements show that Complainant E is the common denominator in all of them.

None of these factors were considered by the Company. They went straight to discharge. The credibility of the witness statements was impeached at the hearing. If read in their entirety and not cherry-picked, it is clear that the coworkers were prejudiced by Complainant E.

The Company failed to meet three of the "seven tests of just cause." Specifically, number five which requires substantial proof; number six equal rule application as evidenced by Complainant E being allowed to continue his rampage of stirring up trouble; and number seven which involves the severity of the discipline.

Grievant is a long-term employee with no citable disciplinary record and has never been accused in the past of such a gross infraction. The Company hired Grievant with full knowledge of his medical disorders. Up until his discharge he was never disciplined for poor work, insubordination, safety, threats, or any other serious infraction.

If this discharge is allowed to stand we have lowered the bar for witness credibility, due process, facts and just cause. The Company has failed to establish just cause by relying solely on ta0inted witness statements.

The grievance should be sustained and Grievant reinstated and made whole. Alternatively, the arbitrator should fashion an appropriate remedy other than the extremely unfair discipline imposed on Grievant.

## FINDINGS AND DISCUSSION

Discharge is recognized to be the extreme industrial penalty since the employee's job, seniority, 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 or some similar standard in deciding fact

issues before them, including issues presented by ordinary discipline and discharge cases such as within.

The narrow issue presented is whether the Company had proper cause to suspend and subsequently discharge Grievant for allegedly threatening coworkers in contravention of its Personal Conduct Rules and Fair & Equal Treatment Policy. The Union denies that Grievant made the alleged threats and takes the position that one of the employees – Employee E – is an instigator who fabricated the alleged threats and relayed them to Grievant's coworkers, who then filed baseless complaints with Cherree Leffel, the Company's Senior Representative of Labor Relations.

The Company's primary evidence consists of written statements from, and/or notes of interviews with, six of Grievant's coworkers. Those interviews were conducted by Cherree Leffel, who led the investigation. During the course of her investigation, and at the arbitration hearing, Grievant unequivocally denied uttering the threats attributed to him.

It should first be noted that some of the alleged threats made by Grievant were not directed to a specific individual. For example, Employee B alleged that Grievant uttered comments such as he would "show all of you mother fuckers." Employee D opined that "[t]his department has become a hostile area to where it's hard to be safe." However, the majority of the alleged threats were, in fact, specific. In front of several co-workers Grievant is alleged to have threatened on multiple occasions that he would cut the throats of his coworkers or shoot his coworkers with a gun from a bridge. Grievant also made it a practice to sharpen a knife he always carried in a very demonstrative fashion in front of his co-workers often accompanied by threatening commentary.

These threats, if made, are obviously very serious. Grievant is not alleged to have merely threatened to "rough up" his coworkers. He also did not simply use foul language. Rather, he allegedly threatened to **kill** his coworkers whether by shooting them or cutting their throats. Clearly such threats would violate the Personal Conduct Rules, which prohibit abusive and threatening language, and the Fair & Equal Treatment Policy, which provides that "all relationships among persons in the workplace will be business-like. . . ." Both provisions provide for discipline up to and including discharge. Even absent these provisions, it is widely accepted, and common sense dictates, that such threats of bodily harm are forbidden in the workplace and may provide just cause for discipline, up to and including discharge.

Arbitrators have consistently and long held that "threats may provide proper cause for discharge regardless of the employee's years of service or discipline record." Arbitrators have explained that the standard to be applied in threat cases is "whether a fair reading of the language would reasonably tend to threaten or intimidate another employee." The emphasis is, therefore, placed on the objective perception of the reasonable observer.

Counsel for the Company cites to United States Steel Corporation Gary Works, 43-501 where noted Arbitrator Theodore Antoine held, in a very similar situation as exists within, that the particular language used by the grievant, together with the characterization by four (4) apparently disinterested observers of the grievant's demeanor in uttering it, left him with no doubt of the reality and the gravity of the grievant's threat of physical injury to a coworker and that his behavior and conduct worsened over time. After a third incident by that grievant, the co-worker had enough, and he, and several coworkers, verified his story to management about the grievant making threats to him. Arbitrator Antoine also noted that "despite the grievant's many years of service [almost 40], the risk of future harm and possible company liability for such harm

were sufficient to provide proper cause for discharge." Arbitrator Antoine concluded that the Company had proper cause for discharging the Grievant.

The above scenario and reasoning is as closely analogous to the situation existing within as one may ever find and provides considerable guidance for my decision. As such, there is no doubt in my mind as to the reality and the gravity of Grievant's threats to harm his co-workers. Furthermore, his overall behavior raises significant concerns about his stability and the threat he poses to his co-workers.

I am very aware of the fact that the majority of the Company's evidence consisted of written statements and notes of interviews with coworkers -- none of whom testified at hearing. Such evidence is characterized as "hearsay evidence". However, it should first be noted that Article FIVE of the Basic Labor Agreement prohibits management from calling any represented employee as a witness during the grievance procedure. The contract drafters surely recognized that the Article FIVE prohibition against calling the other side's witnesses meant there would have to be some reliance on such "hearsay" testimony during the grievance procedure. Moreover, "hearsay evidence" is routinely admitted in arbitration proceedings (especially in the steel industry) and can have significant probative value if there are indicia of its reliability. Finally, I cannot overlook the fact that the Union was free to call any of the co-worker complainants as its own witness(es) if it believed they would, to some degree, challenge or attempt to "walk back" their statements, or at the very least minimize any negative connotations. Since they were not called as witnesses this Arbitrator is therefore free to draw the inference that such testimony would not have been favorable to Grievant.

Furthermore, in the instant case there are several factors indicating that the coworkers' written statements, as well as Ms. Leffel's notes of her interviews with Grievant's other

coworkers, constitute credible evidence. First, and foremost, the coworkers' statements are very consistent and corroborative of each other. For example, Employees A, B and F all reported that Grievant threatened to cut coworkers' throats and snipe coworkers from a bridge. Employee C confirmed that Grievant threatened to shoot people from a bridge. Employee E heard Grievant threatening to cut a coworker's throat. Finally, Employees A, B and E all provided consistent accounts of the June 14, 2018, incident in the labor trailer involving the broken chair.

Second, Employee A was so concerned about his own safety and that of his family that he left his work station without the permission of his supervisor to report Grievant's threats to Ms. Leffel, thus risking discipline for leaving his work area. Employee A also waited for a day when Grievant called off work to report him to Ms. Leffel. These actions by Employee A show that he considered it extremely important to report Grievant's threats but, more importantly, that he feared Grievant. Employee A's report to Ms. Leffel did, in fact, confirm that he feared Grievant and took his threats seriously: "I am afraid he will go after my family, that he might find out where I live and do something to them. When [Grievant] talks and says he is going to do something like that, I believe it. He is always talking about cutting someone's throat and I believe he would do it. . . . I think he is capable of doing these types of things."

Third, Ms. Leffler testified that she had never seen an employee react as angrily as Grievant did during her interview. She stated that he got very agitated and angry, clenched his fists, and that his face turned bright red. Admittedly, Grievant did not make any threats during his interview with Ms. Leffel. However, his angry reaction to her questions, which she characterized as unprecedented, is indicative of his temper, and lends credibility to the accusations against him. Furthermore, Dr. Obolsky's incredibly damaging report was not

available to the Company when it made its initial determination to discharge the Grievant. However, this "after acquired evidence" certainly speaks negatively to the requested remedy of reinstatement.

Finally, weighed against this backdrop of credible evidence is the suspect testimony of Grievant himself. Grievant testified that he completed an EAP program, which the evidence shows is not true. A false statement on a such a significant matter – Grievant had been provided a potential pathway to return to work via the EAP program – calls into question the credibility of the whole of his testimony. If Grievant was untruthful about his EAP program progression, one must therefore view the entirety of his testimony with skepticism. Furthermore, Grievant's insistence that he made *none* of the comments attributed to him is not credible in light of the fact that four coworkers consistently reported that he threatened to shoot coworkers from a bridge and cut coworkers' throats.

In addition to Grievant's denials that he made the threats attributed to him and the argument that Employee E is an instigator, the Union advances several additional arguments. First, the Union asks why, if Grievant's comments were so serious, no police report was filed against him. The Union also asks why Dr. Obolsky did not report Grievant's alleged dangerous tendencies to law enforcement. However, there could have been any number of reasons why the Company and Dr. Obolsky did not report Grievant to law enforcement. The Company apparently considered this to be a personnel matter, not a legal/criminal matter, and both were under no legal/statutory obligation to report such threats.

Second, the Union contends the Company failed to meet three of the "seven tests of just cause." I disagree. As discussed hereinabove, the coworkers' statements were credible and amount to substantial proof that Grievant made the threats attributed to him. The Union also

posits that the Company did not apply its rules equally because Employee E was permitted to "continue his rampage of stirring up trouble" without any punishment. However, there is no evidence, nor even any allegation, that Employee E ever threatened anyone, which is the entire basis for Grievant's discipline.

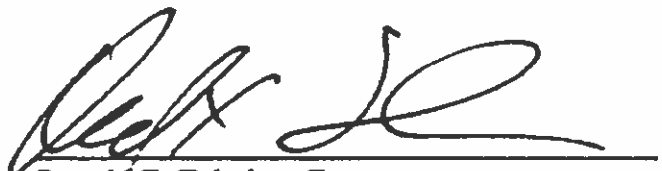
Finally, the Union argues that discharge is too severe of a penalty for Grievant an 18-year employee with no prior discipline for making threats. However, as Arbitrator Antoine noted above, an employee's many years of service cannot shield him/her from discipline for making serious threats of physical injury to a coworker. Furthermore, I disagree that the Company abused its discretion in discharging Grievant. His threats were extremely serious by any reasonable measurement. Grievant threatened to shoot and cut the throats of coworkers – he threatened to kill them. This is not simply "shop talk." His coworkers took the threats very seriously and believed Grievant capable of carrying out those threats. They feared for their lives. Given these facts, it is clear that the Company had proper cause to discharge Grievant and did not abuse its discretion in doing so.

For all of the above reasons, the grievance must, therefore, be denied.

**AWARD**

The grievance is denied.

**Date:** 7-5-21
**Pittsburgh, PA**



**Ronald F. Talarico, Esq.**
**Arbitrator**