IN THE MATTER OF THE ARBITRATION)
)
Between)
)
CLEVELAND-CLIFFS, INC.)
(CLEVELAND WORKS))
)
and)
)
UNITED STEELWORKERS,)
LOCAL 979)
)

OPINION AND AWARD

RONALD F. TALARICO, ESQ.
ARBITRATOR

Grievance No.: 28-BB-0024

Case 135

GRIEVANT

Alex Nezdoliy

ISSUE

Discharge

HEARING

December 20, 2022

APPEARANCES

For the Employer
Kerry P. Hastings, Esq.
TAFT STETTINIUS & HOLLISTER LLP

For the Union
James H. Walker, Jr.
UNITED STEELWORKERS

ADMINISTRATIVE

The undersigned Arbitrator, Ronald F. Talarico, Esq., was mutually selected by the parties to hear and determine the issues herein. An evidentiary hearing was held on December 20, 2022 in Independence, Ohio 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 record was closed at the conclusion of the hearing. No jurisdictional issues were raised.

PERTINENT CONTRACT PROVISIONS

ARTICLE FIVE – WORKPLACE PROCEDURES

. . .

Section I. Adjustment of Grievances

. . .

9. **Suspension and Discharge Cases**

. . .

b. **Justice and Dignity**

(1) In the event the Company imposes a suspension or discharge, and the Union files a grievance within five (5) days after notice of the discharge or suspension, the affected Employee shall remain on the job to which his/her seniority entitles him/her until there is a final determination on the merits of the case.

(2) This Paragraph will not apply to cases involving offenses which endanger the safety of employees or the plant and its equipment, including use and/or distribution on Company property of drugs, narcotics and/or alcoholic beverages; possession of firearms or weapons on Company property;

destruction of Company property; gross insubordination; threatening bodily harm to, and/or striking another employee; theft; or activities prohibited by Article Five, Section K (Prohibition on Strikes and Lockouts).

. . .

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.

. . .

BACKGROUND

The Employer is Cleveland-Cliffs, Inc., which operates an integrated steel mill in the Cleveland, Ohio area producing flat rolled product. The Union, United Steelworkers, Local 979, is the exclusive collective bargaining representative for all production and maintenance employees at the Plant. The Employer and Union have been parties to a series of collective bargaining agreements over the years, the most resent of which is effective September 1, 2018.

The Grievant, Alex Nezdoliy, was hired on October 31, 2011 and at all times pertinent to the within matter held the position of Service Technician in the hot mill slab yard functioning as an overhead crane operator. Grievant was scheduled to work 6:00 p.m. to 6:00 a.m. beginning Friday, August 12, 2022 through Saturday, August 13, 2022. He was assigned to the north conditional yard crane but he switched cranes with a co-worker and instead operated the north slab yard crane that night.

According to the Grievant when he arrived at work that evening, he told his co-workers that he was not feeling well. Grievant indicated that co-worker, Josh Hartness, told him at the beginning of his shift that he can just "park his crane" and that Hartness would take care of all required work that night. But Grievant indicated that he rejected the offer and began operating his crane. Grievant also asserts that he had taken some cough medicine before arriving at work that evening but did not feel he was unfit to do his job. He did admit, however, that he was tired the entire shift.

While operating his crane, Grievant admitted that he dozed off/fell asleep at approximately 2:15 a.m. the morning of August 13, 2022 and unconsciously caused the crane to travel the entire distance of the slab yard and collided with the crane being operated by Hartness. The collision caused Hartness to drop a slab he was carrying with his crane. Another employee, Anthony Peck, was on the floor at the time the slab was dropped but, fortunately, was far enough away that he was not injured. The collision damaged Hartness' crane and rendered it inoperable. Hartness contacted Maintenance Technician Electrical to repair his crane.

Neither employee reported this accident to Management when it occurred. Instead, Grievant returned to the area around 2:25 a.m. and as can be seen on the surveillance video was observed in his crane with no PPE, talking on the phone and smoking a cigarette. He indicated that he had called Hartness to make sure he was okay. Grievant then started working again and used his crane for the remainder of his shift without having it inspected to verify that it had not been damaged.

Grievant testified that at some point after the incident he reported the matter to his Union Shop Steward, Darrin Bates. Grievant claims he told Bates that his crane "bumped" Hartness' crane. However, when Bates saw the video of the collision, he realized that it was much more

severe than how the Grievant described it. Bates then reported the incident to Shift Supervisor, Jim Thompson when Thompson arrived at work on the evening of August 13, 2022 but did not specify what exactly had happened. Instead, Bates simply told Thompson that he should check out the mill aisle because something may have happened last night. However, due to the vagueness of the report, Thompson did not know what to look for or ask about when he walked around that evening.

Division Management did not become aware of this incident until an anonymous email was received on Sunday, August 14, 2022. The next day Labor Relations started an investigation into the matter. On August 16, 2022 an Incident Report was created after the safety investigation, which stated that: "Incident was not initially reported, after discovery Crane Repair was called in to inspect. No issues found."

On August 18, 2022 the Grievant was informed that he was being suspended with intent to discharge pursuant to the following letter:

"Dear Mr. Nezdoliy:

This letter is to inform you that you are being suspended with intent to discharge for failure to adhere to rules regarding incident and near miss reporting, not being fit for duty, and the following plant rule violations:

- **The safe performance of work, in all work-related activities in the plant, is a condition of employment for all Employees. Any Employee found to be in a violation of following proper safe work procedures and or failing to utilize required Personal Protective Equipment (PPE) shall be subject to discipline.**

- **Given the hazards inherent in and around steel making and processing facilities, sleeping is prohibited at any time and at any location on Company premises. Employees found in violation of this rule are subject to discipline, including suspension and discharge.**

- **In addition to the above rules, Employees engaging in conduct such as Failure to Report to Work, Reporting Late for Work,**

Insubordination, Carelessness, Poor Workmanship, Negligence, Excessive Absenteeism, Horseplay, Work Stoppages in Violation of the Labor Agreement, will be subject to discipline, including suspension and discharge.

Violation of any of the Plant Rules, in and of itself, is a basis for your suspension preliminary to discharge.

Please contact your union representatives if you have any questions."

The Union requested Justice and Dignity and the Company denied that request on August 18, 2022.

By letter dated September 22, 2022 the Employer advised Grievant that: "We are adding the violation of failing to inform the Company of a serious accident that occurred on the crane on August 13, 2022. The addition of this violation will not change in any way the previous letter dated August 18, 2022."

The following letter dated October 27, 2022 was sent to Grievant advising him that his suspension was converted to a discharge:

"Dear Mr. Nezdoliy:

Please be advised that Cleveland-Cliffs Cleveland Works is converting your suspension with intent to discharge to a discharge effective today, October 27, 2022. You have two recent suspensions on your disciplinary record. Despite this poor disciplinary record, you failed to adhere to rules regarding incident and near miss reporting by not informing the Company of the serious crane collision that occurred in the crane you were operating on August 13, 2022, and not being fit for duty which are violations of the "One Cliffs Way of Doing Business: Our Code of Business Conduct and Ethics". In addition, you violated the following plant rules:

- **The safe performance of work, in all work-related activities in the plant, is a condition of employment for all Employees. Any Employee found to be in violation of following proper safe work procedures and or failing to utilize required Personal Protective Equipment (PPE) shall be subject to discipline.**
- **Any Employee violating the Company's Smoking Policy shall be subject to disciplinary action, including suspension and discharge.**

- **Given the hazards inherent in and around steel making and processing facilities, sleeping is prohibited at any time and at any location on Company premises. Employees found in violation of this rule are subject to discipline, including suspension and discharge.**

- **In addition to the above rules, Employees engaging in conduct such as Failure to Report to Work, Reporting Late for Work, Insubordination, Carelessness, Poor Workmanship, Negligence, Excessive Absenteeism, Horseplay, Work Stoppages in Violation of the Labor Agreement, will be subject to discipline, including suspension and discharge.**

Violation of any of the Plant Rules, in and of itself, is a basis for discharge. As such, your Company-provided benefits will be terminated as of today. You will be sent information regarding any potential extension of your benefits such as COBRA.

Regards,"

ISSUE

Whether the Employer had just cause to terminate the Grievant? If not, what should be the appropriate remedy?

POSITION OF THE COMPANY

This grievance challenging the routine discharge of Grievant, Alex Nezdoliy, an overhead crane operator with a terrible disciplinary record (four suspensions in 2022 alone) should be denied. Grievant: (1) fell asleep on the job in his crane; (2) somehow started the crane in his sleep; (3) thereby causing a serious collision with another overhead crane; and (4) failed to report the resulting serious overhead crane collision to management. The Company runs a steel mill in Cleveland. Steel manufacturing involves significant safety hazards that can seriously injure or kill employees. This crane collision demonstrates these hazards, as the collision caused the struck

crane to drop a load of steel that would have almost certainly killed anyone struck by it. Falling asleep on the job and causing a crane collision is unacceptable. Failing to report the collision to management is intolerable. When accidents like this one occur, employees must immediately report them to management. This is a critical safety requirement. Immediately reporting accidents allows management to: (1) promptly and effectively investigate what happened; (2) determine if anyone was injured; (3) address any injuries; (4) promptly and effectively correct any unsafe conditions that caused the accident; (5) promptly and effectively correct any unsafe conditions caused by the accident, such as damage to operating equipment; and (6) test employees involved in the accident for drugs and alcohol as appropriate. The failure to report the crane collision at issue here prevented management from doing any of the above, creating terrible and totally preventable safety hazards. Because this crane collision was not immediately reported to management, crane repair was unable to inspect the cranes for damage until two days later. The Company had no opportunity to make sure these cranes were safe to operate for two full days. The cranes could have been hanging from the ceiling by a thread for two days with no one the wiser. Because this crane collision was not immediately reported to management, management was irreparably deprived of the opportunity to determine if drugs and alcohol caused the collision. Preventing management from testing Grievant for drugs and alcohol and from holding Grievant accountable for his misconduct is almost certainly why Grievant did not immediately report this crane collision to management. Because this crane collision was not immediately reported to management, the Company also had no opportunity to investigate the collision immediately afterwards while memories were fresh and before the equipment involved was moved.

The facts of this case are simple and the critical facts are not disputed. The Company hired Grievant in late 2011. He had a little less than eleven years of service at the time of the crane

collision. On Friday, August 12, 2022, Grievant was scheduled to work a shift beginning at 6:00 p.m. and ending at 6:00 a.m. on Saturday, August 13. He reported to supervisor Jim Thompson. As this was a night shift, there is less supervision at the plant which makes it even more important for employees to report collisions like this one to management as management is unlikely to witness anything directly given the size of the plant and limited supervision. Grievant fell asleep in his crane and somehow started his crane in his sleep which caused a collision with another overhead crane operated by Josh Hartness. The crane collision is on video and took place shortly after 2:00 a.m. on August 13 Saturday morning. Grievant's crane does not slow at all before colliding with Mr. Hartness' crane. There was a significant collision, which caused Mr. Hartness' crane to drop slabs and awakened Grievant. The crane collision was sufficiently severe to cause Grievant to call Mr. Hartness to see if he was injured. The crane collision was sufficiently severe to damage Mr. Hartness' crane and render it inoperable. The employees summoned electricians to fix this damage, which took more than an hour. But crane repair does not work nights. So neither crane was ever inspected by crane repair to determine if there was other damage to the cranes or if it was safe to continue to operate them. Grievant continued to operate his crane the rest of the night, but not as if nothing had happened because Grievant tried to cover for the inability of Mr. Hartness to operate his crane. Grievant presumably did this to avoid attracting management's attention to the area. A production stoppage would have caused management to come and investigate. Because Grievant did not report the collision, management had no opportunity to address the collision at the time.

The Company only found out about this serious crane collision after receiving an anonymous email at 9:11 p.m. on Sunday night (nearly two days later). The Company had crane repair inspect both cranes the next morning as crane repair is not present at night. The Company

investigated and interviewed the employees who were in the area at the time. The Company found the video you saw today. During the investigation, Grievant admitted he fell asleep in his crane and somehow started the crane in his sleep causing the collision. He was asleep for about an hour before he unconsciously started the crane. Grievant admittedly did not report the collision to management, either that night or ever. Grievant also violated the Company's rules against smoking in the plant that night, which was captured on video.

After considering the information it had, the Company suspended Grievant subject to discharge. Grievant had: (1) slept on the job; (2) caused a serious crane collision; (3) failed to report the collision to management; and (4) violated the rules against smoking in the plant. Grievant had a terrible disciplinary record. The contract only permits the Company to refer to discipline occurring two years before the crane collision and up to five years for the purpose of progressive discipline. Within these limits, Grievant has four suspensions on his record. In 2022, the Company gave Grievant two one-day suspensions for attendance, a five-day suspension for insubordination, and a 17-day suspension for attendance. So Grievant was already on the brink of discharge when he committed the offenses at issue today. With his disciplinary record, he faced discharge for sleeping on the job and causing the crane collision alone, which likely explains why he failed to report his serious crane collision. Further aggravating his offenses, Grievant lied during the Company's investigation. Grievant falsely claimed his mother picked him up after work, but the truth is a co-worker who was in the area when the collision occurred and who was also discharged due to her own misconduct in the aftermath of the collision took him home that morning.

The Step 2 grievance meeting in this case was held on September 13. During this meeting, Grievant claimed he was not feeling well on the night in question and had taken cough medicine

before coming to work. He said Mr. Hartness told Grievant to park his crane that night and that Mr. Hartness would cover for Grievant. Grievant rejected this offer and claimed he was fit for duty that night (something Grievant's failure to report the collision prevented the Company from verifying by testing him for drugs and alcohol). Grievant admitted he fell asleep on the job in his crane, started the crane in his sleep, and collided with Mr. Hartness' crane as shown by video. After the collision, Grievant called Mr. Hartness to see if he was injured and then kept on working. Grievant said he subsequently contacted a Union representative and told the representative he "bumped" Mr. Hartness' crane. Contacting a Union presentative does not comply with the Company's reporting rules. In any event, Grievant misled the Union representative about the severity of the collision by describing it as a mere "bump".

The Company properly discharged Grievant. He undeniably committed the offenses which led to his discharge. By his own admission, he fell asleep in the crane, caused the crane collision, and failed to report the collision. Video evidence establishes he was smoking in the plant. Grievant had a terrible disciplinary record at the time. Grievant received four suspensions in 2022 alone, including a five-day suspension and a 17-day suspension. Grievant's offenses all had major safety implications, so the Company properly denied justice and dignity. Grievant does not belong in a steel mill.

So what do we expect to hear from the Union today. We expect the Union to claim this collision was not a big deal and did not need to be reported, but the video shows it was. Even if a "bump" need not be reported as we expected the Union to claim (which is untrue), this collision was not a bump. The safety implications of failing to report this collision were serious and could have resulted in severe injuries or death. Grievant's contemporaneous actions confirm this point as he called Mr. Hartness after the collision to see if he was injured. The collision damaged Mr.

Hartness' crane and rendered it inoperable. Grievant's attempt to minimize the seriousness of this crane collision further aggravates his offense and shows he does not appreciate the safety measures required to work in a steel mill. The Union may claim no rule required Grievant to report this collision, but the Company repeatedly trained Grievant on the requirement to report a collision like this one to management. Furthermore, employees routinely report similar incidents to management. The Union's argument that Mr. Thompson should have known about the collision because electricians were summoned to work on Mr. Hartness' crane afterwards is absurd. The mere fact that electricians are summoned to work on a crane does not mean there was a crane collision. A crane could require electrical work for many other reasons, including a simple breakdown. Mr. Thompson did not find out about the collision until Sunday night, nearly two days later. The Union has claimed that discharge is too severe and that Grievant should have been suspended instead, but Grievant committed a series of serious safety offenses here and the Company had already suspended him four times in the last year. Grievant does not deserve any more chances and the Company did not abuse its discretion by discharging him under these circumstances.

Grievant undeniably committed serious safety offenses. He has a terrible disciplinary record. If he is reinstated, the Company's safety program will be severely damaged, which would jeopardize the safety of everyone at the plant. This grievance should be denied.

POSITION OF THE UNION

The case we are hearing today centers around an incident that happened at the Cleveland-Cliffs Cleveland Works, where the United Steelworkers represent approximately 1,800 members.

The Cleveland Works is an integrated steel mill that produces flat rolled product. One such department is the Hot Mill's slab yard where this case originated from.

This case is a discharge case of an employee, Alex Nezdoliy, who had approximately 11 years of service at the plant. A timely grievance was properly filed and processed through all prior steps of the Grievance Procedure without resolve, leading to this arbitration hearing.

On the night of August 12th /13th , Alex Nezdoliy reported for his shift of 6 p.m.- 6 a.m. in the hot mill slab yard. He went to a gathering area where he conversed with a few co-workers. He was not feeling well that night but went in to work his shift any way because he could not afford to take the time off. Mr. Nezdoliy was under the weather and took some cough medicine before reporting for his shift hoping to feel better throughout the night. At some point, he apparently dozed off in the cab on his crane. The crane travelled down the length of the slab yard and made contact with the other crane that shares its rails. While the Company has tried to scare everyone into believing that this was some kind of catastrophic accident, that's just not true. While the video may look serious to people like us who work in an office every day, this quite frankly is something that happens in the mill from time to time. The Employer wants to keep calling it a collision and using scary words like crash, smashed, etc. . . . The workers in the mill call what we witnessed in the video a bump. When two cranes share tracks, inevitably there are going to bump each other sometimes. While the Union certainly isn't claiming that this is something that should be happening under the normal course of the day, it isn't terribly uncommon either and perspective is very important in this case. Equally as important, in a discharge case, the intent is of the utmost importance. There was absolutely no wanton or malicious intent to harm anyone. There was no wanton or willful intent to damage anything. It was simply a mistake.

This collision, commonly referred to in the mill as a bump, never resulted in the mill going down. The Company-prepared Grievance Meeting Minutes even refers to it as a bump. After the bump, one of the cranes lost the ability to hoist. Maintenance was notified by radio, which is monitored by the foremen, that the crane was down and needed repair. Mr. Nezdoliy checked on the other craneman and everyone was fine. When the other crane was being repaired, Mr. Nezdoliy took over and was able to continue to charge the pile, without any issues. We've heard the Company say he was unfit for duty but this simply wasn't true. Did he doze off as a result of being ill? Perhaps, yes. But this should not be grounds for termination. Outside of this incident, he worked the turn and kept the mill running until the other crane was operable.

The Company claims that these two cranes running into one another creased what it has called a "Near Miss". The Union has challenged this claim repeatedly, as a "Near Miss" occurrence would have triggered notification and investigation from the USW Safety Representative in the plant. To this date, the Union's Safety Representative has still never been informed of the incident.

The truth of the matter is that this investigation and subsequent termination of an 11 year employee was sent off by an anonymous email to the CEO of the Company, as well as other Company officials. The Union will show through that this email is filled with falsehoods and unfounded accusations. After this email was received, the Company went on a witch hunt to protect themselves, because the CEO was involved. As soon as the email came out, people started getting pulled out of the mill. None of this satisfies any tests of Just Cause!!! Instead of doing any fair investigation the Company utilized outside anti-Union attorneys, who not coincidentally interviewed everyone in the area, except Mr. Nezdoliy himself.

After terminating Mr. Nezdoliy, the Company started trying to pile-on offenses in an attempt to justify their terminating him. One such case is claiming that the Grievant wasn't wearing PPE in the crane cab. The cranemen don't wear PPE like hard hats in the cab. They wear them in their way to the crane when they're walking through the mill and then take them off once in the safety of the cab.

Another charge we've heard is the no-smoking rule in the mill. The truth is that no one enforces this policy. Oddly enough, the Policy was updated not two days after the crane incident. The Company is trying to make sure all their ducks are in a row, but its smoke and mirrors. The Company did not then, nor do they now have Just Cause to terminate this employee.

With that, the Union respectfully requests that the Arbitrator sustain the grievance, meaning restoring the Grievant to full employment, with a full make whole remedy. Additionally, we ask that you maintain jurisdiction over any award implementation.

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.

In any disciplinary action based, in part, upon alleged sleeping on the job, proof of the employee actually sleeping is an obvious threshold consideration. In this case, however, there is no need to delve into any detailed frame-by-frame analysis of the Plant video (which does show the Grievant in an "inattentive" state) because the Grievant readily admitted that he was at least "dozing" while operating his crane. "Dozing" is often used by employees as a euphemism for "sleeping" and in this case the Grievant confirmed that fact because he indicated the collision "woke him up".

Regardless, sleeping/dozing on the job is a very serious work rule infraction especially in an inherently dangerous work environment such as exists in a steel mill. It is fairly obvious that dozing or falling asleep at one's desk in an office environment is far less significant an infraction than falling asleep in a steel mill, and especially while operating a dangerous moving overhead piece of equipment. In fact, the within scenario is about as serious a work place infraction that readily comes to mind.

While the Grievant offers excuses such as having ingested cough medicine which could possibly induce drowsiness, that is no mitigation for what he did, whether intentionally or inadvertently. And the seriousness of the Grievant's inattentiveness is compounded by the fact that his dozing/sleeping resulted in him falling forward and causing his crane to move forward at

an uncontrolled high rate of speed causing his crane to crash into the crane of his co-worker. To make matters even worse, the force of the collision caused the other crane to drop the large thick steel slab it was carrying down onto the work floor where another employee was in the general vicinity but thankfully was not injured. However, the potential for very serious bodily injury clearly was present.

Even if one could, arguendo, find some mitigation in the fact that the crash was a result of several compounding factors, the most aggravating factor is Grievant's failure to report the accident soon after it happened as is required. The Grievant is well aware of his obligation to report all such accidents as this. There is no ambiguity in his obligation which leads me to conclude that Grievant was well-aware of the fact that had he immediately reported this accident, he would have been subjected to a drug and alcohol test which, if found to be positive, would have led to his termination. As such, I must conclude that the Grievant intentionally did not immediately report this accident for that very reason.

Furthermore, contrary to the Grievant's ludicrous assertion, this crane collision was not a simple "bump" but was sufficiently severe to cause the Grievant to call Hartness to see if he was injured as a result. The collision also rendered Harness' crane inoperable and it was out-of-service for more than an hour while it was inspected. Moreover, the Grievant continued to operate his crane for the rest of the night obvious to whether it was in a dangerous operable condition. Furthermore, the fact that this accident did not come to management's attention for two days denied the management the right to, inter alia, correct any unsafe conditions caused by the accident, address any injuries and test all employees involved in the accident for drugs and alcohol as appropriate.

For all of the above reasons the Company, therefore, had just cause to not only terminate the Grievant but also to deny his request for Justice and Dignity which he made at the time of his discharge.

Finally, with respect to the ability of this Arbitrator to modify the penalty imposed upon Grievant for the above misconduct, as a general rule arbitrators should not interfere with the penalty imposed by an employer if the collective bargaining agreement permits management to exercise discretion and the reasonableness of the penalty is not seriously called into question. However, even where their power to mitigate a penalty is unencumbered arbitrators should still be loathe to substitute their judgment for that of management unless the degree of mitigation is of a major and consequential change. As Arbitrator McCoy explained in Stockholm Pipe Fittings Co.:

> **"Where an employee has violated a rule or engaged in conduct meriting disciplinary action, it is primarily the function of management to decide upon the proper penalty. If management acts in good faith upon a fair investigation and fixes a penalty not inconsistent with that imposed in other like cases, an arbitrator should not disturb it. The mere fact that management has imposed a somewhat different penalty or a somewhat more severe penalty than the arbitrator would have, if he had had the decision to make originally, is no justification for changing it. The minds of equally reasonable men differ. If an arbitrator could substitute his judgment and discretion for the judgment and discretion honestly exercised by management, then the functions of management would have been abdicated, and unions would take every case to arbitration. The result would be intolerable to employees as to management."**

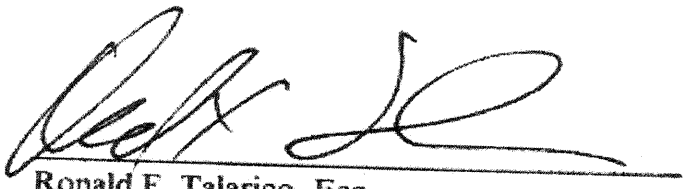
There is no contractual prohibition against an Arbitrator reviewing the penalty imposed by the Employer within. However, after careful consideration of all of the evidence presented I am unable to find the existence of any factors whatsoever that cast doubt upon the appropriateness of the imposition of the penalty of discharge. Significantly, the Grievant had four (4) suspensions on his record at the time of this incident. In 2022 he received two one-day suspensions for attendance;

a five-day suspension for insubordination; and a 17-day suspension for attendance. Clearly, Grievant was on the brink of discharge when the within offense was committed.

AWARD

The grievance is denied.

Date: Feb. 15, 2023
Pittsburgh, PA



Ronald F. Talarico, Esq.
Arbitrator