IN THE MATTER OF ARBITRATION	)	
	)	
	)	
CLEVELAND-CLIFFS COATESVILLE PLANT	)	
	)	
	)	
	)	
and	)	Grievance No. 24-015 & 24-016
	)	
	)	
UNITED STEEL, PAPER AND FORESTRY, RUBBER, MANUFACTURING, ENERGY, ALLIED INDUSTRIAL AND SERVICE WORKERS INTERNATIONAL UNION, LOCAL 1165	)	

Zane Frund, for the Employer
Charlene Crawford, for the Union
Before Matthew M. Franckiewicz, Arbitrator

OPINION AND AWARD

This arbitration proceeding involves the termination of Grievant Stephen Mattson.

A hearing was held on October 22, 2024 at Coatesville, Pennsylvania. Both parties called, examined and cross examined witnesses, and offered documentary evidence. The Parties agreed that I should issue a decision with full opinion within 30 days of the hearing.

Contract Provisions Involved

ARTICLE FOUR - CIVIL RIGHTS

Section A. Non-Discrimination

1. The provisions of this Agreement shall be applied to all Employees without regard to:

   a. race, color, religious creed, national origin, handicap or disability or status as a veteran; or

   b. sex or age, except where sex or age is a bona fide occupational qualification; or

c. citizenship or immigration status, except as permitted by law.

2. Harassment based on any of the characteristics as set forth in this Section shall be considered discrimination under this Section.

3. The Company shall not retaliate against an Employee who complains of discrimination or who is a witness to discrimination.

4. There shall be no interference with the right of Employees to become or continue as members of the Union and there shall be no discrimination, restraint or coercion against any Employee because of membership in the Union.

5. The right of the Company to discipline an Employee for a violation of this Agreement shall be limited to the failure of such Employee to discharge his/her responsibilities as an Employee and may not in any way be based upon the failure of such Employee to discharge his/her responsibilities as a representative or officer of the Union. The Union has the exclusive right to discipline its officers, representatives and employees.

6. Nothing herein shall be construed to in any way deprive any Employee of any right or forum under public law.

Section B. Civil Rights Committee

1. A Joint Committee on Civil Rights (Joint Committee) shall be established at each location covered by this Agreement. The Union shall appoint two (2) members, in addition to the Local Union President/Unit Chair and Grievance Chair. The Company shall appoint an equal number of members, including the Plant Manager and the Plant Manager of Industrial Relations. The parties shall each appoint a Co-Chair and shall provide each other with updated lists of the members of the Joint Committee.

2. The Joint Committee shall meet as necessary and shall review and investigate matters involving civil rights and attempt to resolve them.

3. The Joint Committee shall not displace the normal operation of the grievance procedure or any other right or remedy and shall have no jurisdiction over initiating, filing, or processing grievances.

4. In the event an Employee or Union representative on the Joint Committee brings a complaint to the Joint Committee, the right to bring a grievance on the matter shall be preserved, in accordance with the following:

   a. The complaint must be brought to the attention of the Joint Committee within the same timeframe that a complaint must be brought to the First Step 1 of the grievance procedure.

b. The Employee must provide the Joint Committee with at least sixty (60) days to attempt to resolve the matter.

c. At any time thereafter, if the Joint Committee has not yet resolved the matter, the Employee may request that the Grievance Chair file it as a grievance in Step 2 of the grievance procedure, and upon such filing the Joint Committee shall have no further jurisdiction over the matter.

d. If the Joint Committee proposes a resolution of the matter and the Employee is not satisfied with such resolution, then the Union may file the complaint at Step 2 of the grievance procedure, provided such filing is made within thirty (30) days of the Employee being made aware of the Joint Committee's proposed resolution.

Section C. Workplace Harassment, Awareness and Prevention

1. All Employees shall be educated in the area of harassment awareness and prevention on no less than a yearly basis.

2. A representative of the Union's Civil Rights Department and a representative designated by the Company's Labor Relations and/or Human Resources Department will work together to develop joint harassment and prevention education, with input from the plants and Local Unions.

3. Within six (6) months of the Effective Date of this Agreement, members of the Joint Civil Rights Committee will be trained in matters relative to this provision.

4. All new Employees (and all Employees who have not received such training) will be scheduled to receive two (2) hours of training as to what harassment is, why it is unacceptable, its consequences for the harasser and what steps can be taken to prevent it.

5. All Employees shall be compensated in accordance with the standard local plant understandings for time spent in training referred to in this Section.

ARTICLE FIVE - WORKPLACE PROCEDURES

Section I. Adjustment of Grievances

9. Suspension and Discharge Cases

a. No Peremptory Discharge

(1) Before imposing a discharge (which must be in accordance with Paragraph 9(b) below) the Company shall give written notice of its intent to the affected Employee and the Grievance Chair.

(2) Where the Union files a grievance protesting such intended discharge within five (5) days of receipt of the notice, the Company may impose no more than a suspension (which must be in accordance with Paragraph 9(b) below) on such Employee prior to completing the procedure referred to in Paragraph 3 below.

(3) The grievance protesting the intended discharge shall be filed at Step 2 of the grievance procedure and the Step 2 Answer shall be given prior to the Company converting the suspension to a discharge. At the Step 2 meeting the Company shall provide a written statement fully detailing all of the facts and circumstances supporting its proposed disciplinary action.

(4) In the event the Company does convert the suspension to a discharge, the action shall be treated as a denial of the grievance at Step 2 and the Union may thereupon move the case through the balance of the grievance procedure.

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; acts of workplace harassment; threatening bodily harm to, and/or striking another employee; theft; or activities prohibited by Article Five, Section K (Prohibition on Strikes and Lockouts).

(3) When an Employee is retained pursuant to this procedure and the Employee's discharge or suspension is finally held to be for just cause, the removal of the Employee from the active rolls shall be effective for all purposes as of the final resolution of the grievance.

(4) When a discharged Employee is retained at work pursuant to this provision and is discharged again for a second dischargeable offense, the Employee will no longer be eligible to be retained at work under these provisions.

e. Should the arbitrator determine that an Employee has been suspended or discharged without just cause, the arbitrator shall have the authority to modify the discipline and fashion a remedy warranted by the facts.

The Facts

Grievant Stephen Mattson was discharged three times by the Company.

On February 13, 2023, the Company issued Mattson a suspension with intent to discharge letter, and on March 1, 2023 it converted the suspension to a termination.

The termination was grieved and arbitrated before me. On August 5, 2023, I issued the following award:

> The grievance is sustained in part. The termination of Grievant Stephen Mattson is abrogated and modified to a disciplinary suspension of 30 work days. The Company shall reinstate Grievant Mattson with no loss of seniority and shall make him whole for economic losses suffered. Jurisdiction is retained for the limited purpose of resolving any disputes that may arise in connection with the implementation of this remedy.

Portions of my opinion in that case are pertinent to the current case, and I will quote them below.

On February 20, 2024, the Company issued the following discharge letter to Grievant Mattson, over signature of Senior Labor Relations Representative Zane Frund:

> On February 13, we met along with Managers Bill Neary, Justin Nichols, Steve Amway and Union Representatives Irv Warner and Brandon Davies.
>
> The purpose of the meeting was to discuss serious violations of Company policies and procedures. The following is a list of your failure to perform:
>
> - Failure to stay on the job or your assigned place of duty.
> - Failure to follow work instructions given by your manager.
> - Failure to wear your appropriate and prescribed Cliffs PPE
> - Using Company vehicles to travel to parts of the Mill where you were not assigned work.
> - General loafing
>
> In the investigatory meeting, you did not provide any credible reasons as to why you have been failing to perform your work duties or to follow Company standards, policies, and procedures. Your record currently contains a 6-week arbitrator imposed disciplinary suspension for similar violations. Based upon the seriousness of your actions and the facts of the matter, our investigation, your seniority, and your work record - I have determined that your actions do not meet Cleveland-Cliffs standards of employment. Therefore, your discharge is confirmed as of February 20, 2024.

On February 29, 2024, the Company issued an additional discharge letter to Grievant Mattson, again over signature of Senior Labor Relations Representative Zane Frund:

> On February 13, we met along with Managers Bill Neary, Justin Nichols, Steve Amway and Union Representatives Irv Warner and Brandon Davies.
>
> The purpose of the meeting was to discuss serious violations of Company policies and procedures. The following is a list of your failure to perform:
>
> - Failure to stay on the job or your assigned place of duty.
> - Failure to follow work instructions given by your manager.
> - Failure to wear your appropriate and prescribed Cliffs PPE
> - Using Company vehicles to travel to parts of the Mill where you were not assigned work.
> - General loafing
> - Making threats in the workplace
> - Violation of Company EEO Policies
>
> In the investigatory meeting, you did not provide any credible reasons as to why you have been failing to perform your work duties or to follow Company standards, policies, and procedures. Your record currently contains a 6-week arbitrator imposed disciplinary suspension for similar violations. Based upon the seriousness of your actions and the facts of the matter, our investigation, your seniority, and your work record - I have determined that your actions do not meet Cleveland-Cliffs standards of employment. Therefore, your discharge is confirmed as of February, 20, 2024.

The two letters are identical except for the additional two bulleted items in the second letter.

At a suspension pending discharge meeting on February 13, 2024, the Company did not bring up allegations of threats or racist or homophobic statements.

The Company presented no evidence at the arbitration hearing of the Grievant failing to wear proper personal protective equipment (PPE). Accordingly, this allegation has not been sustained.

Quality Shift Manager Philip McBride, who oversees the Quality Assurance Department (and is not in Grievant Mattson's line of supervision) stated that on January 9, 2024 Mattson, whom McBride did not even know at the time, was at the Automated Utility Pulpit in Finishing, which is on the west side of South Ave., separated from the rest of the mill by South Ave. McBride and another Manager had called for assistance from West Side Maintenance. Initially McBride thought that Mattson was the Maintenance Technician that he had called for.

Later someone else told McBride who Mattson was.

According to McBride, Mattson arrived at around 7:20 a.m. and sat down at the pulpit and said he was doing a walk through of the building checking piping in anticipation of the next week's expected cold weather. About 10 minutes later the actual West Side Technician arrived. Mattson remained until approximately 8:30 a.m., performing no useful work and sitting in a chair until McBride interrupted the conversation. Mattson

discussed the prior arbitration, and said that Senior Labor Relations Representative Zane Frund was miserable because he is short. (McBride's impression was that Mattson thought McBride was an hourly employee.) McBride observed that there are no pipes in that area that would need to be inspected.

According to Grievant Mattson, Mattson was performing freeze watch (discussed in more detail below) on January 9, and his supervisor was aware of that. He estimated that he was in the Pulpit area for at most 20 minutes, until he realized that the problem being addressed there did not relate to him.

Steve Mattson acknowledged discussing the prior arbitration and saying that he had won, but denied saying that Zane Frund was short, or that he was miserable because he was short.

According to McBride's statement written on January 12, Mattson said that he had told one of his Managers that if I ever see you away from here you are in trouble; that Mattson stated that you can tell a Manager to fuck off any time as long as you are not being recorded; and that after the prior arbitration Marcus Valentino said welcome back, and Mattson replied, don't bullshit, you know you fucked up with me.

Mattson denied that he had any conversation with Valentino upon his return to work.

Mattson denied telling any Manager that if he saw him away from there he would be in trouble. He stated that in fact this comment was made to him. He denied saying that he could tell a Manager to fuck off.

Steve Amway has been a Section Manager in MEU for about 9 months. After Mattson returned to work following the earlier arbitration, Amway became Mattson's direct supervisor. Amway stated that he did not assign Mattson to go to the Finishing Department (where McBride met him) on January 9.

On February 12, 2024, Amway assigned Mattson to shop cleanup, and Mark Trevisan to fix a clogged sink in the melt shop, according to Amway's Job Safety Briefing for the day. Amway elaborated that he told Mattson to clean up rack shelving units In the "cage" that had accumulated a lot of junk. Amway testified that Mattson did not do the housekeeping of the shelving and that ultimately Mark Trevisan had to complete the assignment.

Mark Trevisan testified that he and Steve Mattson were instructed to clean the racks, and that the whole area was a mess. Trevisan stated that they both treated the instruction as a fill in, something to do when they had time and he did not recall being given a deadline. On cross examination Trevisan stated that he was the one who primarily organized the shelving racks and that this was not the first time he completed something that was assigned to Steve Mattson.

Amway stated that he left the MEU at around 8:20 a.m. As he left he saw Mattson outside the south yard in a Company vehicle, chatting with Finishing employee Nate Anderson. Amway testified that the location was not where Mattson was supposed to be. Amway returned around 8:50, and Mattson was still in the same place with Anderson.

Grievant Steve Mattson stated that on that day he was finishing his freeze watch. Mattson's prior supervisor Tim Raysor had given him a list of locations and items to check and told him he needed to memorize the list and get to them each day when the weather was cold from October to April. He was told to go through all areas, and doing so took anywhere from 2 ½ to 5 hours. When Amway became his supervisor, Amway never told him not to do so. Mattson acknowledged that he was speaking with Nate Anderson on February 12, but

stated that the conversation lasted no more than 10 minutes. Mattson testified that after Amway returned, he let Amway know he was back and Amway told him to concentrate the rest of the day on the cage.

According to Mattson, at around 9:00 a.m. he was told to head to the cage, and he spent the rest of the day there. He determined what was junk and returned the other items to the shelves.

Nate Anderson, an employee in Shipping, testified that on February 12, he saw Mattson driving by in a work truck and stopped him to chat. Anderson estimated that the conversation lasted around 10 minutes. Anderson himself was not disciplined with respect to the incident.

At around 10:00 a.m. that same day, Amway saw Mattson's work truck parked at the shop, not in Mattson's assigned work area, but Mattson was not in the truck, and Mattson was not in the cage. Amway returned at around 11:20 and found no one in the cage, and the work in the cage had not even been started. According to Amway this was not the first time Mattson did not perform tasks Amway had assigned to him. He stated that he told Mattson to clean up the interior of Mattson's Company truck, but Mattson never did, and told Mattson to organize pallets but Mattson never did so.

Mattson denied that any supervisor assigned him to clean out the truck.

According to Mattson, he did not take his break at any specific time, and may have been on break at 11:20 when Amway could not find him.

Amway stated that he normally communicates assignments to Mattson face to face at the 6:30 a.m. shift start, and that he could change assignments by calling Mattson's cell phone but rarely does this happen.

Amway stated that freeze watch was done as needed in winter, but not on a daily basis. He stated that he had not previously seen Union Exhibit 1, the cold weather checklist. Amway denied that Steve Mattson performed freeze watch.

Amway related a statement disparaging Director of Human Resources and Labor Relations Marcus Valentino that Steve Mattson's nephew John Mattson said he was relaying from his uncle. At the arbitration hearing Amway said that he did not remember if John Mattson attributed the comment to his uncle, but he assumed that it came from Steve Mattson. John Mattson denied that Steve Mattson asked him to relay any such message. There is no evidence that Grievant Steve Mattson made the comment in the first place, and to the extent the Employer relies on this allegation to support the February 29 discharge, the evidence does not support the charge.

But Amway attributed another statement to Steve Mattson directly, Mattson disparaging homosexuals and referring to a fellow employee as "[Name] the queer who is married to a black man."

Steve Mattson denied making racist or homophobic statements, and specifically denied making the "queer" remark, or saying anything to Amway about the individual.

Ronald Kauffman stated that he has known Mattson since high school and never knew him to make a racist or homophobic statement. Thomas Smith stated that he has never heard Steve Mattson make racist or homophobic statements. Mark Trevisan stated that he never heard Steve Mattson use racist or homophobic terms.

None of the employee witnesses mentioned above was interviewed by the Company as part of its investigation.

The Company's Rules of Conduct & Major Company Policies provide in part:

> An employee will be subject to disciplinary action ranging from a written warning to discharge from the Company depending on the seriousness of the offense, the employee's record with the Company and other related factors if he/she commits any of the of the following acts:
>
> 3. Stealing, theft, or intent to steal or defraud the Company, of either Company property or time or the property of a fellow employee.
>
> 4. Insubordination (including refusal or failure to comply with a Supervisor's directive or the use of profane, abusive or threatening language.)
>
> 10. Failure to stay on the job in your department or assigned place of duty during working hours.
>
> 16. Deliberately restricting production or persuading others to do so, loafing on the job or in the locker or rest rooms.
>
> 35. Violation of Company Equal Employment Opportunity Policies.
>
> First Offense: Five (5) day suspension subject to discharge.

The Company maintains an Equal Employment Opportunity and Respectful Workplace Policy, which provides in part:

> 2. PURPOSE
>
> 2.1 This policy expresses the Company's commitment to equal employment opportunity and to providing a respectful workplace that is free of unlawful discrimination, harassment, and retaliation.
>
> 2.3 The Company will not tolerate any behavior that violates this policy. Any employee found to be in violation of this policy will be disciplined, up to and including termination.
>
> 3. EQUAL EMPLOYMENT OPPORTUNITY POLICY
>
> 3.1 The Company is committed to equal employment opportunity. Accordingly, the Company strictly prohibits and does not tolerate discrimination or harassment, in all terms and conditions of employment, including those listed above, regardless of race, color, religion, national origin, age, military or veteran status, disability, sex, sexual orientation, gender identity, pregnancy, genetic information, or any other characteristic protected by law.

4. ANTI-HARASSMENT POLICY

4.1 The Company does not tolerate unlawful harassment affecting the workplace, including at Company-sponsored events, and other offsite work-related activities. This policy applies to all employees, contractors, customers, guests, vendors, and any other individuals with whom the Company does business.

4.2 Harassment is any verbal, physical, or visual conduct, based on a characteristic protected by law, which creates an intimidating, offensive, or hostile working environment, or that unreasonably interferes with job performance. Harassment includes sexual harassment, defined in more detail below.

4.3 Harassment includes, but is not limited to, slurs, derogatory comments, jokes, threats, inappropriate physical contact, displaying offensive images, and other behaviors related to one of the above categories, whether done in-person or via email, text messages, social media, or any other means.

Issue

The issues, as agreed to by the Parties, are: whether the discharge of the Grievant was for just cause, and if not what should the remedy be; and whether the Grievant was denied justice and dignity, and if so what should the remedy be.

Position of the Employer

The Company argues that after Grievant Mattson was returned to work through arbitration with a suspension, his behavior became more extreme, more emboldened, and he regarded the earlier arbitration as a victory. It portrays him as an employee who believes he can tell a supervisor to fuck off.

It contends that Mattson failed to complete assigned work and disappeared, that he is not willing to be a productive employee and feels he is not required to follow his manager's instructions. It also views him as unwilling to follow the Company's EEO Policy.

It submits that to accept Mattson's version of the events would mean that two Managers who had no prior involvement with Mattson are lying.

It asks that the grievances be denied.

Position of the Union

The Union contends that Grievant Mattson is an 18 year employee who was the victim of unsubstantiated claims of threats, and of racist and homophobic statements falsely attributed to him. It finds remarkable that the Company did not include the latter allegations in its discharge letter of February 20, and only remembered them over a week later in the February 29 discharge letter.

The Union responds to the claims that Mattson was out of his work area by asserting that he was doing freeze watch, and was never told not to do so. It submits that his duties covered a wide area, that he delivered parts and also that he was entitled to take his breaks. It stresses that he was never questioned about his alleged derelictions at the time they occurred.

It insists that the conduct attributed to Grievant Mattson does not support the denial of the justice and dignity process under the collective bargaining agreement. It deems odd that the allegations of threats and EEO violations were not raised until after the Union filed a grievance alleging violation of justice and dignity. It argues that the homophobic statements attributed to Mattson are not in keeping with his behavior as related by employee witnesses.

It asks that Grievant Steve Mattson be reinstated and made whole.

Analysis and Conclusions

The Company's discharge of Grievant Mattson in February 2023, addressed in my August 5, 2023 award, was based on several allegations. The Company alleged that Mattson was insubordinate, threatening and profane during an argument with a Manager, at the conclusion of which he committed vandalism by slamming and damaging a door. I concluded that the allegations regarding the interaction with the Manager had not been substantiated, and that the alleged vandalism amounted to no worse than negligence, which would support no discipline beyond a warning.

The Company alleged that Mattson committed what it called "theft of time" on two occasions. I concluded that it had sustained its burden of proof with respect to one of the incidents. It also asserted that he had violated PPE requirements on multiple occasions, and I concluded that it had sustained its burden as to some of the occasions.

I summarized my factual findings with respect to these allegations:

> To recapitulate my findings, I have found that the Company has not established that Mattson engaged in insubordination, threats or other misconduct during his contentious conversation with Manager Chamberlain on February 2; it has not shown that Mattson engaged in theft of time on January 18 when he was on the whistle; it has not shown that Mattson violated a PPE requirement for respiratory protection of which he should have been aware on January 18. I have found that the Company has established that Mattson committed the following acts of misconduct: carelessly denting the door on February 2; failing to wear a hard hat on January 14; spending at least 2 hours and 57 minutes and perhaps as much as 4 hours and 51 minutes inside the blue building on January 14, apparently performing no useful work; and deliberately ignoring the PPE requirement to wear the orange and yellow shirt on January 18.

I went on to assess the relative seriousness of the misconduct I found to have been proven:

> To summarize the above, Grievant Mattson committed two minor offenses: careless disregard for the door (which caused slight damage not deemed worthy of repair by the Company); and forgetting his hard hat, which other employees have also been guilty of. He

committed two serious offenses: deliberate disregard of the orange and yellow shirt PPE requirement, and what might be characterized as aggravated loafing.

As noted earlier, my ultimate conclusion was that the Grievant engaged in misconduct which would not warrant termination, but which would support a suspension of 30 work days, and on August 5, 2023 I issued my award modifying Grievant Mattson's initial termination to a suspension of 30 work days..

An employee who has been the subject of a 30 day suspension is necessarily on thin ice. There are no steps of progressive discipline left if the individual commits further transgressions of the same type.

Philip McBride credibly testified that on January 9 Mattson spent approximately 70 minutes sitting and conversing with other employees. Mattson estimated that he was in the area for only about 20 minutes, but I accept McBride's account as the more accurate. Ostensibly, Mattson was in the area to perform freeze watch, but there were no pipes needing inspection in the area. Sitting and talking for over an hour while performing no real work amounts to a repetition of what I earlier called aggravated loafing.

Steve Amway testified that on February 12, he saw Mattson in a truck chatting with Nate Anderson at around 8:20, and that the two were still chatting inside the truck when Amway returned at around 8:50. Both Anderson and Mattson estimated that they spent no more than 10 minutes talking in the truck, but since Amway noted the time when he departed and returned, his account seems more accurate to me. On this occasion Mattson again wasted at least a half hour, and there is no way to determine how long he and Anderson were in the truck before Amway first saw them.

McBride had not know Mattson at all previously, and Amway had been Mattson's supervisor only briefly at the time, there is no reason to believe that either had any prior animosity toward Mattson, and I find their accounts believable.

In addition, Amway directed Mattson to clean up the cage area, but Mattson did not carry out the instruction. From 10:00 a.m. to 11:20 a.m., when Mattson should have been in the cage, he was instead nowhere to be found.

Thus, within about six months after the imposition of a 30 work day suspension, Mattson on three occasions committed the same sort of aggravated loafing that led to the suspension.

Grievant Mattson's explanation that he was only doing the freeze watch that a prior supervisor had directed him to do is unconvincing. It makes little sense that Mattson would do what a former supervisor in a different department had told him to do over what his present supervisor in his current department told him to do.

These three instances of deliberately wasting time and ignoring his supervisor's instruction, all within only about six months after his reinstatement, are sufficient cause for the Company to conclude that further lesser discipline would be unavailing and that there was just cause to discharge the Grievant.

The Company's February 20, 2024 termination letter included the following allegations:

> Failure to stay on the job or your assigned place of duty.
> Failure to follow work instructions given by your manager.

> Using Company vehicles to travel to parts of the Mill where you were not assigned work.
> General loafing

The evidence sustains the allegations. As noted earlier, the evidence did not support the additional allegation of failure to wear proper PPE, but the infractions found are sufficient to support the penalty imposed, in view of the Grievant's recent lengthy suspension.

In this regard I consider it immaterial that Nate Anderson was not disciplined, although he spent as much time in the truck idling as Grievant Mattson did. Anderson did not have a prior lengthy suspension of record, Anderson was shown to have only one instance of willful idleness, and Anderson did not disregard instructions as to what work to perform.

The subsequent February 29, 2024 termination letter adds the further allegations of threats and EEO violations. These allegations are based on the following statements attributed to Steve Mattson:

- That Zane Frund is miserable because he is short
- That Mattson previously told an unidentified manager that he would be in trouble if Mattson saw him away from here
- That an employee can tell a manager to fuck off, so long as he is not being recorded
- That Mattson referred to another employee as the queer who is married to a black man.

All of the alleged statements are disputed, without corroboration, and the last one is contradicted by several character witnesses who testified that such a remark would be out of keeping for Mattson. Two of the comments (a Manager would be in trouble, and you can tell a Manager to fuck off) were not the subject of direct testimony, but only referenced in McBride's January 12 statement. Each of these disputed statements presents a close credibility conflict, In my view it is unnecessary to make specific factual findings with respect to these allegations, since the evidence of malingering is sufficient to satisfy the Company's burden of proof with respect to the discharge grievance.

I conclude that the Company has satisfied its burden of proving just cause for the termination and that the grievance pertaining to the Grievant's termination should be denied.

* * *

I reach a different conclusion as to the justice and dignity grievance.

None of the proven allegations set forth in the February 20, 2024 termination letter would support bypassing justice and dignity under Article Five Section I (9) (a) and (b). Under Subsection (b) (2), the only exceptions to the justice and dignity procedure are:

> 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; acts of workplace harassment; threatening bodily harm to, and/or striking another employee; theft; or activities prohibited by Article Five, Section K (Prohibition on Strikes and Lockouts).

In the 2023 discharge, although not with the current case, the Company characterized Mattson's idleness as theft of time. I consider "theft" in Subsection (b) (2) to have the traditional criminal law meaning of taking personal property belonging to another. Therefore, I do not regard loafing, even "aggravated loafing" as sufficient cause to bypass the justice and dignity procedure.

I again find it unnecessary to resolve the factual dispute regarding the four alleged statements identified above, since in any event none would satisfy one of the Subsection (b) (2) exceptions.

Even on the assumption that an employee who told a manager to fuck off would be guilty of gross insubordination, the claim that an employee could do so with impunity, although inaccurate, does not itself constitute gross insubordination.

The alleged assertion to McBride that Mattson had told some unidentified manager that he would be in trouble if Mattson saw him away from there, was not a threat directed to McBride. At most it was an admission that Mattson had made a vague threat to some other manager at some time in the past. Such a hearsay "threat" is not of equivalent severity to the types of misconduct specified in Subsection (b) (2).

The alleged statement that Zane Frund is miserable because he is short and the alleged reference to a co-worker as the queer who is married to a black man are both too remote to be considered harassment. Neither was made directly to the individual being referred to, and I would regard both as perhaps disparagement, but not harassment.

Although the Company's Equal Employment Opportunity Policy provides that harassment includes slurs and derogatory comments, that definition is not incorporated into Subsection (b) (2), and I conclude that a more substantial form of harassment than that involved here must be shown to warrant departure from the justice and dignity procedure.

I conclude that none of the statements attributed to Grievant Mattson would be grievous enough to satisfy one of the exceptions to justice and dignity listed in Subsection (b) (2). It follows that the grievance pertaining to justice and dignity should be sustained.

Subsection (b) (4) states that if a discharged employee is retained and discharged again for a second offense, the employee need not be retained under the justice and dignity procedure. In the current case, Grievant Mattson was discharged twice, but the basis for the second discharge had occurred before the first discharge. Where the Company discharges an employee for multiple reasons, it cannot hold back some of the allegations for a second discharge in order to bypass the justice and dignity procedure. Rather the second discharge must be based on new events occurring after the first discharge.

Accordingly, while Grievant Mattson is not entitled to reinstatement, the Company shall make him whole for economic losses suffered from his termination through the date of final determination on the merits of the case. The present award establishes the date of the "final determination on the merits of the case" for purposes of justice and dignity.

Award

Grievance No. 24-016, regarding the termination of Grievant Steven Mattson, is denied.

Grievance No. 24-015, regarding denial of justice and dignity to Grievant Steven Mattson, is sustained.

The Company shall make whole Grievant Steven Mattson in keeping with the above discussion.

Jurisdiction is retained for the limited purpose of resolving any disputes that may arise in connection with the implementation of this remedy.

Issued November 7, 2024