IN THE MATTER OF THE ARBITRATION	)	OPINION AND AWARD
Between	)	
ARCELORMITTAL WEIRTON	)	RONALD F. TALARICO, ESQ. ARBITRATOR
and	)	Case 68
UNITED STEELWORKERS OF AMERICA	)	

GRIEVANT

William Frohnapfel

ISSUE

Discharge

HEARING

February 27, 2014
Weirton, West Virginia

APPEARANCES

For the Employer
Peter D. Post, Esq.
Ogletree, Deakins, Nash, Smoak & Stewart, P.C.

For the Union
Robert J. D'Anniballe, Jr., Esq.
Pietragallo Gordon Alfano Bosick & Raspanti, LLP

ADMINISTRATIVE

The undersigned Arbitrator, Ronald F. Talarico, Esq., was mutually selected by the to hear and determine the issues herein. An evidentiary hearing was held on February 27, 2014 in Weirton, West Virginia 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

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Section J. Management Rights

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

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

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PLANT RULES AND REGULATIONS

Dear Fellow Employee:

This communication is designed to alert all Employees to the specific rules and regulations that are to be adhered to at MITTAL STEEL USA Weirton. It is important that you are aware of and comply with these rules. Noncompliance may result in disciplinary action. In general, discipline will be implemented utilizing a common-sense progressive discipline approach. However, it is important to recognize that discipline must always reflect the seriousness of the offense. For that reason, within these rules, we have attempted to identify where violations may likely result in more severe action. If you do not understand one or more of the rules, please contact your Supervisor of the Labor Relations/Human Resources Department for clarification.

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10. Any employee who intimidates or threatens a fellow employee or member of management will be subject to immediate suspension and discharge.

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26. Employees who are Insubordinate (including refusal or failure to comply with a Supervisor or Team Leader directive or the use of profane language) will be placed on immediate suspension with intent to discharge.

FAIR & EQUAL TREATMENT POLICY

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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 ArceorMittal to forbid sexual and all 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 a violation of the policy will be subject to discipline, up to and including discharge.

BACKGROUND

The Grievant, William Frohnapfel, was a long-term employee of Weirton Steel. For the last several years, he was assigned to the Environmental Control Department as a technician. During February, 2010 the Company began receiving complaints from vendors, employees and management personnel regarding Grievant acting in a threatening and intimidating manner. Several vendors contacted the Company and stated they were not comfortable sending their employees into the facility as they were being threatened by him. One vendor, John Pichi of American Waste Management Service, reported a tirade by Grievant at the Weirton Plant wherein he accused Pichi of overcharging the Company for services, badgered Pichi about environmental issues, said that Pichi was the "reason the steel industry was in the tank" and asked Pichi for a "piece of the action." Mr. Pichi also reported that Grievant verbally attacked Pichi's co-worker and used multiple "attacking profanities". Mr. Pichi concluded his report by saying that, "in all of my 20 years, I have never been exposed [to] this kind of threatening environment."

Grievant was warned by the Company that this type of behavior would not be tolerated. Grievant apologized to the vendor and management at that time and the matter was closed. However, he was reported for the same behavior just a few months later. In October, 2010 ISC Training and Consulting Services conducted a Hazardous Materials/Waste Operations and

Emergency Response training at the Weirton facility. Fourteen employees attended the training. Grievant was the only employee not to complete the training. During the week long training, he became disruptive. The vendor teaching the class notified management that it would not return for any future classes if Grievant attended due to his threatening and intimidating conduct. Grievant was again warned by the Company that this type of behavior would not be tolerated. The warning stated that any future behavior of this type could result in further disciplinary action up to and including discharge.

In December, 2010 Grievant again began acting in an unprofessional manner and was disqualified from being a Team Leader due to his threatening and intimidating behavior toward management, his fellow workers, and vendors. Grievant was warned that the Company would not tolerate this type of behavior on Company premises. He acknowledged his wrong doing and agreed to refrain from this type of behavior.

On June 20, 2012 another vendor, EAP Industries, contacted the Company reporting that one of its employees was threatened and intimidated by Grievant. In particular, it was reported that Grievant accosted the vendor's driver and referred to EAP's President as "that Greek motherfxxxxr". The vendor requested that this situation be rectified, and that their employee not be subjected to this type of behavior. Based upon this incident Grievant was suspended for a two month period and returned to work pursuant to the following Last Chance Agreement dated August 14, 2012:

"LAST CHANCE AGREEMENT

On Wednesday June 20, 2012 the Company was notified that you had verbally accosted an outside vendor, Andrew Diamond working for EAP Industries. A meeting was held with you on that day where you did not deny any of the allegations that were stated. You were suspended pending further notice at that meeting.

On November 29, 2011 a similar incident occurred with ISC Training and Consulting Services, whereas a similar complaint of your conduct was made. Prior to this meeting another complaint had been filed by John Piche regarding your conduct in February, 2010. At the meeting that was held with you on November 29, 2011 the Company notified you that any further conduct of this nature would not be tolerated and you would be disciplined up to and including discharge for not complying with the written warning.

Your conduct whether directed at a fellow employee or one of our vendors, creates a hostile work environment and is in violation of Company policy as well as our Work Rules.

While the Company maintains that this is a dischargeable offense and does not condone this type of conduct, based upon your tenure with the Company, we will suspend you without pay for a period of sixty day (60) or 2 months from the date of your suspension, June 20, 2012. Without precedence or prejudice to either party, the following agreement is hereby entered into by Mr. Fritz Frohnapfel and the respective representatives of the parties involved:

1. **You will be suspended without pay for a period of sixty days effective June 20, 2012. You will retain your health benefits during this period. You will return to work on or about August 20, 2012.**
2. **Mr. Frohnapfel agrees to seek professional help through the EAP and complete the program they establish prior to his return to work.**
3. **Mr. Frohnapfel agrees that he will not violate any Plant Rule or Safety procedure of any kind upon his return. He agrees to follow instruction from both Management and/or his team leader.**

4. **It is agreed that any violation of this agreement will be cause for immediate suspension and irrevocable discharge for the duration of Mr. Frohnapfel's employment with ArcelorMittal.**
5. **This agreement is without precedent or prejudice and shall not be referenced in any other pending or future matter by the Union or the Company, except those involving Mr. Frohnapfel. This agreement shall remain as a permanent part of Mr. Frohnapfel's employment record.**
6. **It is further agreed by Mr. Frohnapfel, the Union, and the Company, that this agreement is predicated on the total acceptance of all of the requirements and stipulations set forth herein, and a guarantee by signature below that no grievance or any other cause of action will be filed by Mr. Frohnapfel; the Union or any other person or agency regarding the implementation or application of this agreement."**

During the negotiations surrounding the Last Chance Agreement, the Company was very specific with both Grievant and the Union that the Company would not tolerate such behavior on Company property. Grievant was instructed that he could not create any type of situation that could be construed as threatening or intimidating and had to follow all plant safety regulation and rules of conduct or be immediately discharged. Grievant was also encouraged to seek professional help for his uncontrolled behavior. Both the Union and the Company also told him that should be encounter a situation that caused him to become angry or frustrated, that he should bring the situation to the attention of the Union President, or the Manager of Labor Relations.

On April 16, 2013 just eight months after he agreed to the Last Chance Agreement, Grievant was told by the Department Manager, Matt Caparese, to follow his supervisor's directives. Grievant became angry immediately after the call and began screaming vulgarities and making profane derogatory statements about Caparese and a team leader. During the rant to two of his co-workers, a microphone on a radio was open, so that the vulgarities and

unprofessional rant was heard throughout the plant, including by hourly and management employees in the Environmental Department. Grievant called Mr. Caparese "more axxhxxe management". And among other things said that the Company was "fxxxxd up". He had earlier ranted about "fxxxing Kerr", another employee.

On April 16, 2013 Grievant was issued a Notification of Violation of Rules. He was informed that he was being suspended until further notice with intent to discharge. During a fact finding meeting on April 16, 2013, Grievant by his own admission stated he knew he made a mistake and that his conversation was unprofessional and demeaning, but kept stating that he was frustrated. He did not deny that he said the things that were reported, including the vulgarities, nor did he deny that he called management by the names heard over the radio.

On April 18, 2013 the Company notified Grievant that his suspension was being converted to discharge effective that day for violation of his Last Chance Agreement, including violation of plant rules and the Company's anti-harassment policy.

A timely grievance was filed on April 22, 2013 challenging that discharge.

ISSUE

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

POSITION OF EMPLOYER

The grievance should be denied. Mr. Frohnaphel could have been discharged in 2012 for acting threatening and in an intimidating manner to a fellow employee. There is no dispute about what happened there. There was no dispute about the vulgar language calling the person a m-f---er, a liar, cheater, etc. No dispute about that and so that gives you an indication of the type

of language that Mr. Frohnapfel uses and how he can get upset and go off on people. However, recognizing his tenure with the Company he was awarded a Last Chance Agreement which provided he would be discharged if he violated the Plant Rules or the Agreement. Only eight months after signing the Agreement he exhibited threatening, intimidating and insubordinate behavior and violated the Plant Rules and the Company's Anti-Harassment Policy. The resulting discharge was clearly for proper cause. It was in accordance with the Last Chance Agreement to which Mr. Frohnapfel was a signatory as well as the Union.

Now the Last Chance Agreement must be enforced. It is well accepted that these agreements are a benefit to the employee and the employer and must be enforced. And I got to tell you from my experience, and I believe the Company's experience, it is the Union that requests these things. And the idea is the employee avoids termination. It allows another chance to save his job by ceasing the poor behavior. To be sure the Employer benefits by allowing the employee to cease his poor behavior and to be able to discharge the employee without argument if the employee violates the Agreement. Arbitrators encourage such progressive programs of salvage and rehabilitation by strict enforcement of the terms which the parties agree to including the employee in this case. The Agreement was in writing, agreed to by the Company, Union and Mr. Frohnapfel. The terms were not onerous. It simply required that he not violate the Plant Rules and to follow the instruction of management and his team leader. The terms of the Agreement were carefully explained. We believed Mr. Frohnapfel understood them and initialed each term. Instead of obeying the Rules and accepting direction from Supervision Mr. Frohnapfel reverted to poor past behavior within eight months of the effective date of the Agreement and was properly discharged.

He violated Rule 10 when he engaged in threatening and intimidating behavior by his angry tirade on April 16, 2013. Therein, according to Mr. Kozar, according to all of the managers at the meeting they heard the transmission from Mr. Frohnapfel that he called his Supervisor an asshole and announced that the company was fucked up. He also had said "that fucking Kerr", etc. He used the f-word repeatedly. He violated Rule 26 by responding to his Supervisor's directive to follow Company procedures with an angry tirade. Because the angry tirade came on right after his conversation with Matt when Matt told him that he had to follow supervision. It wasn't, "oh, Matt's right, I think Matt is okay, I respect him." No. It was an angry tirade immediately after that phone call, and it was directed against Matt. He used profane language in violation of Rule 26 which prohibits such language. Say what you will, witnesses have come here and said there was profane language used. It was exactly what Mr. Kozar testified to and what the other witnesses testified they heard Mr. Frohnapfel state.

The Policy prohibits any inappropriate or unprofessional conduct. These Rules are reasonable and require compliance. Mr. Frohnapfel obviously was aware of all of the Rules, he has had numerous incidents of violations. They all led up to this Agreement. After each incident he was sorry. He is not a bad guy. I'm not saying that. But we just can't have him around because he is too volatile, too insubordinate. He always said he wouldn't violate the Rules then he goes and does it. Now, he has to be discharged under the Agreement according to its terms. It is not the Arbitrator's role to mitigate the Agreement. This has been negotiated by three parties. Even if the terms were harsh or strict, which they aren't, even though you might consider them unfair, which I would find hard to believe that you do, that is not your concern – respectfully. Once the Arbitrator starts substituting his judgment he has exceeded his jurisdiction

and, more importantly, he has jeopardized the future for the use of such agreements for other employees.

Now we believe the Union's arguments are unavailing. What we've heard in the Third Step was that this was a private conversation and they didn't know it was on the radio – that doesn't matter. The only thing that occurred, because it was on the radio, is that Management heard it and that he gave himself away that he violated his Last Chance Agreement. Even if it was one employee who heard this it would be enough. It was also being insubordinate, using profane language and violating Rule 10 as well. Mr. Frohnapfel was acting in a threatening, intimidating manner in violation of Rule 10. He had done it before. He was also insubordinate in that he was complaining about the directive which he was doing. He was unprofessional in violation of the anti-harassment policy and he was profane in violation of Rule 26. Even if unintended, the broadcast of his anger and rage surely added to the hostile, threatening, intimidating, and insubordinate work environment. Accordingly, whether or not the broadcast was intentional, Mr. Frohnapfel violated the Last Chance Agreement and must be discharged.

Any argument seeking mitigation based on years of service must also be rejected. The Award of the Last Chance Agreement already recognized Mr. Frohnapfel's long service. He also agreed that any violation of the Agreement would result in discharge not withstanding his prior employment.

Now a couple of words about the testimony here today. I was struck by Mr. Duke's testimony where he said that the Company witnesses were honest. He said it appeared they were honest. But he was hesitant to say that they were lying. Mr. Pozar – there was literally no reason for this young man to come in here and lie. He came here on his own free will and now he is being called a liar. Matt I think is credited with being an honest person and so was Falbo who

sat here today and you will make up your own mind about her. But respectfully they are not liars and were not told to lie. They came in here and said that Fritz admitted saying these things in the meeting. Now, finally, this idea if it is out there, I'm sure that it is, that Fritz was fired to remove him from the Environmental Department. This is the first time we ever heard any of this. This idea of retribution was not brought up before in the Third Step. So with all due respect the Arbitrator really can't get into any of that. It is totally misplaced.

So, in summary we will say that Fritz Frohnapfel is not a bad guy. But we had an agreement. He told us he was going to obey the Agreement and frankly he didn't. So, in accordance with the Agreement he must be terminated.

POSITION OF THE UNION

We are asking you to consider what we believe the arbitration clearly defines as missing in this case. Whether there was in fact a violation of the Last Chance Agreement on April 16, 2013. And, if you start out there, there were three witnesses that were in the trailer when this comment was made. And it was just one comment and you heard that from three witnesses. One witness had heard it but the other two witnesses who were in close proximity, a few feet from the Grievant, did not hear what was said and the method and manner in which it was said -- the tone, whether he was loud, confrontational, or it was threatening. Mr. Duke, Mr. Carducci and Mr. Frohnapfel all clearly were able to lay out for you that it was one statement, it was one comment, it was accidentally communicated across the Plant. Incidently, I believe the arbitration authority that I reviewed is very clear that threatening, intimidating conduct has to be of a nature that is intended to incite confrontation. I have a hard time understanding how you intend to incite

confrontation when you don't react to the comment you heard and it's merely a casual comment in a general sense not directed to anyone in particular.

I also find it particularly interesting in this case that the paper that was introduced by the Company does not include what they take the position now as being statements that Fritz admitted to have made on that day. What is particularly telling is that they fail to bring you Company exhibits for Union Exhibit No. 1 which they readily admit should have been attached to the Step III minutes. That was prepared close in time to the Step III minutes. As soon as they had it typed up their position clearly points out that it was one statement that was not directed to anybody and it was a statement about "opinions are like assholes, everyone has one and some have two". The only documents that include any specific statements were prepared by the Company and were not included in any of the documents provided to the Union that did not surface until we were at this hearing today. Two rebuttal witnesses were put on and also prepared statements according to their testimony. They did not include specific statements that the Company would want us to believe was stated and acknowledged by Mr. Frohnapfel. As a matter of fact the last rebuttal witness does not recall hearing anything other than the f-word which he acknowledged is utilized all the time here. So, in our opinion clearly, we believe that the evidence supports that the Last Chance Agreement was not violated.

Now, whether they believe that they should have discharged him back in 2012 is irrelevant. On April 16, 2013 he was an employee at ArcerlorMittal who, absent a violation of a Plant Rule or a contract provision, was entitled to come to work, punch a clock, earn a living and provide for his family. That is exactly what he has done since 2012. And what we have is a trail of documents - we don't even hear Plant Rule 10, you don't even hear Plant Rule 26. It's not contained in any of the documents. There is not a paper in the world that has that. As a matter

of fact, there is not a piece of paper in this case prior to almost a month later in the middle of May that even references what Plant Rule they are talking about, that they believe he violated. The mid-May 2013 Step III minutes talk about intimidating and threatening conduct. It's not on the Notice of Violation, it's not on his Discharge Letter, that was the first indication to the Union what Plant Rule or what conduct they felt was a violation of the Last Chance Agreement. We believe, just as Ms. Falbo indicated, that since 2010 they believe Mr. Frohnapfel should not be in the Environmental Control Department. They wanted to get him out of there. They never afforded him an opportunity to be transferred that had been done in another case and had worked out so well. We are talking about a 41 year employee.

There were three individuals who were in the best position to assess what occurred that day, who were in the trailer, who were all in close proximity of each other. He was talking about something that benefits this Company on an important issue that this Company is facing and that would be Mr. Carducci, Mr. Duke and Mr. Frohnapfel. All three of them, without question, indicated what was said, what was not said in an intimidating, threatening or confrontational manner. As a matter of fact, it was not even intended to be heard. It was a general comment about "opinions are like assholes, everybody has one and some people have two". That was it. That was the extent of it. Words even more profane than that such as the f-word were recognized by management officials as being said every day in this Plant. We believe that what was actually said is shop talk, even if the f-word had been said, but it was not in a threatening or intimidating manner nor intending to be a confrontation, but that too would be shop talk and not a violation of the Plant Rules.

We would urge you, and we know you will, to please look at the paper, please consider the testimony, please consider who was in the best position to judge what was said and the

manner in which it was said and we believe that you will conclude that the Company has not met its burden of establishing that just cause exists to terminate and extinguish and write the obituary on a 41 year career here.

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.

It is very important to note at the outset the scope of review of the grievance before me. At the time of his discharge Grievant was working under the auspices of a **"LAST CHANCE**

AGREEMENT" dated August 15, 2012. In general, a Last Chance Agreement is precisely what its name connotes, i.e. a last chance for an employee to salvage their employment, which would otherwise be lost, and to continue to hold gainful employment subject to certain expressed conditions. These agreements are being used more and more frequently by employers. They represent a trade-off: the employee gets something he was not entitled to prior to the agreement, continued employment, in return for relinquishing certain employment rights. For example, when considering whether there is just cause for discharge under such agreements Arbitrators do no apply the same due process considerations or procedural protections as under a normal discharge or disciplinary matter. In fact, Paragraph No. 4 of Grievant's Last Chance Agreement specifically provides just that: **"It is agreed that any violation of this Agreement will be cause for immediate suspension and irrevocable discharge . . ."**

Accordingly, by agreement (which is essentially a modification of the collective bargaining agreement) the parties have established an automatic and immutable penalty. As such, there is no authority for an arbitrator under such circumstances to require the application of progressive discipline nor to consider any mitigating factors. The sole question to be decided is whether Grievant violated his Last Chance Agreement. If that question is answered in the affirmative then the discharge must be upheld.

Turning now to the merits of the within matter, there is no question that if Grievant engaged in the misconduct described by the Employer then discharge clearly would be warranted. The Employer's version of the misconduct was presented primarily through the testimony of Aaron Pozar, Matt Caprarese and Susan Falbo. Grievant (and his witnesses) related a markedly different version of those events. Accordingly, when witnesses having personal knowledge of the facts testify in conflict the arbitrator must address the issue of witness

credibility. In such situations arbitrators have applied varying criteria to resolve such conflicts. Perhaps the most important of all the tests that are normally applied is that of the self-interest of the witness. Is there any reason why the outcome of the arbitration would benefit the witness and, therefore, bias their testimony or motivate them to lie? It is important to note, however, that having an interest or stake in the outcome does not disqualify the witness. Rather, it merely renders their testimony subject to very careful scrutiny. Obviously, Grievant as the accused has an incentive for denying the charges in that he stands immediately to gain or lose in the case, i.e. continued employment vs. termination. Pozar, Caprarese, and Falbo on the other hand, have absolutely nothing to gain or lose from their testimony in this matter.

Shortly after noon on April 16, 2013 Matt Caprarese, Division Manager, Environmental and Utilities, received a phone call from the Grievant who began expressing concern over the job with the B Outfall filter press and making suggestions for changes. It appears that the Grievant and several of his co-workers had been discussing how to best complete this job and decided they would bring their ideas to management. Unfortunately, Mr. Caprarese told Grievant that he could not suggest changes to this job scope until he understood the details better. Mr. Caprarese had only been on the job approximately 3½ months at that time. Mr. Caprarese told the Grievant that he needed to express his concerns to the shift manager or engineers (Robbie Kerr or Rick Martin) who were assigned to this job. Mr. Caprarese reiterated that he did not want to create any communication issues with what the Shift Managers or Engineers had planned to this point. The Grievant indicated that he understood and hung up.

Shortly thereafter, Aaron Pozar, a Water Quality Specialist, was heading towards the environmental file room when Mike Mieczkowski walked in with a radio over which someone could be heard talking. It quickly became clear to Pozar that it was Grievant who was

unknowingly broadcasting his comments over the radio. Pozar testified unequivocally that he heard Grievant make numerous profane statements such as "that fucking Kerr" -- referring to Robbie Kerr the Shift Supervisor. Pozar also heard Grievant make statements to the effect that "this place is all fucked up", and "all we have is more asshole management". Grievant apparently was "dismayed" that his repair suggestions were not being accepted. By this time numerous individuals were attempting to alert Grievant that his radio was inadvertently keyed open and that his comments were being broadcasted throughout the entire Plant and could be heard by anyone whose radio was on that channel.

Caprarese testified that it was reported to him that numerous individuals (including Rick Martin) heard the Grievant's radio broadcasts in which he used profanities towards the Company in general as well as certain members of management. Caprarese assumed Grievant's statement to the effect that "all we have is one more management asshole on our hands" was a direct reference to himself because he was the newest manager on site and he had just concluded a phone conversation with Grievant in which he had to inform Grievant to stick to the original repair plans regarding the B Outfall filter press and declined to accept Grievant's suggestions. In fact, it was right after their conversation ended that Grievant began his profane tirade and making comments about Caprarese and Kerr.

Later that day Grievant was called into a meeting with his Union representative, Matt Caprarese, Wally Jancura, and Susan Falbo. Ms. Falbo testified that during their meeting she directly asked Grievant if he made the various profane statements being attributed to him as referenced in this opinion. Ms. Falbo testified unequivocally that Grievant admitted making those comments. Wally Jancura, the Manager of Utilities, testified that he was also in that meeting and he specifically heard Grievant admit making those profane statements.

For his part Grievant put forth the following sterling defense, i.e. "all of the Company witnesses are lying". While Grievant did admit to making the rather innocuous statement that "opinions are like assholes, everyone has one and some have two" he totally denied uttering any of the alleged profanities, and he denied ever admitting to Ms. Falbo that he had made those profane statements. Needless to say the Grievant has absolutely no credibility with this finder of fact. In fact, it was interesting to observe how Grievant's fellow Union members struggled to agree with him that all of the Company witnesses were liers, and that they heard none of the profanities that everyone else seems to have heard.

The only remaining issue is whether Grievant's conduct constitutes a violation of his Last Chance Agreement. Under the Last Chance Agreement Grievant is prohibited from violating any Plant rules and is required to follow instructions from management and/or his team leader. The Company initially argues that Grievant violated Plant Rule No. 10 which generally provides that any employee who intimidates or threatens a fellow employee or member of management would be subject to immediate suspension and discharge. I have reservations as to whether Grievant's rambling profanities, which in essence were broadcast to the world in general but no one in particular (i.e. "this company is fucked up") would constitute intimidating or threatening conduct towards a co-worker or a member of management. Those comments, while certainly disrespectful, inappropriate and uncalled, under these circumstances do not constitute intimidating and threatening behavior.

Grievant is also cited for a violation of Rule 26 which prohibits insubordination, which is defined as including a refusal to comply with a Supervisor or Team Leader or the use of profane language. Grievant clearly violated this Rule in two distinct fashions. First, and quite obviously, was his repeated and uncalled for use of profane language. Second was his reluctance to follow

his Team Leader's instructions with respect to the B Outfall filter press which precipitated his profane outbursts.

Grievant's conduct is also a blatant violation of the Company's Fair and Equal Treatment Policy. That Policy prohibits, inter alia, any inappropriate and unprofessional conduct whether or not such conduct rises to the level of unlawful harassment, or has the purpose or effect of creating an intimidating, hostile or offensive working environment. Grievant's profanity-laced rants against management in general, and several of his supervisors in particular, which were overheard by numerous individuals throughout the Plant, clearly and unequivocally violates these provisions of the Policy.

Finally, since I find that Grievant's conduct violates his Last Chance Agreement I have no authority but to uphold the mutually agreed upon appropriate penalty for such a violation, i.e. immediate and irrevocable termination.

AWARD

The grievance is denied.

Date: March 26, 2014
Pittsburgh, PA

Ronald F. Talarico, Esq.
Arbitrator