

THE MATTER OF ARBITRATION BETWEEN

Kellogg Sales Company d/b/a Kellogg Snacks Company)	FMCS No. 08 – 58282
)	Issue: Discharge
“Employer” or “Company”)	Hearing Date: 11 – 19 – 08
and)	Brief Filing Date: 12 – 23 – 08
International Brotherhood of Teamsters, Local 471)	Award Date: 01 – 26 – 09
“Union”)	Mario F. Bognanno, Labor Arbitrator

JURISDICTION

The above-captioned matter was heard on November 19, 2008 in Minneapolis, MN. The parties appeared through their designated representatives. Pursuant to Article 22 of the Collective Bargaining Agreement (CBA), the parties stipulated that this matter was properly before the Arbitrator for a final and binding decision. (Joint Exhibit 1) The parties were afforded a full and fair opportunity to present their respective cases. Witnesses were sequestered and each witness was sworn and cross-examined. Exhibits were introduced into the record. Timely post-hearing briefs were filed on or about December 23, 2008 and thereafter the matter was taken under advisement.

APPEARANCES

For the Employer:

Craig A. Mutch
John Johnson

Rick Hillesheim
Keith Carothers
Tom Reczek

Attorney
Manager, Kellogg Snacks Distribution
Center
Manager, Zone Sales
Director, Distribution
Director, Labor Relations

Pam Lisle
Gus Tarr
Bill Krogman

Merchandiser
Territory Manager
Territory Manager

For the Union:

Richard L. Kaspari
David Laxen
Tom Campbell
M. P.
Matthew Oholendt

Attorney
Secretary – Treasurer, IBT, Local 471
Driver
Grievant
Observer

I. BACKGROUND AND FACTS

The Company manufactures and markets cookies and other snack foods, primarily under the Keebler label.¹ It operates a distribution and sales center located in Saint Paul, Minnesota that services customers throughout Minnesota, western Wisconsin and into the eastern Dakotas. The Union represents a bargaining unit consisting of approximately 14 Warehousemen and 16 Drivers.

The Grievant, herein referred to as M. P., was hired on June 10, 1991. As a result of complaints from a customer alleging that the Grievant had been profanely disrespectful while delivering product, he was discharged on March 28, 2002. The matter was grieved and on April 4, 2002, the Employer converted the discharge to an unpaid suspension based on the terms of a Last Chance Agreement (“LCA”). M. P. returned to work on April 8, 2002. Under the LCA, the Grievant was to attend and complete all anger management counseling services provided by the Teamsters Service Bureau, and for the ensuing 24 months he was subject to termination for any subsequent violation of Keebler Company rules, policies or procedure, the Distribution Center’s policy on courtesy and

¹ The Employer’s Saint Paul facility previously was a Keebler Company property, hence the “Keebler” reference that appears throughout the Award.

cooperation, and for poor workplace performance, misconduct, or any violation of the CBA. (Joint Exhibit 6)

Six (6) years and two (2) months later the Grievant was again discharged. Following a July 1, 2008 investigatory suspension, on July 9, 2008, the Grievant was terminated for "... [mis]conduct and violation of Kellogg Snacks Rules and Regulations". (Joint Exhibits 4 and 5) The referenced misconduct and rule violations allegedly occurred on June 19, 2008, while the Grievant was delivering Company product to two (2) of its customers, specifically: Cub Foods in Cottage Grove, MN ("Cub Foods") and Walmart on South Robert Street in West Saint Paul, MN ("Walmart"). On July 11, 2008, the Union grieved the dismissal of M. P., demanding that he be reinstated with "... conditions for continued employment" and with full back pay and benefits. (Joint Exhibit 2) The parties were unable to resolve the grievance and it was moved to arbitration for final disposition.

John Johnson, Distribution Center Manager, testified that his investigation of the events of June 19, 2008, established that the Grievant had run-ins with personnel employed by customers of the Company. While delivering product to Cub Foods and Walmart, Mr. Johnson testified that the Grievant was variously slow and argumentative in responding to directives issued by customer personnel whose job it was to receive said product,² used profanity and abused customer property (i.e., a Cub Foods pallet jack).

² Patti Beissel, a Cub Foods Receiving Clerk, allegedly directed the Grievant to move his docked truck so other drivers would have access to the dock (Company Exhibit 6); and Rebecca Knutson, a Walmart Receiving Clerk, allegedly directed the Grievant to provide her with the

As a consequence, the record evidence establishes that on June 19, 2008, Mark Cronin, an Assistant Store Manager at Cub Foods, orally advised Gus Tarr – the Company’s Territory Manager responsible for servicing Cub Foods – that he would no longer accept delivery of Company product that is conveyed by M. P. On July 2, 2008, Mr. Cronin documented his conversation with Mr. Tarr. (Company Exhibit 1) Further, Bill Krogman – the Company’s Territory Manager who services Walmart – testified that on June 19, 2008, he observed the Grievant arguing with Rebecca Knutson, a Walmart Receiving Clerk. At issue was whether she needed both the Company’s and Walmart’s copies of the delivery’s multipage invoice in order to check-in the delivery and correct the amount that Walmart was to be credited for previously delivered items that were being returned as unsalable. (Company Exhibit 2) Mr. Krogman also testified that later that day Ms. Knutson told him that she was going to speak to her boss about the Grievant’s conduct and on the following day, June 20, 2008, she told him that Walmart did “not want him [the Grievant] back.” On June 25, 2008, Lee Sumilel, Assistant Store Manager at Walmart, documented Ms. Knutson’s declaration. (Company Exhibit 3) In relevant part, that document states:

... M. P. was no longer allowed to delivery (sic) Walmart, West St. Paul, MN, due to conflicts in the receiving process and also overall attitude.

After Mr. Tarr learned that M. P. was no longer welcome at Cub Foods and Mr. Krogman observed the Grievant’s alleged uncooperative and argumentative conduct at Walmart, they separately telephoned their respective

computer generated invoice, including all of its attached five (5) copies, rather than just the “Customer Original Invoice” and “Distribution Copy” copies. (Company Exhibit 5)

Company managers to report what had transpired – messages that were taped and later reviewed by Mr. Johnson and Steve Cunningham, the Center’s previous Manager and Mr. Johnson’s boss at the time. On June 20, 2008, Messrs. Johnson and Cunningham contacted the Grievant to get his account of the June 19, 2008 events at Cub Foods and Walmart. The Grievant provided them with a statement over the telephone that was recorded, transcribed and subsequently signed by the Grievant. (Union Exhibit 1) Mr. Johnson testified that the Grievant did “not recall any arguments”. Among the details in this statement are the following: (1) while at Cub Foods, “I [the Grievant] did not get upset ... and told the Manager to have a good week and the Manager told me to do the same”; and (2) while at Walmart, “I [the Grievant] did not get upset with the Receiver but that woman is a witch, I just want (sic) to get out of there.” (Union Exhibit 1)

Mr. Johnson further testified that the Company’s rules and the Distribution Department Policy on Courtesy and Cooperation (“Courtesy and Cooperation policy”) prohibit the conduct that allegedly was manifest in this case, and he asserted that courteous customer relations are “vital to the Company’s operations.” After all, he commented, “Drivers deliver thousands of dollars of goods to customers daily” and when stores refuse to receive a particular Driver, it creates scheduling “nightmares”. (Company Exhibits 3 and 4) Moreover, he testifies without contradiction that all bargaining unit employees are given a copy of the Company’s rules and that the Courtesy and Cooperation policy is posted. Ultimately, Mr. Johnson testified that the nature of the Grievant’s misconduct,

which is expressly prohibited by Company rules and policies, and the Grievant's disciplinary history, in combination, resulted in the Employer's decision to terminate the Grievant's employment. (Joint Exhibit 5)

II. THE STATEMENT OF THE ISSUE

The parties stipulated to the following statement of the issue:

Whether the Employer discharged the Grievant for just cause and, if not, what is an appropriate remedy?

III. RELEVANT CONTRACT LANGUAGE, WORK RULES AND POLICIES

ARTICLE 2 – Management Rights

The management of the distribution center and the direction of the work forces, including the right to hire, suspend or discharge for just cause ...

ARTICLE 15 – Discharge

15.1 Notification

Employer shall not discharge any regular employee without just cause.

KELLOGG'S SNACKS RULES AND POLICIES

* * *

The following violations or offenses may initiate disciplinary action resulting in suspension and/or termination of employment:

17. Negligence or misconduct

27. Striking, threatening or using abusive language toward other employees or customers.

32. Serious error in work or unsatisfactory cooperative and work performance.

DISTRIBUTION DEPARTMENT POLICY ON COURTESY AND COOPERATION

Customers must be considered Keebler's most important asset. It is mandatory that all Keebler employees treat our customers with courtesy.

... Drivers are required to treat customers with courtesy, whether the contact is face-to-face or by telephone. All conversations must be brought to a natural

conclusion. All questions must be answered courteously and thoroughly, or referred to the proper local party.

* * *

Discourteous treatment of customers may be grounds for termination.

(Joint Exhibits 1 and 3 and Company Exhibit 4)

IV. EMPLOYER'S POSITION

Initially the Employer asserts that it had just cause to discharge the Grievant. It points out that Pam Lisle, Merchandiser, who was working at Cub Foods on June 19, 2008, testified that around 9:30 a.m. she witnessed M. P. being loud, cussing and behaving aggressively while in the store's receiving area that morning. She testified that he was angry because he had to wait some considerable time before accessing the dock to unload and palletizing Cub Foods' order. Moreover, she testified that Ms. Beissel did nothing to provoke him, yet he was mean, rude and uncooperative toward Patty Beissel and he abused the store's power jack.³ Finally, Ms. Lisle testified that later that morning, around 10:30 – 11:00 a.m., she related the above to Mr. Tarr who had come into the store, and she suggested that he speak with Ms. Beissel. Mr. Tarr testified that he spoke to both Ms. Beissel and Mr. Cronin, and the latter told him that M. P. was no longer welcome to deliver Company product to Cub Foods.

³ On or about June 26, 2008, Ms. Beissel prepared a written statement in which she described an exchange between M. P. and herself having to do with moving his truck away from the dock so that another driver could unload. Subsequently, she told him he'd have to move his truck before his palletized load would be checked in. He did so grudgingly, mumbling to himself as he left. She states that she "didn't want to deal with his attitude any longer..." Accordingly, she asked Mr. Cronin, who she stated was also treated rudely, to check in his load, as witnessed by Ms. Lisle. (Company Exhibit 6) David Laxen, Secretary – Treasure, IBT, Local 471, testified that during his investigation of the matter, he spoke with Ms. Beissel who told him that the Grievant had "attitude" and that he was cussing but not at her *per se*. Apparently, Ms. Beissel's comments to Mr. Laxen amounted to a recitation of the content of her written statement. Mr. Laxen also spoke with Mr. Cronin who affirmed that the Grievant's "attitude was extreme" on the day in question.

Next, the Company points to Mr. Krogman's testimony that he observed M. P. hand to Ms. Knutson the June 19, 2008 Walmart invoice and, upon noticing that some copies were missing, she asked for them. Rather than to provide her with the missing copies, Mr. Krogman testified that the Grievant refused, arguing that she did not need them. But, Mr. Krogman continued, Ms. Knutson was insistent, stating that she would not check in the Grievant's delivery without all of the invoice's copies, at which point both parties began speaking in "elevated voices". Thus, Mr. Krogman testified he took it upon himself to go to the Grievant's truck to retrieve the missing invoice copies. This did not end matters, however. Mr. Krogman testified that M. P. next disputed with Ms. Knutson "credit" changes that needed to be made on the invoice. Finally, Mr. Krogman testified that Ms. Knutson told him that she was going to speak to "upper management" about M. P. and on June 20, 2008, Ms. Knutson told him that M. P. was no longer welcome at Walmart.

Based on the above, the Company concluded that the Grievant violated Company Rules 17, 27 and 32 and the Courtesy and Cooperation policy. (Joint Exhibit 3 and Company Exhibit 4) And, as such, the Company avers that it met its *prima facie* burden of proving just cause, dismissing the Union's claim that the Company's proof amounted to immaterial hear-say. The Company also dismisses the Union's claim that the testimonies by Ms. Lisle and Messrs. Tarr and Krogman were the product of a self-serving conspiracy. That is, the Company urges, the Union failed to provide any proof whatsoever that the anti-Grievant testimonies of these witnesses were motivated by their desire to protect

their sales commissions and job security. Further, the Company argues, it was the Grievant, not its witnesses, who had job security reasons for perjuring his testimony and Cub Foods' and Walmart's independent and separate decisions to disallow the Grievant's deliveries to their premises supports this theory.

Moreover, the Company argues, arbitral precedent recognizes that discharge is warranted when (1) delivery drivers discredit their employers' goodwill relationships with customers; (2) employees previously have worked under the terms of a LCA for similar misconduct – as has the Grievant in this case; and (3) employees persistently fail to acknowledge their missteps – as has the Grievant in this case.

Finally, for the above-discussed reasons, the Employer requests that the grievance be dismissed.

V. UNION'S POSITION

To begin, the Union observes that the Grievant testified that when Ms. Beissel asked him to move his truck to allow another driver to use the receiving dock, he immediately did so, saying "It would be nice if other drivers would move for me".⁴ Upon his return to the dock after moving his truck, the Grievant further testified that Mr. Cronin was there to check in his order. According to the Grievant, he had to move the pallets of Kellogg product around – using the store's pallet jack – so that Mr. Cronin could check off items delivered against invoiced items. He further testified that the receiving area was busy and noisy on

⁴ M. P. previously testified that earlier that morning he had to wait 40 minutes for the Cub Foods' dock to open up for him.

the morning in question, which necessitated some “yelling” during the checking-in process.

Regarding the alleged Walmart incident, the Grievant admitted that he only brought Walmart’s invoice pages into the store, leaving the Company’s pages in his truck. However, he further testified that when Ms. Knutson asked to see the Company-specific pages of the invoice, it was she and Mr. Krogman who discussed the matter, and that he was not involved in the conversation. Further, he stated that it was Mr. Krogman who retrieved said copies from the Grievant’s truck and proceeded to make the appropriate credit adjustment.⁵ M. P. also testified that he and Ms. Knutson only spoke to one another when he was checking in his delivery and that occurred after Mr. Krogman had left the premises.

Based on the foregoing, the Union concedes that while the Grievant may have been grumpy, argumentative and rude on June 19, 2008, he was not abusive or profane in his dealings with relevant customer-employees. Surely, the Union argues, such lesser forms of misconduct do not warrant the dismissal of a long-term employee.

Next, the Union contends that the Company received conflicting evidence pertaining to the events of June 19, 2008, and that it did not take adequate investigatory steps to resolve these differences, abridging the Grievant’s right to *due process*. For instance, the Union argues, Ms. Lisle’s accusations that the

⁵ The Grievant testified that as he and Mr. Krogman were having lunch that day, the latter agreed to do the Walmart’s credit paperwork and in exchange the former paid for Mr. Krogman’s lunch. Accordingly, the Grievant refused Mr. Krogman’s request that he retrieve the Company copies of the invoice, necessitating that Mr. Krogman retrieve them. On cross-examination Mr. Krogman denied any such *quid pro quo*.

Grievant used abusive profanity, exhibited abusive behavior and mistreated Cub Foods' pallet jack were not corroborated by the statement provided by Ms. Beissel and Mr. Cronin. (Company Exhibits 1 and 5) Their statements portray M. P. as having an unpleasant "attitude" and as being grumpy and rude, but no more than that, the Union concludes.

Moreover, the Union argues Mr. Tarr made it clear at the hearing that he relishes the commission income he receives from Cub Foods and the other stores in his territory and, indirectly, so does Ms. Lisle since she depends on Mr. Tarr for employment.⁶ For reasons of economic security, the Union contends that neither Mr. Tarr nor Ms. Lisle wanted M. P. to deliver product to their stores, opening to question the veracity of their testimonies.

Finally, the Union requests that the grievance be sustained, observing that since the LCA infraction in 2002, the Grievant's work record has been free of infractions. In addition, the Union contends that the 2002 incident happened too long ago to allow the Employer to treat the Grievant as if he was on the terminal or final step of progressive discipline in 2008, particularly since the Grievant is a long-term employee. Discharge, the Union concludes, is wholly unwarranted in this case.

IV. DISCUSSION

Since the facts of this case are in dispute, we begin our analysis by carefully reviewing them.

⁶ The record suggests that Mr. Tarr hired Ms. Lisle and possibly other Merchandisers to build product displays and stock store shelves with the Kellogg products that he sells to the stores in his territory.

Facts: The Company's Perspective

Regarding the Cub Foods incident, Ms. Leslie testified that on the morning of June 19, 2008, the Grievant was being loud, cussing – using the “f---” word – and abusing the customer’s pallet jack. She also testified that he behaved rudely when Ms. Beissel asked him to move his truck and he was impatient and rude with Mr. Cronin, as the latter checked in his order. In addition, Ms. Lisle opined that the Grievant was angry because he had to wait quite a while before being able to dock his truck and she stated that she reported what she had observed to Mr. Tarr.

In turn, Mr. Tarr repeated what Ms. Lisle had told him, affirming her testimony. Mr. Tarr also described his conversations with Ms. Beissel and Mr. Cronin, whose written statements corroborate the substance of his testimony, namely: that the Grievant was “being a jerk” and otherwise had a “bad attitude”.

With respect to the Walmart delivery, Mr. Krugman testified that on the afternoon of June 19, 2008, the Grievant was argumentative in his discussions with Ms. Knutson, pertaining to the Grievant’s refusal to provide her with the Company-specific pages to the invoice in question. He also stated that the Grievant told her that the Employer’s pages of the invoice were not needed to check-in his delivery or to correct the amount being credited to Walmart’s account. Further, Mr. Krugman testified that the Grievant refused his plea to retrieve the requested pages, necessitating that he do so in order to defuse the situation.

Facts: The Union's Perspective

The Union argues that the testimonies of Ms. Lesle and Mr. Tarr misstate the facts of the Cub Food incident and do not conform to the written statements by Ms. Beissel and Mr. Cronin. Specifically, the Union claims that during the Cub Foods delivery, the Grievant was neither profane nor abusive toward Ms. Beissel and Mr. Cronin, pointing to the Grievant's testimony that he moved his truck, as requested, although he admittedly did "grumble" in the process. Further, the Grievant's statement to Messrs. Johnson and Cunningham suggest that he was not "upset" at Cub Foods; and he and Mr. Cronin ended the check-in process on a positive note.

With respect to the Walmart delivery, the Grievant testified that it was Mr. Krogman, not he, who had the invoice-related exchange with Ms. Knutson. Further, in the statement he gave to Messrs. Johnson and Cunningham, the Grievant again stated that he was not "upset" with Ms. Knutson, although he thought her to be a "witch".

The Union avers that the Grievant is innocent of the most serious allegations that were made in support of his termination, namely, that he acted in a profane and abusive manner while making deliveries at the stores in question on June 19, 2008. When, in fact, the evidence supports the conclusion that the Grievant was only "grumpy" and "argumentative". For several reasons, the Arbitrator does not accept this rendering of the facts.

Fact Findings: Cub Foods

Ms. Lisle's testimony that the Grievant used profanity at Cub Foods and that she reported as much to Mr. Tarr is judged to be credible. First, there is no doubt that Ms. Lisle was on the dock at the time to witness what had transpired – an observation that Ms. Beissel made in her statement of events. (Company Exhibit 5) Second, as testified by Mr. Tarr and as observed by Mr. Cronin in his written statement, the Grievant gave Ms. Beissel "attitude" and while checking-in the delivered product, the Grievant also "... gave me [Mr. Cronin] attitude." (Company Exhibit 1) These references to "attitude" imply that something untoward was being said and done by the Grievant. Third, the fact that Mr. Cronin's written statement does not mention that the Grievant was cursing does not discredit Ms. Lisle's testimony to the contrary. In fact, the record evidence suggests that the Grievant was not using profanities in the presence of Mr. Cronin. Rather, he was swearing in Ms. Beissel's presence. Fourth, while Ms. Beissel's written statement does not reference cussing *per se*, it does state that after she told him to move his truck, "He turned around and mumbled out the door..."⁷ (Company Exhibit 5; emphasis added) In addition, Mr. Laxen testified that Ms. Beissel told him that the Grievant was cussing, although not specifically at her. Finally, if the Grievant was merely "grumpy" and "argumentative", it is doubtful that Cub Foods would have gone so far as to forbid any future delivery by the Grievant – a fact that is not in dispute and that was documented by Mr. Cronin. (Company Exhibit 1)

⁷ Ms. Beissel's statement also indicates that when Mr. Cronin would ask the Grievant to identify the delivered product corresponding to an invoice entry, the Grievant "...would say things like, 'it's over there', or 'it's in front of your face', not very respectful." (Company Exhibit 5)

Based on the above analysis, it is concluded that the Grievant did use profanity during his Cub Foods delivery and that he was disrespectful of Cub Food personnel. Company rule #27 proscribes the use of “abusive language” but even in the absence of this rule, the Grievant knew or should have known that such conduct is not acceptable on-the-job behavior. (Joint Exhibit 3) Moreover, to be argumentative and disrespectful toward customers is prohibited by the Employer’s Courtesy and Cooperation policy. (Company Exhibit 4) Violations of the indicated Company rules and policies are grounds for employee discipline, including termination of employment.

Fact Findings: Walmart

The Union contends that the Grievant was little more than an innocent bystander who watched Ms. Knutson and Mr. Krogman argue over the Walmart invoice matter. However, Mr. Krogman testified that it was the Grievant who refused to retrieve the Company-specific pages of the invoice when Ms. Knutson asked him to do so; and, further, it was the Grievant who argued with Ms. Knutson over this point. The Union’s contention is inconceivable. Critically, Mr. Krogman’s version of events is corroborated by the fact that on June 20, 2008, Ms. Knutson found the Grievant to be the *persona non grata* at Walmart and not Mr. Krogman – a fact that Mr. Sumilel documented on June 25, 2008 and that is not in contention. (Company Exhibit 3) Accordingly, the Grievant’s conduct toward Ms. Knutson was manifestly uncooperative and discourteous in violation of Company rules and the Courtesy and Cooperation policy.

Opinion

As implied by the forgoing findings of fact, the “conspiracy” defense raised by the Union was not persuasive. There is nothing in the record to show that Ms. Lisle and Mr. Tarr conspired to do anything but to tell the truth. First, Ms. Lisle testified about the Grievant’s conduct at Cub Foods on June 19, 2008. This same conduct caused Ms. Beissel – a [non-conspiring] third-party – to conclude that she “... didn’t need to deal with this attitude any longer...”; and caused Mr. Cronin to conclude that the Grievant was “... no longer allowed to deliver product to this store and I expect ... [the] Company to follow my decision.” (Company Exhibits 5 and 1, respectively) Second, Mr. Tarr testified that the Grievant was not welcome at Cub Foods. Mr. Cronin, a [non-conspiring third-party] documented this fact.

The Grievant is guilty of the charges that were brought by the Company in this case. As a consequence, the Company terminated M. P.’s employment for violating reasonable and known rules and policies governing employee conduct, and because the Grievant’s employment was once before terminated for violating kindred rules and policies. The Union demurs, arguing that the Grievant is a 16-year employee whose work record has remained unblemished for slightly more than 6-years. Thus, the Union argues, the events of June 19, 2008 should be treated as a first-time offense (i.e., the LCA is by now “stale”). Also, the Union points out that the parties’ CBA and their route-assignment practices allow the Company the flexibility it needs to put the Grievant back to work without assigning him to the Cub Foods and Walmart accounts.

The Union's plea to reinstate the Grievant is denied. As a Company driver, the Grievant was functioning as a representative of the Company on June 19, 2008. It was in this capacity that the Grievant came up short. Through his conduct, the Grievant compromised Company–customer relationships that Kellogg's rightly endeavored to cultivate in order to promote sales and profits on the one hand and employment and wage-earnings on the other. When customers ban a Company driver from their properties not only is the Company put on notice that its dealings with said customers prospectively are in jeopardy but the foundation upon which the employer–employee relationship was formed is fractured. In this case, the Company has lost trust in the Grievant's ability to be one of its driver–field representatives. In 2002, the Grievant was terminated and later reinstated – thanks to Union involvement – under the terms of a LCA that expired on April 8, 2004. (Joint Exhibit 6) Now, slightly more than four (4) years later, the Grievant's conduct again renders him unfit to deliver product to two (2) of the Company's customer accounts.

It was the actions of the Grievant and not those of Ms. Lisle, Mr. Tarr or anyone else that caused Cub Foods and Walmart to forbid the Grievant from delivering Company product to their stores. Yet, the Grievant has refused to take responsibility for his June 19, 2008 actions and, for that matter, he has refused to take responsibility for the actions that resulted in his termination in 2002. The Grievant's denial of responsibility in these matters and his refusal to express remorse or promise to refrain from future episodes of kindred misconduct all combine to deepen the chasm separating him from the Company. Under all of

these circumstances, the undersigned is not persuaded that the Grievant's relatively long tenure and infraction-free post-2002 disciplinary history are factors that ought to mitigate his discharge. The Company had just cause to terminate the Grievant, as is its right under the CBA.

VII. AWARD

The Grievant's termination from employment was for just cause. The grievance is denied.

Issued and ordered on this 26th day of
January 2009 from Tucson, AZ.

Mario F. Bognanno, Labor Arbitrator