

IN THE MATTER OF THE ARBITRATION BETWEEN

International Brotherhood of Teamsters,  
Local 926,  
Union

and

Vanguard Car Rental USA, Inc.  
Employer.

**OPINION AND AWARD**

Grievance of IBT, Local 926  
(Discharge)

FMCS Case No. 09-52830

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ARBITRATOR:

Janice K. Frankman,  
Attorney at Law

DATE OF AWARD:

November 2, 2009

HEARING SITE:

Marriott Hotel  
777 Aten Road  
Coraopolis PA 15108

HEARING DATES:

June 4 and July 30, 2009

RECORD CLOSED:

September 24, 2009

REPRESENTING THE EMPLOYER:

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## **JURISDICTION**

The hearing in this matter was held on June 4, and July 30, 2009. The Arbitrator was selected to serve pursuant to the parties' collective bargaining agreement and the procedures of FMCS. Both parties were afforded a full and fair opportunity to present their cases. Witnesses were sworn and their testimony was subject to cross-examination. Both hearing days were reported by AKF Reporters, Inc., 436 Boulevard of the Allies, Pittsburgh PA 15219-1314. The parties submitted Post-hearing Briefs which were received, by the Arbitrator, from the Union and the Company on September 8 and 24, respectively. The Briefs were timely by agreement of the parties. The record closed on September 24, 2009, when the matter was taken under advisement.

## **ISSUE**

Whether the Grievant was terminated from her position for just cause and if not, what is the remedy?

## **BACKGROUND AND SUMMARY OF THE EVIDENCE<sup>1</sup>**

("Grievant") began employment as a Service Agent with National CarRental/Alamo n/k/a Vanguard Car Rental USA, Inc. ("Vanguard" "employer" "Company"), on July 11, 1999. Vanguard is an umbrella corporation owned by Enterprise which includes the Enterprise, Alamo and National Car Rental brands. Grievant was discharged from her position on November 4, 2008, for misconduct. She had a good work performance record. She was counseled and received verbal warnings concerning her workplace conduct during the summer and fall of 2008. On August 28, 2008, she received a written warning following an incident involving a customer. The warning advised that "(a)ny further incidents of this nature or any other will be grounds for further disciplinary action up to and including termination." Joint Exhibit 3. This Grievance was filed on November 5, 2008.

The Grievant's work primarily involved the servicing and cleaning of rental vehicles which had been returned by customers to the Pittsburgh International Airport and driven by Shuttlers from the Airport garage to a servicing lot located about ½ mile away. Service Agents also shuttled cars when needed and available. The Service Lot is about 100 yards deep and 33 yards wide, large enough to park a fleet of 1100 cars. A building on the lot includes a car wash, break and locker room, service bays and an office. Four sets of gas pumps on two islands in front of the building include vacuums. A "back lot" behind the building is typically used for cars which need special service and for overflow on busy days.

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<sup>1</sup> This is an unusual case in that the Union takes the position that the Grievant's conduct described up to and including the incident which led to her discharge did not occur. Consequently, it largely disputes the facts set out in this Background and Summary of the Evidence.

There are a total of 45 to 50 Service Agents and Shuttlers in the bargaining unit who cover three shifts every day. Changes in the corporate structure and a downturn in the U.S. economy in 2008, resulted in personnel changes, a hiring freeze and a reduction in overtime work. In May, 2008, G. D. began work as City Station Manager overseeing operation of the Service Lot facility including scheduling of Service Agents and Shuttlers. He is one of three Station Managers who cover the three shifts. Gretchen Martin was one of the three in 2008. Mr. D. reports to R.H., Operations Manager who reports to C. S., Airport Market Manager. Mr. S. began work for Vanguard in Pittsburgh in August, 2008. The four managers were present when Grievant was terminated from her position.

Mr. D. and Mr. S. described Grievant's manner as bold and brash when they first met her shortly after beginning their employment with Vanguard. She yelled at Mr. D. as he drove a car into the Airport garage, admonishing him for driving it because he was not a union member. Mr. S. first met Grievant at a welcome lunch in mid-August when she told him that the day and night shifts did not get along, that she had been subject of a statement made by a co-worker which led to workplace violence training and that earlier managers had not been successful working there.

The Grievant worked the same night turn shift as Mr. D. They worked from 3:30 p.m. to midnight. His responsibility required him to rotate through the garage or airport side of the business as well as the service facility side where Grievant reported for work. He spoke with her on several occasions telling her to tone down her language and her voice which he found inappropriate. He had heard her scream into the radio to call cars so that customers could hear her. One time he heard her yell, "Take the wax out of your ears!" He heard her scream directions at co-workers and generally fail to talk nicely to people. Several employees reported to him that they did not want to work with her.

Mr. S. also spoke with Grievant about her attitude and demeanor. She was vocal and demonstrated a negative attitude toward management when she was upset or didn't agree with some action taken by them. She spent considerable work-time objecting to the hiring of part-time Shuttlers which resulted in reduced overtime for Service Agents. She was angry when she was forced to work, per CBA provisions, on a day that she had planned to visit her mother in the hospital. She boldly let everyone in the workplace know where she stood on a variety of issues. Co-workers testified that she swore frequently, calling people "b..ch" and "mother-f....er". They distinguished her language and conduct from others in the workplace.

### Earlier Discipline<sup>2</sup>

On August 28, 2008, Grievant received a written warning for yelling out of a car window at a customer who had parked a rental vehicle so that it blocked Grievant's access as she returned a clean car to the garage. Grievant told the customer that she was preventing her from doing her job. Mr. D. witnessed the incident from a distance.

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<sup>2</sup> There has been no evidence that a Grievance was filed challenging this discipline.

Station Manager G. M. was approached by the customer who told her she would never do business with National again after being treated as she had been by the Grievant. Mr. D. reported the matter to Mr. S., and they met with Grievant who admitted what she had said to the customer denying that she yelled at her. She explained that she simply talks loudly. They gave her a written warning which she refused to sign. The Corrective Action Notice warned the Grievant: “. . . .Customer service is our #1 priority and this type of behavior will not be tolerated. Any further incidents of this nature or any other will be grounds for further disciplinary action up to and including termination.” Joint Exhibit 10

M. R. was hired as a Shuttler in September, 2008. She had worked evenings for two years for a company that cleaned the service lot and building. She knew the Grievant from conversations with her in the break room. They got along well until she was hired as a Shuttler. Ms. R. was a good worker and was often called in to work earlier than usual in the afternoon. Because her regular schedule was part-time, she could work extra hours up to 38 without earning overtime pay. Grievant often called her “b. . ch” and warned her against performing too well “for this mother-f . . .ing company”. Ms. R. reported that the Grievant was loud and frequently profane. She asked Grievant what she had done wrong when she swore at her, and she asked Mr. S. if Grievant was her supervisor because Grievant routinely gave her directions as if she were. Ms. R. confided her discomfort with the way Grievant treated her to Mr. D. several times. She asked him not to do anything about it because she believed the situation would improve. He abided by her request until an incident occurred in early November.

### The Incident

November 2, 2008, was a very busy Sunday on the service lot. Ms. R. had shuttled a 15 passenger van to the Lot from the Airport garage. She called to Grievant who was close to the service pumps to ask her where she should park the vehicle since the lot was so crowded. She asked her in an attempt to get along and to accommodate Grievant's work. Grievant yelled, “Park it up your ass, b. .ch.” The comment was heard by two co-workers, L. T. and T. W. When Ms. Rohm asked them, they confirmed what she had heard. She was very upset. She drove a clean car back to the airport garage and reported the incident to Mr. D. in tears. She told him once again that she did not know if she could work there any longer. He told her he was going to report the matter to Mr. S. which he did the next day.

Mr. S. contacted Ms. Rohm and discussed the incident with her. Then he met with Mr. D. and Mr. Hackett to investigate the matter. They contacted Mr. T. and Mr. W. Mr. T. declined to discuss the matter with them. Mr. W. confirmed the incident and agreed to sign a statement which was prepared for his signature the following day. After consulting by telephone with E. R., Human Resources Director, they concluded the incident was grounds to terminate Grievant's employment. Ms. R. was contacted and told to stay home until she was called back to work. She had expressed fear that there would be retaliation against her. She had experienced pranks earlier which she suspected were instigated by Grievant.

Discipline; Grievance

When Grievant arrived at work on November 4, she was asked to meet with Mr. S. and others in his office including Union Steward Bob Frank, G. D., R. H. and G. M.. When she was asked what happened on Sunday, she did not respond. Mr. S. then asked her if she knew anything about a van and an employee who was told to park it up their ass. She responded that it was a joke, then said she did not remember the incident. Grievant was told that her work was being terminated. A typed Corrective Action Notice described the incident and corrective action and referred to earlier discipline:

Per my investigation, I have discovered that you have violated company policy by creating a hostile work environment towards another employee . . . . . you were witnessed yelling across the lot that a 15 passenger van could be parked up another employees 'ass'. It was also witnessed you verbally assaulted this employee as well. Your actions on that day created a hostile work environment which we cannot and will not tolerate.

\* \* \*

You were also directly involved in another incident that involves a hostile work environment on August 28, 2008, which you were given a written warning. . . . .

L., per my investigation, you are in violation of company policy under Workplace Violence Prevention. We have determined that you will be terminated from National/Alamo effective immediately. Any type of retaliation will be turned over to the appropriate authorities.

Joint Exhibit 3, page 1

A handwritten signed and dated notation was added to the Notice at the Meeting:

R. H., G. M., G. D. were all present. All witnessed L. say that she did not remember any incident happening on Sunday, in addition, when asked about the 15 passenger van, she claimed it was a joke.

Joint Exhibit 3, pages 1 and 2

This Grievance was filed the following day:

"On Nov. 4, 2008 I recieved (sic) a termination notice for 'hostile conduct'. As I stated in our meeting on Nov 4, 2008, I do not recall the events and actions you have discribed (sic). I believe my termination is unjust due to this.

Several days after the incident had occurred and Grievant had been discharged, two co-workers, K. E. and C. S., each approached Mr. S. to discuss the matter. They told him that they had witnessed the exchange between the Grievant and Ms. R. on November 2, and that they believed the discharge was unfair. He did not agree to meet with them because they had not come forward earlier and his investigation had not revealed them as witnesses. They wrote nearly identical statements which were given to the Union and delivered to Management at a Step Grievance meeting the following week.

K. E. and C. S., are friends of the Grievant. They have worked as Service Agents with her since she began employment with the Company. Mr. E. is Ms. S.'s son-in-law. They live in the same building and often commute to work together. The Grievant is the godmother of Mr. E.'s daughter. The Grievant told Ms. S. that she had been fired as she left work within an hour of her arrival on November 4. Ms. S. called her the next day to find out what had happened.

#### Workplace Violence; Co-worker Discipline; Training

In February, 2008, Grievant and a co-worker filed a Complaint against another co-worker. The matter was investigated and the co-worker received a three day suspension for violation of Company workplace violence policy. He admitted to telling a co-worker, in her absence, that he hoped Ms. Grievant's plane would crash. He had used foul language and been confrontational in discussing the matter. He admitted to earlier negative, hostile and aggressive workplace conduct, and was warned the suspension was a first and final warning and that further unprofessional behavior including swearing, yelling or hostile behavior would result in further discipline up to termination. Grievant acknowledged and accepted resolution of the matter in writing. She and others attended a workplace violence training session in March, 2008, which had been developed following the incident.

#### Contract and Employee Handbook Provisions

The parties' CBA sets out for management rights including termination of employees for just cause and recognizes a scheme of progressive discipline:

### **ARTICLE 5 LIMITATION OF AGREEMENT**

The Employer has the exclusive right and power to manage, control and conduct its business, to plan and direct the working forces including the right to hire, suspend, discharge, promote, demote schedule or transfer its employees for just cause and to make such rules relating to operations as it deems advisable subject, however, to other provisions of this Agreement, past practices and the provisions of applicable law.

**ARTICLE 17**  
**SUSPENSION AND DISCHARGE**

\* \* \*

Section 2. The Employer endorses a procedure of progressive discipline which shall include written warnings, possible suspension and termination. Discipline for offenses which are not considered grounds for immediate termination shall normally be:

- |                         |   |
|-------------------------|---|
| 1 <sup>st</sup> offense | verbal warning                                |
| 2 <sup>nd</sup> offense | written warning                               |
| 3 <sup>rd</sup> offense | 2 <sup>nd</sup> written warning               |
| 4 <sup>th</sup> offense | 3 <sup>rd</sup> written warning or suspension |
| 5 <sup>th</sup> offense | subject to termination                        |

\* \* \*

Section 3. Just cause for termination without prior disciplinary action will include, but not be limited to . . . . refusal to follow a direct order of management . . .

Joint Exhibit 1

The Company Associate Handbook includes a Code of Business Ethics and Conduct and Compliance:

\* \* \*

All associates are responsible for compliance with the standards and principles contained or referenced in Vanguard's Code of Business Ethics and Conduct and Compliance Policies. Violations of the law, the Vanguard Code of Business Ethics and Conduct and Compliance Policies, or any one of Vanguard's policies, procedures, instructions, work rules, practices or the like may lead to disciplinary action up to and including termination. . . .

***Workplace Violence Prevention***

It is the Policy of the Company to maintain a work environment free from violence. The Company does not tolerate violence or conduct that is dangerous or may be perceived to threaten, intimidate, or coerce another.

. . . . .

Company Exhibit 2

**POSITION OF THE EMPLOYER**

The Employer seeks an Award which denies the Grievance. It argues that its discharge of the Grievant is consistent with Company Policy and with management

rights and discipline provisions of the parties' CBA . It argues that the Grievant's conduct, characterized as "hostile conduct", "creating a hostile work environment towards another employee" and a violation of Company workplace violence prevention policy, was egregious, supporting termination without application of progressive discipline in this case. It asserts that the Grievant was familiar with the workplace violence policy, having complained against a co-worker, which was followed by an investigation resulting in discipline, a few months before the incident in this case. It points to training which the Grievant attended the month following that incident which addressed the issue of workplace violence.

The Company points to several instances when the Grievant was cautioned and counseled by new managers, who arrived in May and September of 2008, against loud and inappropriate language and the negative attitude she demonstrated toward them and management decisions which had been made. It details an incident in August, 2008, when the Grievant yelled at a customer drawing a complaint for which she received a written warning. It does not dispute that she was a competent employee who performed her job duties well.

The Company argues that witness credibility relative to the incident which led to the discharge is central and determinative in this case. It asserts that Ms. R. and Mr. W. testified persuasively and truthfully as opposed to Ms. S. and Mr. E. whose credibility is lacking. It argues that no motive to seek Grievant's discharge has been shown and that the Union failed to demonstrate any inconsistency or lack of credibility on the part of either Ms. R. or Mr. W. It argues that discipline which Ms. S. received later in 2008, based upon dishonesty, supports a conclusion that she lacks of credibility in this case. It takes the position that Mr. E.'s recent poor performance review provides motive to challenge the Company's action against Grievant. With regard to the Grievant's credibility, the Employer points to her refrain that she could not "recall" or "remember" in response to significant questions put to her during her testimony. It argues she gave testimony tantamount to an admission that she had said and done precisely what Ms. R. and Mr. W. reported.

Citing several cases where determination of the credibility of witnesses with clearly divergent views was discussed, the Employer argues the Grievant's motive and incentive to lie is greater than its witnesses, creating a presumption which requires the arbitrator to credit their testimony over hers.

The Company argues there is no support for reduced discipline or for providing the Grievant with a last chance given the totality of the record which supports a conclusion that she determined her own fate by repeated offensive, knowing and incorrigible behavior which cannot be countenanced in the workplace.

## **POSITION OF THE UNION**

The Union seeks an award which reinstates the Grievant to her position, making her whole for lost wages and benefits without loss of seniority for a discharge for which

there was no just cause. It argues that the incident for which she was discharged never occurred, that the Company failed to sustain its burden of proof.

The Union argues this matter turns on determination of the credibility of the parties' cases. It argues that motive to prevaricate is a significant factor in determining who to believe. It anticipates the Company's argument that the Grievant is most highly motivated to lie and urges the arbitrator to recognize the Company's stake in the outcome which is equal to that of the Grievant. It points to Company motivation to control the workforce, to save face and to ensure that other employees do not see defeat of a disciplinary action.

The Union argues the Company has demonstrated bias by failing to interview Ms. S. and Mr. E. when they approached Mr. S. to discuss Grievant's discharge, three days after it occurred and their first day back to work after learning why her employment had been terminated. It argues Mr. S. "preremptorily" dismissed their statements for expedience.

The Union asserts bias was also demonstrated by Mr. D.'s failure to take action following "claimed" complaints by Ms. R.. It argues this makes no sense with the backdrop of an earlier warning given Grievant, awareness of other misconduct in the workplace and management's commitment to employee morale. It argues if all of those things are true, he would have taken action, suggesting that the earlier incidents did not occur.

Finally with regard to bias, it argues the Company's interview of Grievant on November 4, was not designed to arrive at the truth, but, instead to confuse and intimidate her. It asserts the Company had pre-determined her discharge, and there was no opportunity to alter the decision, that the intent was to take advantage of mistakes she made in responding to their questions. It asserts that she was referring to the process when she said it was a joke and had not tacitly admitted to the comment the Company asserts she made to Ms. R.. It argues the Company wanted to "get rid of her at all costs."

The Union argues it is "obvious" the statements made by Ms. S. and Mr. E. are to be believed. It points to the fact that Mr. T. was not called to testify although he is still an employee and could have been subject to subpoena. It points to the Employer's explanation that Mr. T. did not want to get involved in the matter, the truth of which will never be known. It urges the Arbitrator to find that had Mr. T. testified, he would have contradicted the other employer witnesses.

The Union compares the written statements of Mr. W. and Ms. S. and Mr. E., arguing that their witnesses independently prepared their own statement while Mr. W.'s was prepared by the Employer. It concludes that the Employer's case was "manufactured" as evidenced by the fact that Ms. R. told Ms. S. that she had been instructed by management what Grievant had said to her.

Finally, the Union argues the Grievant's testimony supports her Grievance, that she presented as a "happy-go-lucky", admittedly loud "people person" who did not do that with which she has been accused. It argues she was placed in the position of attempting to prove a negative which is very difficult. The Union asserts its impression that the Company regarded the Grievant to be a loose cannon responsible for discontent in the workplace and someone they needed to get rid of to change the workplace culture.

## **OPINION AND FINDINGS**

It is appropriate to deny this Grievance. The Employer has demonstrated just cause for the Grievant's discharge. The Grievant's case has been argued on the narrow issue of credibility of the parties' cases. While the Company has also focused upon credibility, it raised numerous other issues in its presentation at hearing and its closing Brief. It is appropriate, therefore, to be more expansive in addressing the basis for this Award with discussion of management rights, progressive discipline, due process, the express provisions of the parties' CBA and Company Policy and principles of labor law. The foregoing background and summary of the evidence details the facts and relevant CBA and Policy provisions which need not be repeated here except for reference and highlighting where needed for understanding.

The Union has argued that the Company manufactured this case against the Grievant, determined to rid the workplace of her in order to create a different culture. It has urged the Arbitrator to agree that she and two co-workers, who testified on her behalf, presented entirely credible evidence in contrast to the Company witnesses who conspired and prevaricated to support the Grievant's discharge. This is a strong and bold position which the entire record, made over two hearing days and concluding with Post-hearing Briefs, does not support. To the contrary, the Grievant's demeanor and testimony together with significant apparent bias and inconsistencies in her co-worker witnesses' statements and testimony, bolster the Company's case. Grievant's self-description, failure to effectively address adverse testimony and evidence provided by management and co-workers, and remarkable inability to recall or remember detail relevant to key issues in the case, enhance the credibility of the Company's case.

There is evidence which supports a conclusion that neither Mr. E. nor Ms. S., Grievant's close friends and co-workers, was present when the incident on November 2, 2008, occurred. In addition, there is no corroborating evidence or testimony to support, perhaps the most serious charge made by the Union, that Ms. R. told Ms. S. sometime during the pendency of this Grievance that she had been instructed by the Company as to the precise words Grievant had said to her on November 2, which led to her discharge. As important, the testimony provided by the Company in going forward with the evidence and on rebuttal was not eroded by cross-examination or refuted through evidence or testimony.

## The Parties' Cases

### Company's Case

The evidence and testimony presented by the Company was thorough, clear and consistent. Perhaps most noteworthy was the testimony of Ted Webster, a tenured Service Agent with an unblemished work record who reported the incident, precisely as Ms. Rohm had, when he was contacted by his three managers on November 3, to learn whether there had been an incident the previous day. He volunteered the information without being led or prompted. He testified at hearing that he had just arrived to begin work and was walking toward the service building when the incident occurred, significantly marking the time of the incident. He also confirmed at the hearing that L. T. had been close-by and was unwilling to get involved with the incident, a customary position for Mr. T. to take. Mr. W's description at the hearing of Grievant's demeanor over the many years that he had known her, and on that particular day, supported the testimony of management and Ms. R.. There has been no assertion that Mr. W. had any motive to lie.

The Union's assertion that management was motivated to improve the workplace environment, including morale and productivity, is well-supported by the Company's evidence and testimony. Mr. D. and Mr. S. both testified that they regarded the Grievant to be a problem within the workforce, challenging their decisions, displaying a negative attitude, distracting workers with disruptive behavior, disregarding warnings to tone down both her volume and rhetoric and ultimately creating a negative environment. It is understandable that they did not take swift, strong action against her immediately because they were new and working to establish trust among the employees. In addition, she had received a written warning just as Mr. S. was arriving in Pittsburgh to begin his work and there is credible evidence that she received numerous verbal warnings and counseling from them. They may have been hoping, like Ms. R., that she would respond and improve. When she did not, she was discharged within two months of Mr. S.'s arrival for conduct they concluded was egregious. She had specifically offended a customer, management and a co-worker within a very short time-frame.

### Union's Case

The Grievant's testimony supports the Company's case. Her self-description is tantamount to admission that she had said and done that for which was discharged. At the close of direct examination, her counsel asked her why she thought the Arbitrator should rule in her favor. She replied:

- A. Because just to let her know that I'm not a mean person. I like people. I talk fast. I move fast. I do things –how do I want to say it – so fast that I don't remember what I do. A lot of times I talk without realizing what I saying. (sic) I'm just that type of person.

I'm a people person. I love people. I don't care who they are, you know, the color of your skin, big, fat, little, small. It doesn't matter. I'm just the type of person where – and I don't hold grudges. I don't – I just –I have nothing against people, and if I've done anything to offend anybody, you know, I'm sorry. You know, I'm just – I'm not that type of person. I just do things spur of the moment.

You know, I just -- like I said, I talk loud, you can all see that now, and I jump the gun, and sometimes I shouldn't say things off the gun and just stop – stop and think before I say things. But there are some things that were said in both of these hearings that were not, absolutely not true.

TR (July 30, 2009), page 366

The Grievance is based on Grievant's lack of memory of the incident, a trait she addressed in her testimony. She continued to claim as she did in August, when she drew a customer complaint for yelling offensive words, that she simply is loud.

Significantly, Grievant corroborated Mr. W.'s timing of the incident thereby impeaching Mr. E.'s written statement and testimony and contradicting her own testimony. She testified that she is diabetic and routinely takes her break shortly after 4:30. Payroll records reveal that Mr. E. arrived at work on November 2, nearly one hour after the incident had occurred. The Grievant testified that she was standing next to him smoking a cigarette when the incident occurred. She did not identify Ms. S. as a witness at any time.

In addition, Ms. S's written statement and testimony are inconsistent and lack credibility. There is no direct or circumstantial evidence to support her assertions that Mr. W. was in the break room when the incident occurred or that the Company had enlisted Ms. R. to support its effort to terminate Grievant's employment. It appears that her written statement and testimony along with Mr. E.'s statement and testimony, which she requested, were entirely gratuitous and dishonest in support of their friend to save her job.

With regard to drawing an adverse inference from the fact that the Company did not call Mr. T. to testify, the same argument could have been made by the Company. If Mr. T.'s testimony would have supported its case, why wasn't he called by the Union?

Finally, the Arbitrator agrees with Company's counsel that Union Steward F.'s testimony represented gentle spin on the Grievant's reference to the matter being a joke. He testified that she was referring to the process. However, there is no evidence that he objected to the managers' recording of the Grievant's statement, on the Notice of Action which he signed, that her comment to Ms. R. was a joke.

### Due Process

The record does not support a conclusion that the Grievant was denied due process. Her Union Steward was present when she was discharged after being provided with an opportunity to explain what had happened on November 2. There is no evidence of coercion, trickery or harassment so as to confuse and confound her as the Union suggests. She testified she thought the meeting was one and one half hours long. In fact, she punched in and was escorted out in a period of less than 40 minutes. The fact that the Company delivered a Notice of discipline which had been prepared before the meeting, does not alone support a claim that there was nothing she could have said or done to reverse the Company's predetermined position. In fact, the referenced handwriting, added to the document at the Meeting, reports a part of what she said in the Meeting. There has been no charge that she or her Union Steward wanted to add anything else. She testified that she did not sign the Notice because she had been directed long ago by the Union not to sign disciplinary documents.

The Company's disregard for Ms. S.'s and Mr. E.'s requests to meet with management, followed by their handwritten statements, also does not support a charge of failure of due process. Mr. S. took the position he did because the investigation had not revealed their names as witnesses and there had been no mention of them in the discipline meeting. He admitted he doubted their veracity at the time.

### Policy; Basis for Discharge

Grievant was charged with hostile conduct and creating a hostile work environment. The Company's Workplace Violence Policy does not provide express language which applies in this case. It is apparent, however, from the manner in which the Policy was applied in the case described above, which arose from the Grievant's complaint against a co-worker, that the language has been given broader meaning and application. In addition, there was limited testimony relative to the Policy training provided the Grievant and others, to know its contents. Moreover, this Grievance is based upon Grievant's lack of memory of the incident. There has been no argument that the Policy does not apply in this case.

In any event, it is clear that discipline and discharge is not contingent upon the existence of a workplace rule or express prohibition of improper conduct. Bullying, abusive and disruptive behavior, exhibited by use of name-calling, inappropriate, offensive and profane language has been the basis for discipline and discharge in countless cases. Grievant's discharge was based upon conduct directed at an individual which had been exhibited on numerous occasions involving other circumstances and individuals. Defenses which have been successfully raised in other cases include provocation and shop talk. In this case, there has been no evidence of provocation or suggestion that Grievant's demeanor and use of offensive and profane language constitutes shop talk. In fact, there was significant testimony from management and her co-workers distinguishing her conduct from all others.

### Progressive Discipline

The parties' CBA provides support for circumstances which do not require rigid application of progressive discipline. Grievant had received a written warning two months earlier which put her on notice of possible termination in the event of recurrence of the conduct which led to the warning. The Union challenges the seriousness of the Grievant's behavior and wonders why the Company did not fire her earlier if her conduct was truly so inappropriate. The facts speak for themselves. There is no evidence of undue delay by new management.

The notion of corrective action customarily supports application of progressive discipline. In this case, there is little evidence of understanding or remorse and no expression of a need or intent to change. There is no proper basis for reduction of the discipline.

### Management Rights

The Company is expressly empowered to develop work rules and policy to support its desire and responsibility to maintain an orderly, respectful, non-confrontive and non-intimidating work environment. There is no basis for disturbing the Company's discretion and decision in this case. It has demonstrated just cause for the discharge.

## **AWARD**

The Grievance is denied.

Dated: November 2, 2009

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Janice K. Frankman  
Labor Arbitrator