

IN THE MATTER OF ARBITRATION BETWEEN

ALLIANT TECHSYSTEMS, INC.)	
“Employer”)	FMCS Case No. 060404-55872-7
)	
AND)	James Hart Discharge
)	
IBT, LOCAL NO. 1145)	
“Union”)	

NAME OF ARBITRATOR: John J. Flagler

DATE AND PLACE OF HEARING: June 7, 2007; Minneapolis, MN

DATE OF POST-HEARING BRIEFS: August 10, 2007

APPEARANCES

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ISSUE

Whether the Company had just cause to discharge the Grievant. If not, what is the appropriate remedy?

INTRODUCTION

On January 13, 2006 Alliant TechSystems (ATK or Company) discharged James Hart (Grievant) on the charge of insubordination and creating discord in the workplace.

BACKGROUND

ATK follows a progressive discipline policy for its workforce. That policy is set forth in work rules described as “the Blue Book.” The progressive disciplinary framework is premised upon a system of demerits that vary by degree depending upon the nature of the offense with the demerits being cumulative.

The Blue Book provides that certain serious offenses may result in discharge even for a first time offense and that certain enumerated infractions result in an automatic 4th Degree Demerit, the highest form of demerit carrying with it the potential penalty of discharge. The Blue Book expressly provides that the following types of offenses are “intolerable” and mandate the issuance of the 4th Degree Demerits: (1) deliberate promotion of discord or unrest; (2) refusal to perform work as directed or other willful neglect of duty; and (3) willful disobedience of instructions or directions. The record show ATK’s long history of following the progressive discipline framework and the practice of discharging employees who receive more than one 4th Degree Demerit in a twelve month period. The Grievant did not challenge this past practice.

While in Shipping and Receiving at ATK’s Advanced Weapons Headquarters, the Grievant received several formal disciplinary demerits prior to January 2006. Given the essence of the highly sensitive subject matter that is the focus of ATK’s Plymouth facility, the Company follows strict rules regarding shipment of United States Government classified material and handling of the dangerous explosives that flow into and out of the operation. The Grievant received discipline for violating these rules.

These pre-2006 instances of discipline were not grieved and are not in dispute. The last demerit received in 2005 by the Grievant was the 4th Degree Demerit issued to him on August 2, 2005. As the Grievant’s receipt of this 4th Degree Demerit on August 2, 2005 meant that another demerit received during the ensuing twelve months would result in his discharge under the policy as well as established past practice.

The Grievant began 2006 working in assembly at the Advanced Weapons Headquarters in Plymouth in connection with a project known as the “Paladin Contract,” a production repair program for the 155mm Howitzer. Terry Haugan, the Facility Security Officer and Manager of Security, Facilities and Media Center Operations at Advanced Weapons Headquarters, was the Grievant’s direct supervisor at all times. On Tuesday, January 10, 2006, Haugan learned that production under the Paladin Contract was coming to an end resulting in a series of CBA-mandated bumps that resulted in the Grievant’s seniority taking him to the Stockroom with the incumbent in the stockroom, Deb Greenstone, moving into Shipping and Receiving.

Haugan called a meeting on the morning of Wednesday, January 11, 2006, with the personnel affected by the Stockroom change including Human Resources Generalist Ruth Culshaw, bargaining unit member Greenstone, Union Steward Mike Brinwall. Haugan explained at this meeting that she wanted Greenstone to be in Shipping and Receiving by the following Monday, meaning that the Grievant had three full days to be trained on the Stockroom functions. Haugan testified that she specifically ordered Grievant on January 11, 2006 to accept training from Greenstone starting right away. This was the first direct order that Haugan gave the Grievant, and he acknowledged this fact at the hearing.

Haugan instructed Greenstone and the Grievant to accompany her to the Stockroom so she could review with them the specific job functions for which she wanted the Grievant to receive training. She recited the job responsibilities and told the Grievant to take notes while Greenstone taught him regarding the following specific job responsibilities: cycle count inventory accuracy; Cincom stockroom designations; stocking; retrieval; kitting process; monthly inventory; GANS; ESD checklist; and tally sheets. She reminded the Grievant that the training needed to move forward expeditiously because she wanted bargaining unit member Greenstone to be in Shipping and Receiving by the following Monday. After she reviewed the particular aspects of the Stockroom job, Haugen specifically told Grievant that over the next three days, he should focus his efforts on receiving training from Greenstone. This was the second direct order that she gave the Grievant and he acknowledged this fact at the hearing as well.

Notwithstanding Haugan's direct orders to him on the morning of January 11, 2006, the Grievant refused to be trained by Greenstone beginning that afternoon as related by the testimony of Greenstone as well as ATK's other witnesses. According to Greenstone, the Grievant behaved as follows:

- He refused to sit down at the computer
- He refused to fill out the inventory sheet
- After being told not to turn off the computer, he defiantly shut it off
- He refused to take any notes
- He refused to use the scale to weigh bags of tiny parts and, instead, counted the tiny parts manually after being told that doing so was not proper procedure
- When asked why he was refusing to be trained, he screamed, in anger at Greenstone

Greenstone brought this behavior to the attention of Culshaw in Human Resources on Thursday morning, January 12, 2006. Culshaw met with Haugan and Patti Soule, Director of Human Resources to discuss the fact that the Grievant was already on a 4th Degree Demerit meaning that further discipline would result in his discharge. Even though the Company would have been within its right to discharge the Grievant upon his first act of insubordination the Company wanted to work with the Grievant to attempt to avoid discharge. Consequently, on the morning of January 12, 2006, Haugan, Soule and Culshaw agreed that (1) Culshaw would approach Union Steward Brinwall to request that he encourage Grievant to stop being insubordinate; and (2) Culshaw and Haugan would encourage Greenstone to try a second time to train the Grievant.

Culshaw asked Greenstone on Thursday, January 12, 2006 to try again with the Grievant. Greenstone agreed and she returned to the stockroom. After speaking with Culshaw, Brinwall agreed to encourage the Grievant to accept the training as Culshaw testified. Brinwall reported back to her that the Grievant refused to listen to him. Furthermore, shortly thereafter Greenstone informed Culshaw that she had offered to work with the Grievant on training again but he refused to speak with her and just glared silently at her instead.

Rather than disciplining the Grievant at this point, the Company gave the Grievant yet another chance. Culshaw called a meeting with the Grievant and Union Steward Brinwall on January 12, 2006 and told the Grievant that if he did not stop ignoring the order and accept training from Greenstone, he would be discharged because he was already on a 4th Degree Demerit. After Culshaw told the Grievant that he would be fired if he did not follow orders, Union Steward Brinwall advanced the Grievant that Culshaw was right and that if he did not start listening to orders and accept training he was putting his job at risk.

The Grievant made no effort to challenge the fact he had been repeatedly insubordinate. Instead, he said he was not going to argue the facts and boasted that "I plan to make mistakes" in the new position rather than accept training. Culshaw told the Grievant he had just two more days to learn the job and that further refusal to be trained would be treated as insubordination resulting in termination. Grievant's reply was, "Let the ball roll." Rather than accept the Grievant's challenge to "let the ball roll" by discharging him, Culshaw ordered him to go back to the Stockroom and accept training. This was the third direct order to the Grievant.

Culshaw then accompanied the Grievant to the Stockroom and attempted to convince him to take notes and start learning the procedures. She even gave him a notepad and encouraged him to follow the format she started for him while Greenstone described an inventory procedure. Rather than pay attention, the Grievant resumed his mockery of the inventory process by slowly counting the tiny parts that are to be weighed on a scale – not counted by hand. Culshaw then told the Grievant for the second time (the fourth direct order overall) that he should immediately stop ignoring Greenstone and start accepting training or risk being fired since he was a 4th Degree Demerit already. He just shrugged his shoulders signaling that he did not care whether he was discharged.

After the Grievant's "let the ball roll" remark and his refusal to follow Culshaw's orders the afternoon of January 12, 2006, Culshaw regrouped with Soule and Haugan that evening. They decided that Haugan would meet one last time with the Grievant and Greenstone on Friday morning, January 13, 2006 in the presence of Union Steward Brinwall with the purpose of getting a commitment to accept training.

Haugan began the meeting early that Friday morning with the Grievant, Greenstone and Brinwall. She asked the Grievant to produce copies of the training notes he had been ordered to take. In response, he pulled out a scrap of paper devoid of a single procedure, but upon which he had written derogatory remarks about Greenstone. Haugan told him his behavior was unacceptable and that he was continuing to be insubordinate. Haugan then stated that this was the last chance to commit to learn and be trained. She asked both Greenstone and the Grievant whether they will go back to work right now. Greenstone said yes and returned to the

Stockroom; the Grievant refused to return to work. After he refused Haugan's direct order to return to work Brinwall also urged him to go back to work. Grievant dismissed Brinwall as well stating "what's the use?" Haugan ended the meeting by suspending the Grievant for two days with pay while the disciplinary decision was to be reviewed.

Haugan conveyed to Soule the result of the January 13th morning meeting in which the Grievant unequivocally refused to return to work. That weekend Soule and Haugan reviewed the Grievant's disciplinary history. Given the fact he was already on a 4th Degree Demerit and the fact he had been repeatedly warned the prior week that his insubordination was putting his job at risk, the Company was forced to discharge him. Accordingly, the final 4th Degree Demerit and termination letter were delivered to the Union and to the Grievant the following Tuesday.

RELEVANT CONTRACT PROVISIONS

Collective Bargaining Agreement

Article 9

D. Discharge. The Company shall have the exclusive right to discipline, suspend, or discharge employees for just cause.

Article XVI

Section 2

Step 3 (of the grievance process). The decision of the arbitrator shall be final and binding upon the Company and the Union and the employee...The arbitrator may only interpret the Agreement and apply it to the particular case presented, as specified in the written grievance. The arbitrator shall have no power to add to or subtract from or modify any of the terms of this Agreement or any agreement made supplementary hereto.

Article XXI

Section 4

Work Rules. The Company shall establish work rules from time to time and deliver them in written form to the union and represented employees. The Company shall meet and discuss changes to the work rules to ensure clear understanding by employees.

PLANT RULES (aka "Blue Book")

Some cases of unacceptable behavior, including those noted, can result in immediate corrective action up to and including discharge without intervening warning steps. Company Exhibit 2, p. 13

Intolerable exceptions from conduct commonly expected of employees, including conduct such as...(2) deliberate promotion of discord or unrest...(8) refusal to perform work as directed or other willful neglect of duty...[and] (9) willful disobedience of instructions or directions warrant a 4th degree demerit with up to 20 days' disciplinary time off or discharge. Company Exhibit 2, p. 18.

Demerits will be cumulative by degrees within the prescribed time limits except where the total degrees exceed 4, in which case the penalty prescribed will be for a 4th degree demerit. Company Exhibit 2, p. 19

POSITION OF THE COMPANY

This case presents a two part analysis: first, whether the Grievant engaged in the alleged misconduct, and second, whether the discipline imposed is appropriate under the circumstances. In assessing the latter, arbitrators typically consider the following “just cause” yardsticks: (1) whether the rules at issue are reasonable; (2) whether Grievant had notice of the rules and opportunity to correct his behavior; (3) whether there was an investigation; (4) whether the investigation was fair; (5) whether there was more than sufficient proof of misconduct; (6) whether similarly situated employees have received similar discipline; and (7) whether, given Grievant’s disciplinary record, the discipline was fair. Enterprise Wire Co., 46 LA 359 (1966).

In cases involving intentional misconduct such as “persistent refusal to obey a legitimate order,” it is axiomatic that “summary discharge without the necessity of prior warnings or attempts at corrective discipline” is justified. This is the settled rule even if the particular grievant may have had long seniority and a clean record. Finally, in a standard discharge grievance such as the instant case, the Company’s burden of proof is a “preponderance of the evidence” standard.

Not only does ATK satisfy its burden of proof by the applicable preponderance standard, but it would also satisfy its burden if one were under a clear and convincing standard because the Grievant made no effort to challenge Haugan’s detailed testimony about the rationale for the discharge decision in face of his repeated acts of insubordination. Indeed, the Grievant himself acknowledged Haugan’s solid credibility when asked about it on cross examination. Thus, as explained below, each of the seven Enterprise Wire factors points in favor of the Company in this case.

The first factor in a discharge case is whether the rule violated was reasonable. The three fundamental rules that the Grievant repeatedly violated were the prohibitions against: (1) “refusal to perform work as directed or other willful neglect of duty,” (2) “willful disobedience of instructions or directions,” and (3) “deliberate promotion of discord or unrest.” The Union did not challenge the reasonableness of these rules as there is no question that they are rudimentary expectations of any employee.

The second factor in a discharge case is whether the grievant had notice of the rules and an opportunity to correct his behavior. There is no doubt that the Grievant in the present case knew about the long settled Blue Book rules he chose to repeatedly violate. Moreover, he was given multiple chances to voluntarily correct the problem before he was ultimately discharged. If it was really true that either Greenstone or “the Union was out to get [him]” as he posited on cross examination, then the Grievant most certainly would have sought out Culshaw in Human Resources or Haugan about whatever concerns he had. The fact of the matter is that he had no

legitimate concerns about the training he was to receive from Greenstone – it was simply a matter of the Grievant deciding to openly defy the Company.

After the Company learned about his insubordinate behavior on January 11, 2006, he was repeatedly warned by Culshaw and by his own Union steward that his conduct was unacceptable and would result in discharge if he did not immediately change. Well before his final refusal to return to his work area and be trained on January 13, 2006, he was told that his continued insubordination was placing his job in jeopardy since he was already on a 4th Degree Demerit. By defiantly stating to Culshaw, “Let the ball roll,” he obviously did not care about the ramifications.

The third and fourth factors in a discharge case are whether there was an investigation and, if so, whether the investigation was fair. These factors necessarily point in the Company’s favor for two reasons. First, the Grievant acknowledged that Haugan’s testimony was credible, and Haugan (as well as Doule and Culshaw) testified at length about the thorough steps taken by the Company – with Union Steward Brinwall involved all along – to understand why the Grievant was repeatedly choosing to ignore orders and defy the Company to fire him. Second, when Haugan asked the Grievant to produce notes of the training procedures she had ordered him to record, he admittedly pulled out a scrap of paper upon which he had recorded derogatory statements about Greenstone but not a single procedure.

The fifth factor in a discharge case is whether there was sufficient proof of misconduct. This factor is easily resolved in the Company’s favor for four separate reasons. First, the Grievant admitted on cross examination that on January 12, 2006, he told Culshaw and Union Steward Brinwall that he did not challenge the facts detailing his insubordination to that point. Second, Union Steward Brinwall told Culshaw that the Grievant had refused to listen to him too, when Brinwall asked him to cease his insubordination. Third, it is undisputed that Haugan ordered the Grievant to return to his work station and accept training on the morning of January 13, 2006, and the Grievant refused. Fourth and finally, in none of the post-discharge meetings with the Union did anyone suggest that the Grievant’s conduct was anything other than a series of insubordinate acts.

The sixth factor in a discharge case is whether similarly situated employees have received similar discipline. The record is undisputed that no ATK employee has ever been permitted to engage in a pattern of insubordination such as that exhibited by the Grievant. Moreover, as Haugan, Culshaw and Soule all testified, ATK’s progressive discipline policy is consistently followed such that employees who have two 4th Degree Demerits in a twelve month period are discharged.

The seventh factor in a discharge case is whether the discipline was fair in light of the Grievant’s disciplinary record. Here, it is undisputed that the Grievant was at the final step of the progressive discipline process as of January 2006 in light of the 4th Degree Demerit issued in August 2005. Moreover, the repeated warnings given to the Grievant in January 2006 by Culshaw, Haugan and his own union steward about the fact he would be discharged if he did not correct his behavior accentuate the fact that the ultimate discharge was fair.

Recognizing that the facts regarding the Grievant's repeated acts of insubordination are not legitimately in dispute, the Union argued in its opening statement that the Arbitrator should analyze this case not as a discharge case, but as a bumping and seniority case. That argument is a non-starter because it is necessarily based on the premise that when one's seniority permits him to bump into a new department, his seniority also becomes a license to repeatedly refuse to allow direct orders from management. Neither the facts nor the law supports such an argument. The fundamental labor law principle is the "obey now, grieve later" rule that requires employees to follow all management orders other than those which create safety risks or are illegal. The Grievant testified that his perception of the situation was that it was one in which "the Union was out to get me." Notwithstanding this allegation, the Grievant offered no actual evidence to suggest that the Union acted inappropriately or, that there was anything more the Union could have done to change the Grievant's conscious decision to repeatedly refuse direct orders from multiple Company agents with full knowledge of the consequences.

ATK's witnesses credibly testified as to why the Company had no realistic choice but to discharge the Grievant after repeated warnings to the Grievant that his insubordinate behavior was putting his job in jeopardy. Significantly, the Grievant himself did not dispute the facts that establish his pattern of blatant and repeated insubordination. That set of facts includes the five different instances in which the Grievant ignored direct orders from the Company from January 11 through January 13, 2006. The Grievant was repeatedly warned by ATK managers and even his own Union steward that he was risking discharge by brazenly defying the Company. With full knowledge of the ramifications, the Grievant refused to return to work or accept training from the incumbent in the Stockroom.

POSITION OF THE UNION

In its opening statement the Company omitted some key facts. The Company did not provide written work procedures or a training guide for the Grievant; neither did ATK supervisor even observe Greenstone training him. Tension existed between the Grievant and Greenstone, because of the Grievant's eligibility for the job Greenstone held. Consequently, he did not receive adequate training to replace her. On January 12, 2006, after only one training shift with the Grievant, Greenstone sent an early morning e-mail, with no factual support, to Company supervisors, including Culshaw, claiming that Grievant was not competent to perform the stockroom job. That same morning, Greenstone went to Culshaw's office, reiterating her evaluation of Grievant's abilities. Culshaw sent Union Steward Mike Brinwall to the stockroom to mediate the dispute between Greenstone and Grievant. Brinwall later reported to Culshaw that he was unsuccessful. Early in the afternoon of January 12, 2006, Culshaw met with Grievant and Brinwall. Culshaw told Grievant that he was to take instruction from Greenstone. She reminded him that he was on a 4th Degree Demerit, and that if he doesn't learn the job, he would be fired. Culshaw then sent Grievant back into the stockroom with Greenstone.

On the morning of January 13, 2006, Greenstone sent another e-mail, denouncing Grievant to Company supervisors. Following this e-mail, Greenstone complained to Supervisor Haugan about Grievant. Haugan convened a meeting in her office with Greenstone, Grievant, and Brinwall. Haugan gave Grievant a last chance to learn the Stock Attendant's job. When he

was asked to return to the stockroom with Greenstone for the remaining six hours of his shift, the Grievant stated "What's the use, nothing is going to happen."

Haugan interpreted this statement as Grievant's refusal to learn the job, and immediately suspended him for two days, with pay. Grievant was told to return to work on Tuesday, January 17, 2006. On January 16, 2006, the Company terminated him for "deliberate promotion of discord or unrest, refusal to perform work as directed or other willful neglect of duty, and willful disobedience of instructions or directions." This termination was based solely on Grievant's response to Haugan's directive to go back into the stockroom and be trained by Greenstone.

The Employer imposed on the Grievant the most extreme form of discipline available. This discipline is particularly harsh in the case of the Grievant, a 67 year old worker and 47 year employee, with minimal prospects to find new employment. In discharge cases, therefore, a significant quantum of proof is required to show not only that the Grievant did the act alleged, but also that the act justifies discharge. An employer seeking to discharge an employee for misconduct assumes the burden of proof in two areas: (1) whether the employee committed a dischargeable offense, and (2) whether the act, if proven, justifies termination.

In the present case the Grievant did not commit a disciplinary offense. At worst, he failed to qualify for the Stock Attendant position and should have been allowed to re-bid and bump to another position for which he was qualified. Just cause did not exist for any discipline, much less discharge.

Although just cause has no universally accepted definition among arbitrators, arbitrators often determine the presence of just cause by applying the famous "Seven Tests." First articulated by Arbitrator Carroll R. Daugherty in 1966, the Seven Tests of just cause have been consistently used by arbitrators for decades, and are understood to be: (1) notice; (2) reasonable rule or order; (3) investigation, (4) fair investigation; (5) proof; (6) equal treatment; and (7) penalty. If any of these tests are not satisfied, then there is not just cause for the discipline.

Rather than fashion an effective training program so Grievant could assume the Stock Attendant job to which he was contractually entitled, the Employer assigned an employee, incumbent Stock Attendant Greenstone, who had a vested interest in his failing, so that she would retain the Stock Attendant job for herself. The Employer then acted out of frustration when its plan for job transitions was falling behind schedule, following the completion of the Paladin project. Such a reactionary imposition of discipline is inconsistent with just cause. Moreover, when the particularized facts of this case are fully examined, it is apparent that no discipline was appropriate.

Reasonable rule or order. The Employer's ill-conceived training program, involving gas it did the use of Greenstone as a trainer, who had a conflict of interest over Grievant's bid and bump of her and a vested interest in his failure, was compounded by ATK's unreasonable order that Grievant return to the stockroom and receive training from Greenstone. From the outset, the Company should have recognized that there were conflicting interests between Grievant and Greenstone. After only one day of the minimal three day training period, Greenstone accused Grievant of being incompetent for the Stock Attendant job and informed the Company that she

“cannot do any more.” In spite of this early declaration from Greenstone that she was unwilling to provide adequate training for Grievant, the Company ignored the untenable pairing and reputedly sent Grievant back to face Greenstone. For the Company to then tell the Grievant to “go in there and get trained” was unreasonable, given the evidence that adequate training was, under the circumstances, unavailable.

Not only was the order unreasonable, obeying it was impossible. Grievant had no power to ensure that he be properly trained. Greenstone kept leaving to complain about him, and then others would come into the stockroom to accuse him of not learning the job. Grievant stated that Culshaw backed him up against the stockroom wall and pointed her finger at him, threatening: “Learn the job or you’re fired.” Culshaw told him that he was too old to be working. Considering all these circumstances, the order to Grievant was not reasonable and his subsequent discharge was without just cause.

Proof. The Company terminated Grievant, alleging, “deliberate promotion of discord or unrest, refusal to perform work as directed or other willful neglect of duty, and willful disobedience of instructions and directions,” with respect to a request made of him at the morning meeting with Haugan on January 13, 2007. At the arbitration hearing, Haugan admitted that she was under a tight schedule to complete the personnel transfers and felt frustration over the length of time to train Grievant to be a Stock Attendant. She testified that her intention at this meeting was to “take control of the situation,” and that “she would be the one asking the questions.” Haugan said she gave Grievant one last chance to return to the stockroom with Greenstone and receive training. Grievant was nervous and agitated. Grievant asked her, “What’s the use, nothing is going to happen?” This was a legitimate expression of his opinion, not a refusal; nevertheless, Haugan treated Grievant’s opinion as refusing to be trained, immediately suspended him and sent him home, and ultimately discharged him, an extreme overreaction.

Grievant’s response was not a refusal to follow an order, but rather an accurate assessment of whether his continued working with Greenstone in the stockroom would result in the training he needed. His rhetorical question indicated the need for an alternative to being trained by Greenstone, but the Company was oblivious of the need to remedy this unworkable pairing. Grievant’s impulsive words did not constitute insubordination, anymore than Haugan’s overreaction proves that he deliberately promoted discord or unrest.

The Company has failed to prove an act by Grievant that warrants any discipline; indeed, ATK failed in its duty to observe his seniority rights. ATK failed to provide a verifiable training method and failed to secure a fair and neutral trainer. This case thus presents the spectacle of a junior worker, who Grievant is bumping to a much more difficult job that requires a more rigorous training schedule, being placed in control of his training.

Penalty. ATK’s demerit system is no substitute for just cause. ATK’s demerit policy attempts to quantify the just cause requirement of Article IXD of the CBA by assigning a numerical level of severity to alleged offenses, without accommodating the CBA’s just cause requirement. Further, because the policy was unilaterally imposed by ATK, it must be strictly

construed against the Employer. At a minimum, the Employer failed to prove that the policy under which it fired Grievant was both reasonable and reasonably applied.

The Employer makes no claim that its quantitative disciplinary scheme was ever negotiated with or agreed upon by the Union. If the Arbitrator finds that the Employer met the first burden – that Grievant committed an offense – then the issue becomes whether the punishment assessed by the Employer should be upheld or modified. This Arbitrator has modified penalties in past arbitrations. The fact that Grievant had accumulated demerits under the Policy is a factor to consider in deciding whether to impose discipline, but it must only begin, not end, the inquiry.

The Employer's strict application of the demerit policy does not comport with the just cause standard. At the hearing, Haugan testified that it was her understanding that because the Grievant had a previous 4th Degree Demerit, another 4th Degree Demerit meant automatic discharge. She stated that this was the next required step in the disciplinary process, and that she was aware of no other disciplinary step. However, the actual language of ATK's Blue Book states: "Demerits will be cumulative by degrees within the prescribed time limits except where the total degrees exceed 4, in which case the penalty prescribed will be for a 4th Degree Demerit." In this case, because Grievant had a previous 4th Degree Demerit, any subsequent discipline would be the 4th degree level. The corrective action for a 4th Degree Demerit is: up to 20 days' disciplinary time off or discharge. Thus, by its own terms, the Company's policy does not mandate discharge; indeed, it expressly provides for a lesser punishment. The fact that the Company assumed that termination was mandatory is compelling evidence that a just cause analysis was not used in determining Hart's punishment.

Mitigating circumstances of Grievant's previous demerits further negate just cause to terminate Grievant. The Company issued Grievant a 2nd degree demerit on March 29, 2005, for an inadvertent mislabeling of paperwork while he was working in Shipping and Receiving. Grievant had correctly and properly loaded the correct, non-explosive materials onto the proper truck. Due to the mix up in paperwork, the ATK driver was later stopped by the highway patrol. After a check, it was confirmed that the proper non-explosive materials had been loaded. The Employer mischaracterized it as a "potential Haz/Mat explosives incident that could have caused the loss of life and/or property and resulted in significant D.O.T. fines to ATK." Not so; undeniably, Grievant had properly followed Haz/Mat loading protocol, placing the correct materials on the correct truck. On August 2, 2005, Grievant was issued a 4th Degree Demerit for "Failure to ensure that confidential material was shipped via an approved method," for an incident which occurred on Tuesday, June 28. Grievant was working as Team Leder in the Shipping Department. At approximately 3 p.m., Engineering Technician Roger Miller brought in a pre-wrapped package. He told Grievant that the package was confidential and to mail it. Miller further stated that it "wasn't hot and to send it regular mail." Coworker Paul Slettehaugh, who was present in the shipping room but did not hear this exchange, handled the actual shipping of the package. Slettehaugh asked Miller if the package needed to go registered or certified mail. Miller replied, "No, no hurry. Send it regular mail." In accordance with these instructions, it was sent via regular U.S. Mail. Slettehaugh testified that the Company trained him not to ask if something was confidential, or obvious security reasons, but only to ask what method of delivery was required. ATK employees working with confidential materials decide which delivery

method is appropriate. Miller insisted on regular mail. Both Grievant and Slettehaugh were later given demerits for failure to ship confidential material by approved methods.

ATK's investigation showed that this was an isolated incident and not a deliberate disregard of security requirements or of gross negligence. ATK official B.L. Clauson cited Grievant's inexperience in working with confidential shipments and the need for further training. In spite of this finding, "Haugan issued Grievant a 4th Degree Demerit. Grievant had attempted to protest these demerits but then Union Steward Greenstone failed to file a grievance. Because of Greenstone's failure to act, the grievances were untimely. The Company's stubborn adherence to the practice of "stacking" demerits, which then results in discharge, does not meet the requirement that termination be for just cause.

Grievant has had over 47 years of tenure; lengthy service to the Employer should operate in Grievant's favor when a discharge is reviewed through arbitration. Years of service to any employer are deposits in a reservoir of good will from which an employee should be allowed to draw in times of need. A single act, especially under the circumstances presented in this case, is insufficient grounds to ignore the lengthy tenure, loyalty, and good work record of the Grievant.

Because the Grievant's actions do not establish just cause for termination, Grievant must be fully reinstated. Alternatively, because the conduct was not sufficiently serious under the circumstances to justify discharge, a suitable modification of the penalty should be ordered.

DISCUSSION AND OPINION

Both parties employ the oft-quoted Seven Tests of Just Cause analysis in their competing arguments. It should be pointed out at the beginning of this review that most arbitrators agree that this analytical framework should be used as merely a set of useful guidelines, rather than as a rigid formula for resolving the often complex interplay of particular facts in disciplinary cases.

Certainly, few arbitrators require perfect compliance with each and every step but, rather, substantial compliance usually suffices. Furthermore, the weight to be given to the various tests necessarily varies with the special circumstances of the particular case.

In the present matter, the test of reasonable rule or order was mooted by the basic rule of workplace common law mandating that when faced with an undesirably even odorous work directive, an employee must "obey now and grieve later." This fundamental, common sense tenet of any civilized workplace recognizes that no sustained productive enterprise can survive, much less prosper, if its members can willfully disobey the work orders of its supervisors.

In light of the charge for which the Grievant was terminated, it becomes necessary to state a well-established definition of the term insubordination. A commonly accepted definition relied on in arbitration states that such industrial misconduct consists of a willful refusal to promptly carry out a proper work directive issued by an authorized management representative.

The Grievant's position examined in full view of this definition of insubordination, misses the mark by a wide margin. Essentially, the Grievant argues that the order to "go in there and get trained" was not only unreasonable but virtually impossible – given the conflict of interest between him and Greenstone. The argument runs to the conclusion that Greenstone was at fault by her unwillingness to provide appropriate training given her desire to have the Grievant fail in order that she could retain her "vested interest" in the Stock Attendant position.

On its face, this line of argument would strain the credibility of the most gullible. No credibility resolution need be performed on such a fanciful proposition, however, in view of the meaning of the "obey now, grieve later" admonition. The definition of insubordination widely relied upon by arbitrators assumes only three exceptions to the condition of a "proper order." These exceptions cover the following circumstances where refusal to comply are acceptable:

- An order requiring risk of injury or loss of life, not inherent in the position. Even where risk of injury or death are inherent in the job such as firefighting, law enforcement or industries like mining and bridge construction, arbitrators carve specific exceptions against so-called "kamakaze" orders – those which are heedlessly reckless.

Obviously, no exception involving risk of injury or loss of life applies to this present case.

- A work directive requiring an illegal act. This exception to compliance refers to such situations as a trucker refusing to carry a seriously overweight load or to deliberately exceed posted speed limits. Another example would be a worker refusing to dump toxic waste into a protected waterway.

This type of exception obviously does not apply in this instance.

- A work directive requiring an unethical or immoral act. Examples would include an order to share the industrial secrets of a competitor for whom the employee formerly worked or one involving participation in a sexually compromising situation.

It should be entirely clear that none of the foregoing exceptions have any relevance to the Grievant's refusal to comply with repeated proper work directives to accept the training required for him to perform the tasks of the Stock Attendant position to which he had been assigned.

The declaration that he saw no use in grieving the directive to participate in the training because "The Union was out to get him" stands contradicted by the energetic and skilled representation provided him in the two arbitrations of his grievance. In the first of these, the Union prevailed through effective advocacy to establish his eligibility to be heard on the substance of his discharge grievance.

There can remain no serious doubt over the accessibility of the Grievant's Union to represent him if after complying he then had chosen to challenge the propriety of the work order that he refused to obey. This Arbitrator has decided a substantial number of cases brought by this Union and has seen an unswerving commitment on the part of its leadership to conscientiously represent its membership – even in grievances of dubious merit, as in the instant

matter. Even if the Grievant lacked confidence in his union steward, after 47 years of membership in Local 1145, he surely must have known that he could have readily appealed to its grievance chair and up to the executive board, if necessary, in order to secure fair representation. In no event, however, did the Grievant have the right to follow his passive-aggressive non-compliance with management's repeated work order.

All that remains of the Grievant's defense, therefore, consists of the assertion that the penalty was unduly harsh and that the Company should have honored his bid to another job rather than that of stock attendant. In regard to the severity of the penalty it must be recognized that insubordination, standing alone, is routinely accepted by arbitrators as sufficiently serious an offense to constitute just cause for discharge. It has been truly said that insubordination represents the misconduct which threatens the very fabric of the employee/employer relationship and ultimately the success of the entire enterprise.

The corollary argument that the Grievant's other 4th degree demerit was unwarranted has no eligibility to be belatedly heard in connection with the instant grievance. The record shows that the Grievant failed to timely grieve that earlier penalty and, accordingly, it cannot now be reviewed as somehow a departure from ATK's Blue Book commitment to progressive, corrective disciplinary policy.

In plain truth, the fact that the Grievant persisted in the incidents immediately causing his discharge to defy proper orders no less than five times amounts to gross insubordination. In connection with each of his refusals to obey, the Grievant was told by separate supervisors and even by his own union steward, that he was placing his job at risk. Therefore, he was clearly and forcefully apprised of the nature of his offense and of the ultimate results of his persisting in his misconduct. Under these unrelenting facts it must be found that, standing alone, his insubordination constitutes just cause for termination.

This review now turns to the Union's contractual claim that the Company should have simply deemed the Grievant unqualified for the Stock Attendant job and permitted him to re-bid and bump to some other job. This line of argument rests on the terms of Article XV, Section 2 which states:

When employees are downgraded they shall be downgraded within their job classification, on the basis of seniority, with the least senior employee being downgraded first. In the event there is no one to bump within the job family, they will displace the least senior person, on a non-protected job in the bargaining unit, provided he or she has the seniority and qualifications to do so and it does not result in an upgrade. This same process will apply if an employee is unable to perform their job duties, and is downgraded for inability. When a surplus occurs in an employee's job classification, the employee will bump first within their job classification, if there is no one to bump within their job classification, they will bump within their job family, provided he or she has the seniority to do so, and it does not result in an upgrade. If there is no one to bump within their job family, he or she will displace the least senior person, on a non-protected job in the bargaining unit, provided he or she has the seniority and qualifications to do so it does not result in an upgrade.

To credit the Union's reliance on the provisions of Article XV would be to invite abuse of the bid and bumping rights of employees who are downgraded. Those rights are meant to be applied to employees who are "unable to perform their job duties" and are consequently "downgraded for inability." Any reasonable interpretation of this language would assume that any such inability to meet the demands of a job would be manifested only after a good faith attempt to learn and apply the job knowledge skills needed to do the work.

It cannot be reasonably argued that the terms of Article XV would apply to someone whose inability to perform the job resulted from their adamant refusal to be trained in the requisite job knowledge and skills. If such an interpretation were adopted, any employee could virtually frustrate the will of management's right to assign work by a calculated strategy of insubordinate refusal to participate in mandatory training. This could not have been the mutually bargained for and agreed upon purpose of Article XV.

Finally, the Union argues that the penalty should be mitigated by the 47 years of tenure during which the Grievant completed several courses of study to upgrade his value to ATK and during which he received many awards and commendations for his job performance. Examination of the hearing record shows where a virtual parade of managers exhibited great patience and forbearance in attempting to save the Grievant from losing his job, he cannot claim that his long tenure shelters him from following proper work orders.

It cannot be concluded that the Grievant received such forbearance through his five defiant rejections of the training for reasons other than deference to his long tenure. Indeed, Haugen and Culshaw literally bent over backward to bring the Grievant into compliance with the training directives in order to keep him from being fired. The sparse and immutable facts show that he defied these orders even at the most elemental level including:

- Refusal to take notes
- Turning off the computer after being told to leave it on
- Refusal to fill out the uncomplicated list of procedures
- Manually counting small parts rather than using a scale as directed
- Refusing to even return to the room where the retraining was to be conducted

These refusals are merely symptomatic indicators of the underlying indifference the Grievant exhibited towards the best efforts of his supervisors to retain him in employment.

In regard to alternative penalties available to the Company, the Union points out that the Blue Book provides for a discretionary corrective action for a 4th Degree Demerit of "...up to 20 days disciplinary time off or discharge." From this fact the Union argues that Haugan and other Company personnel involved in the decision to terminate the Grievant's employment erred by assuming that discharge was mandatory for a 2nd 4th Degree Demerit.

The flaw in the Union's argument lies in the assumption that, notwithstanding the blatant and persistent nature of the Grievant's insubordination, a 20 day corrective suspension should have been considered an option by ATK management. The facts counsel otherwise. Indeed, the

Grievant received an abundance of corrective options over the period when he was unequivocally advised to reverse his defiant course of conduct and come into compliance with the reasonable orders to at least take notes on procedure, cease counting small parts by hand rather than using the prescribed scale, sit down at the computer, and similar small steps in the training process.

What stands out as truly remarkable in this record is the extraordinary forbearance of ATK management personnel in their patient efforts to encourage the Grievant to take the reasonable steps needed to save his own job. It now would be entirely unrealistic to suppose that a 20 day suspension would prove corrective where the Grievant had already demonstrated unrelenting defiance to proper work directives. This Arbitrator has no basis for substituting a lesser penalty in the face of the reasonable judgment arrived at by ATK after the exhaustion of unavailing efforts to avoid discharging the Grievant.

DECISION

On the basis of the foregoing findings and conclusions, the grievance should be, and is, hereby denied.

8/16/07
Date

John J. Flagler, Arbitrator