

IN THE MATTER OF THE ARBITRATION BETWEEN
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International Brotherhood of Teamsters, Local 792,
Union

and

Midwest Coca-Cola Bottling Company

Employer.

OPINION AND AWARD

Grievance of IBT, Local 792
(Le Discharge)

FMCS Case No. 06-53871

ARBITRATOR:

Janice K. Frankman,
Attorney at Law

DATE OF AWARD:

August 8, 2006

HEARING SITE:

Union Hall
3001 University Avenue, S.E.
Minneapolis MN 55414

HEARING DATE:

May 12, 2006

RECORD CLOSED:

June 12, 2006

REPRESENTING THE UNION:

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JURISDICTION

The hearing in this matter was held on May 12, 2006. 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. The parties submitted post-hearing briefs which were received on June 12, when the record closed and the matter was taken under advisement. By letter dated August 1, 2006, Counsel for the Union submitted an Award issued in a related case on July 27, 2006, which was received into the record by the Arbitrator on August 4, 2006, following an exchange of correspondence with counsel. *Midwest Coca-Cola Bottling Co. and IBT Local 792*, FMCS Case No. 06-53874 (Jay, 2006)

ISSUE

At the hearing, the parties agreed that the issue in this case is "Whether the Employer violated the parties' Collective Bargaining Agreement in terminating Mr. Le, and if so, what is the appropriate remedy?" They each submitted different statements of the issue in their closing briefs. The arbitrator believes an accurate statement of the issue is as follows:

Whether the Employer had just cause to discharge the Grievant from his position and, if not, what is the appropriate remedy?

BACKGROUND AND SUMMARY OF THE EVIDENCE

Loc ("Butch") Le ("Mr. Le" "Grievant") came to the United States from Viet Nam in 1975 at the age of 12. He became employed by Midwest Coca-Cola Bottling Company ("Company") on May 28, 1997. On January 10, 2006, he was suspended indefinitely, and on February 1, 2006, he was terminated from his position in the production at the Company plant in Eagan, Minnesota. The only earlier discipline Mr. Le had received was a written warning several years ago relative to an attendance issue.

Coca-Cola Bottling Company is 40% owner of Coca-Cola Enterprises, Inc. which produces and distributes all Coca-Cola products in North America and Europe. Midwest Coca-Cola Bottling Company has a diverse work force which includes a large number of employees of Latino origin and fewer of Asian or African origin. The bargaining unit averages 580 members, the number being higher in the summer months. There are approximately 400 non-union employees working at the Company plant. Warehouse employees are typically younger and less tenured. Bids are made for positions in production. During the busy summer months, some warehouse employees are brought up to work in the production department.

Reporting and Investigation of Incident

In late September, 2005, Ron Johnson, Union Business Agent received a report from Donnavan Lyons, a Plant employee, that he had been subject to racial slurs and that Cesar Jimenez and Butch Le had information concerning one of several incidents. Mr. Johnson reported his conversation with Mr. Lyons to Ben Crockett, Plant Employee Relations Manager. When Mr. Lyons followed up with Mr. Crockett, inquiring when the matter was going to be handled, Mr. Crockett said he needed the names of people involved. Mr. Lyons gave him several names. Only three of them agreed to provide Mr. Crockett with statements. They were Mr. Le, Mr. Jimenez and Jose Aguirre, Union Steward.

On November 15, 2005, Mr. Crockett, approached Mr. Le at his work station toward the end of the third shift to discuss an incident ("the incident") which occurred some time in late summer, 2005. Mr. Crockett and Mr. Le talked about the incident involving Cesar Jimenez and Mr. Le. Mr. Crockett told Mr. Le that he had done the right thing in responding to a racial slur made by Mr. Jimenez. He did not tell Mr. Le that he could be subject to discipline as a result of the incident. Mr. Le's written statement, provided at Mr. Crockett's request, was prepared in a few minutes following their conversation.

Mr. Crockett did not take a statement from Mr. Lyons. Mr. Aguirre provided a written statement about November 17, 2005, and he testified at this hearing. Mr. Jimenez did not testify at this hearing; his statement dated December 21, 2005, was received into evidence for the limited purpose of reflecting Mr. Crockett's investigation of the incident and not for the truth of the statement. Mr. Jimenez was terminated from his position on February 1, and his Grievance was heard on June 26, 2006.¹

Suspension and Termination

Mr. Le heard nothing further concerning the matter until January 10, 2006, when he was paged by his supervisor and directed to Mr. Crockett's office where he was told that he had been suspended. He reminded Mr. Crockett that he had commended him for opposing Mr. Jimenez' racist remarks which were offensive to Mr. Lyons. Mr. Crockett told him that he had gone about it in the wrong way and that there would be further investigation of the incident. In his suspension letter directed to the Union to Business Agent Ron Johnson's attention, Mr. Crockett wrote:

Please allow this to serve as notice of suspension of Mr. Butch Lee (sic), as of (1/10/06). This suspension is a result of Mr. Lee (sic) being involved in a physical altercation with another employee after that co-worker made

¹ An Award in Mr. Jimenez' case was issued by Arbitrator Sara Jay on July 27, 2006. Arbitrator Jay reinstated Mr. Jimenez to his position without back pay, and she directed him to provide written apologies to Mr. Le and Mr. Lyons "for his use of racial epithets and ethnic references and jokes." Id. at page 13

some derogatory racial comments around other employees in the lunch room. A full investigation of this situation is under way and Mr. Lee (sic) will be informed of the results in the near future. Joint Exhibit 6

Mr. Le contacted Ron Johnson following his suspension, and sometime later in January, Mr. Johnson invited him to attend a meeting in Mr. Crockett's office with Mr. Johnson and Mr. Jimenez. Mr. Johnson had suggested discipline to the Company of a 30 day suspension with a lifetime last chance agreement. He had advised Mr. Crockett that he had begun his own investigation of the incident and agreed that very few people were willing to discuss it. Mr. Crockett advised that investigation of the matter was ongoing.

On February 1, 2006, Mr. Crockett notified the Union that Mr. Le's employment had been terminated. In his notice of termination, Mr. Crockett repeated the statement he had made when Mr. Le was suspended which is quoted above, replacing the last sentence with the statement, "An investigation of the incident revealed that Mr. Lee's (sic) conduct was threatening and inconsistent with the work rules and company policies established by Midwest Coca Cola." Joint Exhibit 7. Mr. Johnson asked once again, after receiving the termination notice, whether the Company would reduce the termination to a 30 day suspension with a life time last chance agreement. Mr. Crockett said that they would consider his suggestion. This Grievance was filed on February 2, 2006.

Following his meetings with Mr. Le in January, 2006, Mr. Crockett had consulted with Michael Smith, Market Unit Human Resource Manager to whom he is a direct report with three other Employee Relations Managers covering five states. Mr. Smith had spoken about the matter with Jeff Laschen, General Manager of the Eagan Plant and Brian LaVelle, Director of Labor who together made the decision to terminate Mr. Le. The decision was based upon violation of work rules, specifically Group III, Rule 4.² Mr. Le's conduct was viewed as raising a workplace violence issue. In that regard, Mr. Smith testified:

We felt it was a workplace violence issue and that it needed to be enforced based on the fact that a gentleman, was, you know, assaulted or restrained in our facility. And we did not want to ignore the fact that this had happened. We wanted to make sure that we maintain a safe environment in our work force. And certainly what Mr. Le had done could not go unnoticed.

TR page 61

² Rules & Regulations for the Employees of Midwest Coca-Cola Bottling Company (revised 1996) include a Disciplinary Procedure which details Group 1, 2 and 3 Rules. The Procedure provides for enforcement of the three sets of rules in different ways. With regard to Group 3 Rules, it provides, "Violation of Group 3 rules will normally subject an employee to immediate termination." Group 3, Rule 4 provides that "(p)rovoking, fighting, or committing any act of violence against any person on Company time or property is prohibited." Joint Exhibit 2 at pages 5 and 8.

The Incident

Mr. Le and Mr. Jimenez had been friendly at work before the late summer, 2005 incident. Mr. Jimenez along with several other warehouse workers had been working in production during the high demand summer season. Mr. Jimenez is younger than Mr. Le, and they discussed many things. Mr. Jimenez called Mr. Le names such as “slant eyes” and directed slurs comparing Mr. Le, of Vietnamese origin, with people of Chinese origin who Mr. Jimenez said “all look alike”. Mr. Jimenez asked Mr. Le if his people eat dog. Mr. Le was offended by Mr. Jimenez’ comments and questions but ignored them although he warned Mr. Jimenez that talking like that to the wrong person could result in him getting hurt. Although he was able to overlook Mr. Jimenez’ comments to him personally, Mr. Le saw Mr. Jimenez change when he was a part of a group; he saw him as a “racist”.

On the day of the incident, Mr. Le and Mr. Jimenez and others were playing cribbage and joking at their third break on the third shift. Donnavan Lyons was sitting at a nearby table. As Mr. Le got up from the lunchroom table to leave, Mr. Jimenez asked him what the difference between Vietnamese and Chinese is. Mr. Le was weary of Mr. Jimenez’ comments and responded with a rhetorical question, “What is the difference between a Mexican and a Puerto Rican?” to which Mr. Jimenez responded, “A Puerto Rican is a nigger wannabe.” Mr. Le asked him what he said and Mr. Jimenez repeated his comment. Mr. Lyons, a Jamaican-American of African descent, heard Mr. Jimenez’ remark and Mr. Le’s response. Mr. Le saw Mr. Lyons’ angry expression in response to Mr. Jimenez’ remark. When Mr. Jimenez refused Mr. Le’s demand that he apologize to Mr. Lyons, and as Mr. Jimenez approached him, Mr. Le put his hands on Mr. Jimenez’ shoulders once again demanding that he apologize. When Mr. Jimenez said he would say whatever he wanted to say, Mr. Jimenez pushed him to a seated position on the table then down onto the attached bench. When Mr. Jimenez reached for a gold chain around Mr. Le’s neck, Mr. Le let go of him.

Union Steward Jose Aguirre witnessed the incident. Mr. Le did not recall Mr. Aguirre telling them to “cool it” or telling him to let go of Mr. Jimenez. Mr. Aguirre believed their conduct was inappropriate and had gone on long enough. He reported that Mr. Le did not attempt to hit Mr. Jimenez or slam him onto the table as suggested by Company counsel during his examination of Mr. Aguirre at hearing. He did not see Mr. Le using force to hold down Mr. Jimenez. The incident spanned about two minutes, and Mr. Le and Mr. Jimenez returned to their work stations together uneventfully. Mr. Aguirre and Mr. Lyons left the lunchroom together. Mr. Lyons told Mr. Aguirre that he wanted to report the matter to Mr. Crockett, and Mr. Aguirre supported him, agreeing that there was good reason to go to him.

Corporate Policies and Training

Coca Cola Enterprises publishes a Sexual Harassment/Anti-Harrassment Policy each year. Its January 2005 policy defines harassment and requires employees and

managers to report incidents and to take responsibility to eliminate harassment respectively as follows:

* * *

. Harassment is verbal or physical conduct that denigrates or shows hostility or aversion toward an individual because of his/her legally protected status, which can include race, color, religion, sex, sexual orientation, national origin, age, disability, marital status, and/or citizenship status

* * *

Coca Cola Enterprises requires employees to report incidents of discrimination or harassment whether they are the object or the observer of such conduct.

* * *

REPORTING PROCEDURES. All managers are required to take responsibility to eliminate conduct amounting to harassment and sexual harassment within Coca-Cola Enterprises. Furthermore, each employee is responsible to assist in maintaining a work environment that promotes a harassment-free workplace. (emphasis in original)

Joint Exhibit 3 at pages 1 and 2

An undated Derogatory Words and Jokes Policy directed to “All Coca-Cola Enterprises Inc. Employees” provides that “(i)t is unacceptable, under any circumstances at any time, to use racial, . . . ethnic-based, . . . or other ‘group’ identifying derogatory words or jokes in the workplace.” (emphasis in original) Joint Exhibit 4

The Company Rules and Regulations (revised 1996) include a Statement of Policy which addresses discipline:

Our policy in matters of discipline is always one of progressive or corrective discipline. This means that the appropriate disciplinary action in any case is the minimum amount required to correct the employee’s misconduct. Discipline shall neither be imposed in the spirit of punishment nor will it be punitive except:

1. Where an employee fails to respond to corrective discipline.
2. The misconduct is so offensive and serious in nature that it must be dealt with promptly and severely.

If an employee engages in conduct which is not specifically listed in these rules and regulations, the Company will apply the disciplinary measure corresponding to the rule and regulation which most closely approximates or describes the employee’s conduct.

Joint Exhibit 2 at page 3

In 2003 and 2004, the Company provided Inclusion Training for all employees following a \$190 million dollar racial discrimination settlement. The record does not include evidence or testimony with regard to training provided at the Eagan plant. The Company has held an occasional meeting where employees were encouraged to report issues.

Union/Management Concerns; Handling of Other Cases

Mr. Johnson discussed his concern with regard to racial harassment in the plant with Mr. Crockett in 2004 and 2005. He requested Union/Management meetings with employees to address the issues that were being raised with him. Mr. Crockett agreed to have meetings but advised that he wanted to reach an agreement with regard to a schedule of discipline before having them. Mr. Johnson could not agree to set discipline because the Union required that each case be considered individually. Mr. Johnson met with employees in December, 2005, to discuss the issues. He had posted a Memo dated November 3, 2004, directed to "All Local 792 Members employee at Coca-Cola" which addressed Racial Harassment and which advised that discrimination violates Union By-laws and the International Constitution and that members could be sanctioned for discriminating against one another.

The Company has disciplined several employees in recent years for use of abusive and inappropriate language, for making threats and racial comments and for improper touching of or pushing another employee. Discipline in the four cases raised and discussed at this hearing involved written warnings or suspension. One case involved a union steward who was removed from his position by the Union. He had used a racial epithet while threatening an employee. A Department Manager gave him a written warning.

On May 19, 2006, Arbitrator Stephan Bard issued his Award in a case involving the parties and a Grievant who had been terminated. *Midwest Coca-Cola Bottling Company and Teamsters Local No. 792*, FMCS Case No. 06-51438 (Bard, 2006) The Grievant had shouted an inappropriate and profane remark to a supervisor who expressed his lack of appreciation for the employee's "talking that way". The Grievant responded with a threat to "punch out" the supervisor. Arbitrator Bard found that "the words of the Grievant, along with his tone and volume of voice and demeanor, constituted a threat of physical violence against (the supervisor)." *Id.* at page 8. The Company had argued that the Grievant's conduct constituted harassment under Group 3, Rule 6 and was cause for termination. It had also cited violation of Group 2, Rule 7 which prohibits use of threatening language toward a superior. Arbitrator Bard concluded that the Grievant "did exactly what Group 2, Rule 7 prohibits". *Id.* at page 11. He reduced the discharge to a five day suspension denying the Grievant's request to be made whole for the nearly six months he had been out of work. The employee was an eight year employee with two minor disciplines.

POSITION OF THE EMPLOYER

The Employer argues that there is just cause for the Grievant's termination based upon his violation of Group 3, Rule 4 of the Company's Rules and Regulations. It argues that the Grievant improperly used self-help rather than the reporting mechanism provided by the Company to report racial harassment and incidents of discrimination. It asserts that the Company has zero tolerance for workplace violence and that Mr. Le's use of physical force violated its rules.

The Company argues that there is no basis or support for the Union's arguments with regard to violation of Mr. Le's Weingarten rights; to the timeliness of its decision to discipline the Grievant; to the allegation of disparate treatment; to application of progressive discipline; or with regard to the Company's responsibility for the incident.

With regard to Mr. Le's Weingarten rights, the Company argues that Mr. Le admitted he knew that Mr. Crockett wanted to discuss the incident with him when he approached him on November 15, 2005, and that it was Mr. Le's responsibility to request that a Union representative be present.

The Company asserts that it followed the letter of the parties' CBA in exacting discipline and further, the Union has shown no harm as a result of the time it took to investigate and discipline Mr. Le. It argues that it did not want to rush to judgment in disciplining Mr. Le and that it required time to review plant disciplinary history and to reach consensus among management.

The Company distinguishes the earlier cases of discipline raised by the Union at hearing and argues that Mr. Le has not been subject to disparate treatment. It asserts that this case is more severe than any of them and that none compares to this case "because none of (the Grievants) engaged in the type of conduct involving an angry, physical confrontation with a co-worker". Company Post-Hearing Brief at page 11. The Company submitted the recent case decided by Arbitrator Bard discussed above at page 7. It argues that this case is distinguishable from that case as well because there was no physical contact by the Grievant with the supervisor. It argues that progressive discipline is not required or appropriate in this case.

With regard to the Union's assertion that the Company must take some responsibility for the incident in this case because it has permitted a hostile work environment to exist, it points to its provision of inclusion training and policies which address harassment and discrimination. It acknowledges the code of silence which exists in the plant and the difficulty in addressing issues which arise when employees will not report each other to management. The Company points to meetings between Union and Management concerning the problems and the fact that all employees are duty-bound to report incidents of harassment and discrimination to management. It argues that both the Grievant and the Union Business Agent had failed to report incidents. Specifically, Mr. Le did not report Mr. Jimenez' offensive comments directed to him on several occasions or the fact that he viewed Mr. Jimenez as racist when he

was a part of a group. Mr. Le admitted that he did not want to get Mr. Jimenez in trouble.

The Company argues that it has a zero tolerance policy which requires it to discipline the Grievant for his behavior and that the nature of his conduct in this case supports his termination. It cites and quotes a treatise and cases where the topic of workplace violence has been addressed, emphasizing the importance of proper employer response. It argues that Mr. Le's conduct could be regarded as an early warning of further violence in the workplace and that if his termination is not upheld, the Company will have been denied enforcement of its zero tolerance policy, which will encourage employees to maintain a code of silence and to respond, instead, with self-help when a "breaking point" is reached.

POSITION OF THE UNION

The Union argues that this Grievance should be sustained and that Mr. Le should be made whole for any loss he has sustained as a result of his termination. It points to his tenure with the Company and the fact that his only discipline had been a letter warning with regard to attendance issues several years ago.

The Union argues that Mr. Le was improperly interviewed and requested to provide a written statement, preliminary to discipline, without benefit of Union representation; that the length of time the Company took to discipline Mr. Le suggests that it was not seriously concerned about his conduct and his continuing to be a part of the work force; that the Company's investigation of the matter was limited and therefore support for the discipline is likewise limited, principally to Mr. Le's statement made on November 15, 2005, when he did not know that he was subject to discipline and without Union representation; that earlier cases support a conclusion that Mr. Le has been treated differently from others and was disproportionately and severely disciplined compared to them; and that the conduct to which Mr. Le admitted does not constitute violence or fighting consistent with the Group 3, Rule 4, upon which the Company relies to support its discharge of him.

The Union argues that there is no evidence of use of force by Mr. Le or that he meant anything but to insist upon Mr. Jimenez' apology to Mr. Lyons for his racial comments. The Union argues that Mr. Le was supported by management in "standing up" for Mr. Lyons and responding to Mr. Jimenez racial slurs and that he had no notice that he could or would be terminated for his conduct. It points to "euphemistic" use of words by the Company such as "placing hands on" and "altercation" to support its argument that Mr. Le was fighting or engaging in violent conduct. The Union argues that the two minute incident did not result in any further adverse conduct by Mr. Le and there is no evidence that similar conduct can be expected from him in the future or that he will not have learned from this experience. In short, it argues that there is no evidence of intent or effect of violent conduct or fighting. It seeks an award which sustains this Grievance.

OPINION AND FINDINGS

It is appropriate to sustain this Grievance reinstating Mr. Le to his position and substituting as discipline a 30 day suspension without pay. Mr. Le was discharged more than six months ago. The Union Business Agent suggested this level of discipline when he learned that investigation of the incident was pending in November, 2005, and he repeated his suggestion several times before and after Mr. Le was discharged. He also suggested that Mr. Le be returned with a lifelong last chance agreement. The Arbitrator does not agree that a last chance agreement is necessary or appropriate. An Award of backpay without loss of seniority or benefits is appropriate.

The facts of this case and express provisions of Company policies and rules support this Award. It is bolstered by the manner in which the matter was handled by the Company and the Union's position with regard to discrimination and its effects on conduct in the workplace. Company policy calls for progressive and corrective discipline. Its rules do not mandate discipline of a specified nature. This record does not support a conclusion that Mr. Le provoked, fought or committed an act of violence against Mr. Jimenez. Moreover, there has been no showing that Mr. Le will not respond to corrective discipline or that his conduct on a late summer early morning in 2005, required prompt and severe discipline. In fact, he was not disciplined until mid-January, 2006.

Matters such as this require careful consideration on a case by case basis. Treatises which address the topic of fighting in the workplace and the broader topic of workplace violence reflect the detail considered by arbitrators who have heard these cases and the variety of remedies awarded depending upon the facts in a case. See, Brand, *Discipline and Discharge in Arbitration*, BNA Books (1998, Supp 2001) at pages 271-277. The circumstances in this case are critical to the outcome here. The reduced yet significant discipline which has been directed acknowledges the impropriety of an employee using a form of self-help to address another employee's inappropriate conduct. It also recognizes that under different circumstances, similar conduct may well justify termination. The Arbitrator has partially agreed with the Union's suggestion for discipline. A last chance agreement is not appropriate. While there is no expectation that Mr. Le will repeat his conduct, in the event another incident arises, he is entitled to have the facts carefully reviewed.

Many of the Union's arguments made on behalf of the Grievant have been persuasive, and are well-supported by the record. While Mr. Le was arguably provoked by racial comments directed toward him, he was at least equally provoked by the remark which affected Mr. Lyons and which prompted his response insisting that Mr. Jimenez apologize to Mr. Lyons. Mr. Le has not been charged with discrimination or harassment nor has he been charged with failure to report discrimination or harassment. Analysis of his case is distinct from that of Mr. Jimenez whose case was heard by Arbitrator Jay. It is noteworthy that she directed Mr. Jimenez to provide written apologies to both Mr. Le and Mr. Lyons. Mr. Le was disciplined for conducting himself in a violent manner. While provocation does not justify Mr. Le's conduct, the record

reflects that he escalated his response to Mr. Jimenez remark by putting his hands on his shoulders and pushing him when Mr. Jimenez stepped toward him saying that he would say whatever he wanted and refusing once again to apologize to Mr. Lyons. The brief duration of the encounter and the fact that the two men returned uneventfully to their work stations together further supports a conclusion that what occurred was not a fight and did not reflect violence in the workplace. The “altercation” as the Company referred to the incident in its disciplinary Notices did not by purpose or effect constitute violent conduct or a fight. The Notices did not refer to a Group 3, Rule 4 violation, and there is no evidence that the words “violence” or “fighting” were ever used to describe Mr. Le’s conduct before this hearing.

The foregoing recitation of the facts in this case underscores the unusual handling of it by the Company. Investigation of the incident which was placed to have occurred sometime in late summer, 2005, began with Mr. Crockett’s conversation with Mr. Le on November 15, 2005. Nearly two months passed before Mr. Le was suspended indefinitely pending “a full investigation” which resulted in his termination three weeks later on February 1, 2006. The Union Business Agent acknowledged the difficulty in producing witnesses to events which occur in the plant, partially explaining the delay in commencing the investigation. The delay in disciplining Mr. Le, however, reflects the Company’s perspective on the matter. It cannot properly argue in support of termination that his conduct was so offensive and serious that immediate severe discipline was required. In fact, Mr. Le received initial assurance from Mr. Crockett for his actions. The Company has relied very heavily upon Mr. Le’s statement provided after he and Mr. Crockett spoke on November 15. Mr. Le could not reasonably have concluded that he could or would be disciplined for his conduct and, therefore, that he should request Union representation. His hastily prepared written statement reflects, as the Union suggests, an uninformed, unwise and ultimately inaccurate depiction of the incident. His use of the words “pinned down” and guesstimate of more than five minutes for the duration of the incident are examples of nearly exclusive evidence which was used against him.

There has been an assertion that Mr. Le was subject to disparate treatment. This record includes evidence of four earlier disciplinary matters, some resolved outside of the grievance process and none of which went to hearing. It also includes arbitration awards issued by Arbitrators Bard and Jay, both issued in 2006. All of the cases involve discipline based on conduct and all of them were ultimately resolved with lesser discipline than that exacted here. The facts in the various cases are distinguishable and do not permit the necessary close comparison to properly conclude that this case represents disparate treatment of Mr. Le.

The evidence in this case demonstrates growing concern by both Management and the Union with regard to acts of discrimination and the effects of it including the use of fighting words, threats and inappropriate touching. There is no question that the Company has genuine concern and has taken steps to address the presence of discrimination in all of its forms in the workplace. Both the Union and the Company have adopted policies and have provided training and meetings to address the issues.

At the least, a review of the recent cases confirms that these matters are being pursued with greater rigor. Both Arbitrators Bard and Jay closely and carefully reviewed the facts of the cases before them. In both cases, the Grievants had been terminated and were reinstated to their positions. Their Awards reflect the unique facts in each case.

Mr. Le's tenure with the Company and nearly perfect disciplinary record have been considered. A 30 day suspension without pay is severe, and it recognizes the inappropriateness of his conduct. He has been out of work for more than six months awaiting this decision. It is unnecessary to punish him further through loss of pay or benefits. The Union's unwillingness to adopt a schedule of discipline for misconduct is as understandable on the whole as it is in this case. Each incident is unique and requires case by case decision-making which Company policy supports.

AWARD

The Grievance is sustained. The Employer has failed to demonstrate that there was just cause to discharge Mr. Le from his position. It has demonstrated just cause for reduced discipline which shall be suspension without pay for 30 days. Mr. Le shall be reinstated to his position and made whole for any loss which was sustained as a result of being suspended on January 10, followed by discharge on February 1, 2006, except with regard to pay for the 30 day period of suspension. The Arbitrator shall retain jurisdiction in this case for a period of 60 days from the date of this Award for the limited purpose of providing assistance, where needed, in the implementation of it.

Dated: August 8, 2006

Janice K. Frankman, Attorney at Law
Arbitrator