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In Re the Arbitration between:

**FMCS File No. 07-59438-3**

Walter G. Anderson, Inc.,

Employer,

and

**GRIEVANCE ARBITRATION  
OPINION AND AWARD**

United Steelworkers, Local 1259,

Union.

Grievance of Eugene D. Peterson.

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Pursuant to Article VVIII of the collective bargaining agreement effective June 2005 through June 2009, the parties brought the above captioned matter to arbitration.

James A. Lundberg was selected as the neutral arbitrator from a Federal Mediation and Conciliation Service list of Arbitrators.

The parties stipulated that all steps of the grievance procedure were properly complied with and the grievance is properly before the Arbitrator for a final and binding decision.

The grievance was filed on April 19, 2007.

A hearing was conducted on October 26, 2007.

Briefs were filed on November 21, 2007.

**APPEARANCES  
FOR THE EMPLOYER**

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**FOR THE UNION**

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**ISSUE:**

*Whether the Employer had just cause to discharge the grievant, Eugene D. Peterson, on April 16, 2007? If not, what is the proper remedy?*

**FACTUAL BACKGROUND:**

Walter G. Anderson, Inc. produces high quality printed and folded packaging cartons for a variety of different clients. For example, printed boxes used to package spaghetti are among the products created by Walter G. Anderson. In addition to requiring printing and folding, spaghetti boxes need to be cut and clear windows must be glued into the packages. The market served by Walter G. Anderson, Inc. focuses heavily on the quality of packaging produced by the company. Hence, rather than competing by being the lowest bid producer, Walter G. Anderson, Inc. competes by promising the highest quality products.

The grievant was a long term employee at Walter G. Anderson, Corp. the assets of which were purchased by Walter G. Anderson, Inc. in 2006. The grievant along with most of the employees from “Corp.” was hired by Walter G. Anderson, Inc. Grievant’s agreed upon seniority date at Walter G. Anderson, Inc., hereinafter, the Employer is set by a Letter of Understanding at October 4, 2005.

Mr. Peterson worked for the Employer as a Gluer Operator or Setup Operator. Grievant’s job required that he prepare a machine to produce product boxes according to the customer’s specifications. His job often required that the packages he was making would have see through windows glued into them. Occasionally, packages from the same customer required identical or nearly identical folding and gluing and were identical except for small differences on the printed package. For example, regular spaghetti boxes

and thin spaghetti boxes prepared for the same customer might be the same size, same color and have the same window but one label would say thin spaghetti rather than spaghetti.

The job of Gluer Operator is demanding and requires the Operator to be attentive to his duties. Some machines in the plant have scanning devices that help the Operator of the machines screen for inappropriate materials as they enter the machine. The process that Mr. Peterson worked with demanded more attention to the specific product to be loaded than the processes that include a scanning step, because the configuration of his machine would not allow product to be scanned before being glued. Mr. Peterson was in a production job that required him to make the final quality control check, before materials were placed into his machine for processing.

Mr. Peterson, whose seniority date was established as October 4, 2005 under the agreement whereby Walter G. Anderson, Corp. was purchased by Walter G. Anderson, Inc., actually started working for the Employer in December of 2005. Shortly, after he started with his new Employer, Mr. Peterson told a number of sexually oriented jokes in the presence of a female employee, who was offended and complained to the Company. Following an investigation, Mr. Peterson was given a five (5) day suspension and warned that any future rule violations could result in his discharge. At the time Mr. Peterson was disciplined, he was still a probationary employee. The discipline was not grieved.

In July of 2006 the Employer conducted meetings with the entire production staff, which focused on the importance of quality in all phases of production in the plant. The Company emphasized recent customer complaints and how the complaints were the direct result of carelessness and failure to follow quality control procedures. At the end of

the meeting the Production Manager said that the meeting would serve as a disciplinary first warning to all employees that sub-par quality performance would not be tolerated and that the Employer would discipline employees who failed to meet its quality standards. The Employer has treated the general notification of the workforce as if it was a disciplinary first warning given to each member of the bargaining unit consistent with the terms and conditions of the collective bargaining agreement. The Union does not agree that the notification given in July at a general meeting amounted to a disciplinary first warning to all employees.

The notification given in July of 2006 was not, in fact, a disciplinary first warning as it was not directed toward a specific employee or specific employees and did not address a specific incident or specific incidents of misconduct..

During the month of August 2006 additional meetings were conducted with employees and the importance of quality in production was reviewed. Employees were again informed that failure to follow quality production standards would result in discipline.

The grievant first worked as a Gluer – feeder trainee. He was matched with a mentor who was charged with the responsibility of providing one on one job training. The grievant also was given training an direction from his supervisor. Additionally, the grievant was informed that he could receive all of the training he needed on paid overtime, before or after his shift, in order to become proficient in his duties. The grievant took advantage of training opportunities for a period of time. When the grievant told his supervisor he believed he was well trained on his duties, his supervisor checked

with the grievant's trainer. The trainer also believed that the grievant was fully trained on his duties and the grievant was allowed to discontinue training activities.

The grievant bid and was promoted to Gluer-Operator.

The grievant experienced a number of production quality problems for which he was counseled. According to his supervisors, other employees complained about the grievant's work product and preferred not to use product that the grievant had prepared. On December 19, 2006 the grievant was suspended for a production problem. Grievant had misaligned the windows on packages he was working with and the cartoons coming from his machine were sticking together. It took approximately four (4) hours to correct the production problem. The grievant was given a three day suspension. The suspension was not grieved. The grievant was also warned that he would be terminated, if his production problems were not corrected. Also, the employer suggested that he might want to bid down to an inspector packer position or a feeder position. The other positions would reduce the level of responsibility and allow the grievant to be more successful.

Following the December 19, 2006 suspension, the grievant's quality performance did not improve. On January 13, 2007, the grievant misaligned windows on pasta cartons he had been responsible for gluing. He was counseled and warned that continuing problems could lead to his discharge. In March of 2007 the grievant mis-glued a large number of boxes for a large customer. When his supervisor discussed the problem with the grievant, the grievant said that he didn't think that the product looked that bad. Grievant was warned again that he would lose his job, if his production quality problems continued.

Near the end of his shift on April 12, 2007, the grievant mixed between 1,000 and 3,000 cartons of spaghetti and thin spaghetti. At the arbitration hearing the grievant acknowledged that he took a “short cut” by not turning over the product in a manner consistent with the quality control protocol for his machine. Consequently, two different products were mixed with his run.<sup>1</sup> The employees coming on to the next shift caught the error and grievant helped straighten out the problem before he left work that day. Management alleged that the problem was not completely straightened out before the grievant left on April 12, 2007. No mixed material went out to the customer as a result of the grievant’s error. The grievant’s co-workers told him they would finish straightening out the problem and he did not need to continue working on the problem any longer. The grievant punched out at 11:08 on April 12, 2007.

Grievant’s supervisor met with the Plant Manager and the Human Resources Director and reviewed the April 12, 2007 incident as well as the grievant’ employment record. On April 16, 2007 the grievant’s employment was terminated.

The Union grieved the discharge on April 19, 2007.

**SUMMARY OF EMPLOYER’S POSITION:**

The Employer competes in the marketplace by producing products that are of high quality. The processes used to produce printed packaging materials like the materials produced by Walter G. Anderson, Inc. are costly and the cost must be passed on to the Company’s clients. Consequently, it is of utmost importance that the product that leaves the plant be of high quality. The survival of the business is dependent upon the quality of product produced. In this disciplinary grievance, the focus is on reasonable quality control measures developed by the company, which the grievant repeatedly failed

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<sup>1</sup> The run was of very short duration.

to observe. The Employer's enforcement of quality control standards through the disciplinary process is reasonable in the context of a just cause analysis.

The Employee was notified of the expectations of the Employer. The Employer placed the entire workforce on notice of a heightened concern for production quality at meetings in July of 2006, when it issued a verbal warning to the workforce and in follow up sessions in August of 2006.

The grievant was trained on all of his job duties and responsibilities through one on one mentoring. He was offered the opportunity to receive unlimited overtime training in his work. During his training period he informed his supervisor that he believed he had received sufficient training to work independently at his station and his mentor concurred in that opinion. There is no doubt that the grievant knew what precautions he needed to take at his machine on April 12, 2007 in order to avoid mixing product. In his testimony at arbitration he acknowledged that he took a "short cut." The Employer informed the grievant of appropriate procedures and the grievant admitted his knowledge and understanding of the procedures.

The grievant was disciplined in accordance with the disciplinary scheme established in the collective bargaining agreement. In fact, the Employer was lenient in its imposition of discipline. The grievant engaged in very serious misconduct during his probationary period and could have been discharged. Instead, the grievant was given a five (5) day suspension and warned that any future rule violation would result in discharge. The grievant was counseled regarding his production repeatedly and suspended for three (3) days for producing product with misaligned windows on December 19, 2006. Not quite a month later on January 13, 2007, the grievant

experienced the same production problem that he was suspended for on December 19, 2006. He was counseled and reminded that continued carelessness would result in his discharge. He had another significant problem with product quality in March of 2007, when he mis-glued a large number of boxes for Federal Cartridge. Once again he was warned that carelessness in production would lead to his discharge. In December of 2006 he was given the option of bidding into a less demanding position but did not elect the option.

On April 12, 2007 the grievant mixed product that was going through his machine and he was discharged. There is no question whether he mixed product. The grievant admitted that he took a “short cut” and stayed a few minutes into the next shift to correct his error. In this situation the grievant's carelessness was obvious and was admitted. There was no need for an in depth investigation and there are no relevant facts in dispute.

The grievant's employment was terminated on April 16, 2007, after two prior suspensions and numerous warnings that the quality of his work needed to improve or he would lose his job. The Employer gave the grievant more opportunities to correct his behavior than provided for by the collective bargaining agreement but the grievant failed to make adjustments in his work performance. Grievant was forewarned of the rules and what he needed to do to comply with plant rules but failed to meet the reasonable standards of production in the plant. The Employer had just cause to terminate the grievant's employment.

The Employer noted a number of other employees who were discharged due to poor quality production. The Employer has been even handed in the manner in which it

has dispensed discipline. The grievant was treated the same as other similarly situated employees under similar conditions.

**SUMMARY OF UNION POSITION:**

The Union argues that the Employer failed to establish just cause for the termination of grievant. They challenge:

- The characterization of the July 2006 notice to employees as a verbal warning.
- Whether the investigation that was conducted was thorough and fair.
- Whether discipline was truly progressive.
- Whether the discipline imposed was reasonable given the nature of the offense.
- Whether the Employer treated the grievant the same as other employees under similar circumstances.

The Employer unfairly considers the notification given to Employees during a July 2006 meeting that failing to follow quality control procedures will result in discipline to have been a disciplinary first warning to each employee. The position flies in the face of accepted standards of industrial justice. The employer did not establish that any single employee in July made specific production errors for which an employee could or should have been disciplined. The blanket discipline was given without due process and should be considered notice but not an oral warning.

The investigation conducted by grievant's supervisor resulted in an termination report that included a number of inaccuracies. The report inaccurately says that the grievant seemed to be in a hurry as he left his shift. However, the grievant did not punch out until eight minutes after his shift ended. The report says that the second shift operator had started running product at 11:00 but the next shift operator did not run any mixed

product. Finally, the statement that “we had to sort product to prevent the customer from getting mixed product was inaccurate because the product needed to go through an additional process before it left the plant. The investigation was not thorough and the Company did not have a clear picture of what happened before Mr. Peterson was discharged.

The Employer used the five (5) day suspension given to Mr. Peterson for telling “off colored” jokes to a female employee as part of its claim that Mr. Peterson was disciplined progressively. The argument fails to acknowledge that the inappropriate statements made by the grievant were wrong but not remotely related to quality production issues. The warning given in July to the entire workforce should not be considered discipline. Hence, the grievant was never given any discipline less severe than a three (3) day suspension for production issues.

The Employer should have but did not take into consideration the fact that no mixed product was sent to the customer. In fact, the problem was caught and remedied within a few minutes. The Employer expects its employees to be careful in the way that they handle product, which is exactly what happened. The Employees identified a production problem, which related to the quality of production, and the problem was corrected. Despite the fact the problem was caught and cured so that no mixed product was delivered to customer, the Employer still terminated the employee’s employment. The penalty did not fit the misconduct.

The examples of other disciplines imposed by the Employer on employees who engaged in similar conduct do not reflect any discernable pattern. Every form of discipline has been issued to employees for failing to meet quality production standards.

In this case, Mr. Peterson was treated differently than other employees and received harsher punishment for conduct that is not as serious as the error Mr. Peterson made. Mr. Peterson's error did not result in any mixed product leaving the plant.

The Employer did not have just cause to discharge the grievant. Grievant should be reinstated with full back pay and benefits.

**AWARD:**

There are some problems with the manner in which the Employer approached the discharge of Mr. Peterson. The most notable problem is the Employer's equation of its July 2006 notice to the workforce that it would be focusing on the quality of production by employees and would be disciplining employees whose work failed to meet quality standards with a disciplinary first warning. The July 2006 notice was not a disciplinary warning. At the July 2006 meetings employees were given notice of the importance of quality in the production process. Also, the investigation into Mr. Peterson's conduct was not particularly thorough. Since the grievant did not challenge any relevant fact relating to his discharge, the Arbitrator does not find the summary investigation to be a reasonable basis for overturning the discharge.

In this case, the grievant was given multiple warnings in the form of counseling and discipline that included a three (3) day suspension for poor quality work. The grievant knew the quality performance requirements of the shop and knew on April 12, 2007 that he had skipped a step of the quality control procedures for his machine. In fact, the grievant testified that he knew he took a "short cut" in the procedure. The grievant received adequate notice of both the required procedures and the consequences of failing to follow the quality control procedures in the plant.

The Employer has imposed an extremely harsh penalty upon the grievant for an error that did not result in mixed product being delivered to a customer. While the Arbitrator would prefer to see the grievant transferred/demoted to a position where he could be successful, based upon testimony that the grievant has mechanical aptitudes that are very useful in the plant, the Arbitrator may not substitute his personal brand of justice for well established standards of industrial justice. Furthermore, the grievant was offered the opportunity to bid into a position where he could be more successful and did not avail himself of the opportunity in December of 2006. The Arbitrator will not look to a transfer or demotion as a viable remedy given the grievant's rejection of the option prior to the April 12, 2006 incident.

The Employer has imposed various degrees of discipline upon employees over time. However, the grievant's conduct took place after the Employer gave notice to the workforce that it intended to discipline and discharge employees who failed to follow plant quality control procedures. The grievant received discipline as a direct result of his failure to follow plant quality control procedures and he repeatedly received notice that he had to improve or he would be discharged.

The Employer had just cause to discharge the grievant and the grievance must be denied.

**AWARD:**

- 1. The Employer had just cause to discharge the grievant, Eugene D. Peterson.*
- 2. The grievance is hereby denied.*

**Dated: December 3, 2007**

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**James A. Lundberg, Arbitrator**