Labor Arbitration Awards: 1986 - Present, MV Transportation, Inc. and Amalgamated Transit Union, Local 1433, 26-1 ARB ¶8850, (Nov. 28, 2025)

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26-1 ARB ¶8850. LEE HORNBERGER, Arbitrator. Selected by the parties. FMCS Case No. 240329-04880. Hearings held via Zoom in Phoenix, Arizona, on October 10, December 5, 2024, and February 12 and 28, 2025. Post-hearing briefs were filed by November 7, 2025. Award issued November 28, 2025.

Headnote

Discharge from employment: Evidence: Personal conduct.–
A paratransit driver filed a grievance contesting his termination for allegedly threatening a dispatcher with violence during a late-night conversation. The arbitrator denied the grievance, crediting the dispatcher's contemporaneous written complaint and detailed testimony over the driver's denials. The arbitrator found the driver made alarming statements about shooting the coworker and causing her serious harm, which the dispatcher reported promptly despite fear of retaliation. While the video footage had no audio, it supported the dispatcher's account of a prolonged, intense interaction. The arbitrator found the employer had just cause to terminate.

Kerry S. Martin, Attorney, for the Employer. Gerald Barrett, Attorney, for the Union.

[Text of Award]

DECISION AND AWARD

INTRODUCTION

HORNBERGER, Arbitrator: This arbitration arises pursuant to a Collective Bargaining Agreement (CBA) between MV Transportation, Inc. (Employer) and Amalgamated Transit Union, Local 1433 (Union). The Union contends that the Employer violated the CBA and the National Labor Relations Act (NLRA) when it discharged Grievant. The Employer maintains that it did not violate the CBA or the NLRA when it discharged Grievant.

Pursuant to the procedures of the Federal Mediation and Conciliation Service, I was selected by the parties to conduct a hearing and render a final and binding arbitration award. The date of the alleged incident was June 29, 2021. The discharge notice was issued on July 22, 2021. The discharge grievance was filed on July 23, 2021. I was notified by the parties of my selection as the Arbitrator on May 17, 2024. The hearing was held on October 10 and December 5, 2024, and February 12 and 28, 2025, in Phoenix, Arizona, via Zoom. At the hearing, the parties were afforded the opportunity for examination and cross-examination of witnesses and for the introduction of relevant exhibits. The hearing was transcribed. I received the transcript on May 29, 2025. The dispute was deemed submitted on November 7, 2025, the date I received the post-hearing submissions.

The parties stipulated that the grievance and arbitration were timely and properly before me and that I could determine the issues to be resolved in the instant arbitration after receiving the evidence and arguments presented.

The post-hearing submissions were outstanding.

ISSUES

1. Was Grievant discharged for just cause. If not, what is the appropriate remedy?
2. Was the Grievant discharged because he engaged in Union and/or protected concerted activity under the NLRA. If so, what is the appropriate remedy?

RELEVANT CONTRACTUAL LANGUAGE

ARTICLE 4

MANAGEMENT RIGHTS

Except as otherwise specifically limited by the express provisions of the Agreement, the Company has the right to manage its business including the following:

***

1. Determine and direct the size and composition of the workforces, including the right to hire, promote, demote, discharge for cause, layoff or transfer any employee, and maintain the discipline and efficiency of its employees, i.e. reprimand, suspend, discharge, counsel or otherwise discipline employees.

***

ARTICLE 9

GRIEVANCE AND ARBITRATION

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SECTION 4: The arbitrator shall be without authority or jurisdiction to add to, remove from, alter, or otherwise amend in any way any provision of this Agreement.

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ARTICLE 14

DISCIPLINE AND DISCHARGE

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Serious Infractions

The following violations of Company policies and rules are considered serious infractions and shall be just cause for discharge of the employee, although the Company may impose a lesser penalty at the sole discretion of the Company.

***

(f) Any form of harassment prohibited by company policies.

(j) Inappropriate, unprofessional or disorderly verbal or physical conduct directed towards, passengers, clients or any third party while acting as a representative of the Company.

(p) Inappropriate verbal conduct directed towards coworkers.

EMPLOYEE HANDBOOK

MV is an equal opportunity employer and maintains anti-discrimination policies/zero tolerance policies and procedures for the workplace. MV also provides its employees with a telephone number for a reporting hotline and contact information for various government agencies to contact if they believe they have experienced or witnessed discrimination or threats in the workplace. Rx. 7.

Equal Employment Opportunity

As a government contractor, MV's employment policy is to provide equal opportunity to all persons and to require affirmative action to ensure equality of opportunity in all aspects of employment. In furtherance of that commitment, employment decisions at MV are based on merit, qualifications, and competence. Except where required or permitted by law, employment practices shall not be influenced or affected by virtue of an applicant's or employee's race, color, creed, religion, sex, national origin, age, pregnancy, disability, veteran status, marital status, sexual orientation, gender identification, or any other characteristic protected by law. This policy statement governs all aspects of employment including but not limited to recruitment, selection, promotions, terminations, transfers, layoffs, compensation, training, benefits, and other terms and conditions of employment. Rx. 7, pp. 3-4.

Anti-Harassment/Discrimination Policy

All Company employees have a right to work in an environment free from all forms of unlawful discrimination and harassment. Consistent with the Company's respect for the rights and dignity of each employee, discrimination and harassment based on race, color, creed, religion, sex, national origin, age, pregnancy, veteran status, marital status, sexual orientation, gender identification, or any other characteristic protected by applicable law, will not be tolerated. This includes harassment and discrimination by any MV employee, or a contractor, agent or third parties with whom MV employees interact during their employment. All employees should be aware of the following: …

***

(2) Harassment on the basis of any protected characteristic is strictly prohibited. In general, statements or physical conduct relating to a person's race, color, creed, religion, sex, national origin, age, pregnancy, disability, veteran status, marital status, sexual orientation, gender identification, or any other status which is protected by applicable law constitutes harassment when it:

(a) has the purpose or effect of creating an intimidating, hostile, or offensive work environment.

(b) has the purpose or effect of unreasonably interfering with an individual's work performance; or

(c) otherwise adversely affects an individual's employment pursuant to applicable law.

(3) Harassing conduct includes, but is not limited to: epithets, slurs, or negative stereotyping; threatening, intimidating, or hostile acts …

***

(5) An individual found to have engaged in inappropriate conduct, including discrimination, sexual harassment, or any other form of unlawful harassment, will be disciplined as appropriate, up to and including discharge. Rx. 7, pp. 7-8.

***

Workplace Violence/Zero Tolerance Policy

MV Transportation is firmly committed to providing a workplace free from acts of violence or threats of violence. In keeping with this commitment, the Company has established a policy strictly prohibiting any employee from threatening or committing an act of violence in the workplace, while on duty, while on company related business, or while operating any vehicle or equipment owned or leased by the Company.

Assistance is needed from all employees to achieve a workplace secure and free from violence. MV is committed to a “zero tolerance” policy and compliance with this policy in respect to workplace violence is every employee's responsibility. Any and all incidents involving an act or threat of violence must be reported immediately to the employee's supervisor or the Human Resources department, who will conduct an investigation and take appropriate action.

Any employee who engages in or contributes to violent or threatening behavior may be subject to disciplinary action, up to and including termination. Rx. 7, p. 8.

FACTUAL OUTLINE

List of Participants

DH is the Employer's Senior Director of Human Resources. Tr. 18.

SC is a Window Dispatcher. Tr. 93 and 736. SC's June 30, 2021, email, Rx. 1, is an Appendix at the very end of this Decision and Award.

CC is a Driver. Tr. 124.

ER is a Dispatcher. Tr. 145.

HH is the Employer's Director of Labor Relations. Tr. 183 and 759.

NT is a General Manager. Tr. 207.

Grievant was an employee of the Employer from August 3, 2009, to July 22, 2021. Tr. 237.

TH is the Union Representative. Tr. 449.

VL is a Window Dispatcher. Tr. 520.

FG is the Union Recording Secretary. Tr. 563.

JH is a General Manager. Tr. 630.

KD is a Driver/Dispatcher. Tr. 688.

Testimony of Senior Director of Human Resources DH

Senior Director of Human Resources Senior Director DH has been employed by the Employer for 20 years. The Employer is a private contractor of public transportation services with schools, cities, and other entities as customers. This includes paratransit services, serving customers with wheelchairs, and door-to-door services. The passenger schedules the ride in advance. In 2021 DH was a Regional Human Resources Director. There is a Union represented workforce. DH would speak with Union representatives. There was an amicable relationship between the Employer and the Union.

There are drivers and dispatchers. There are on-time performance requirements. There can be fines imposed on the Employer for not complying with requirements. The schedule is a manifest which is turned in to the window dispatcher. The window dispatcher is not a supervisor.

There is an anti-harassment provision in the Employee Handbook with zero tolerance for violence.

The Employer has a “racially diverse working environment.” DH knows Grievant. There were a couple of interactions between DH and Grievant prior to July 2021. Grievant had concerns over a vacation. There was a vacation issue. There was a settlement letter between the Employer and the Union concerning vacation accruals. It was a “reasonable settlement.” There were complaints from Grievant concerning vacation pay. Director of Human Resources DH was asked by the Union to contact Grievant. Grievant did not believe the vacation settlement applied to him. Grievant was not happy with the explanation. DH and Grievant agreed to disagree.

On July 1, 2021, the Employer placed Grievant on paid administrative leave pending investigation. He was given the nature of the complaint. Complaining witness dispatcher SC was “very upset.” SC's complaint “was one side of the story.” There was a potential hazard to the workforce. The Employer wants to make sure the employees are safe. There was an investigation. DH interviewed Grievant, Dispatcher SC, ER, CC, and L _____. The names were provided by SC and Grievant. Grievant was advised of SC's complaint. Grievant said the allegation was “not true.” Grievant said “quite a bit.” He complained of issues. He said that he would contact the Attorney General. There were prior issues. Grievant denied “all of that.”

There is video from a camera in the dispatch office window. The video shows SC sitting at her desk and Grievant coming in and delivering documents. Grievant is moving his arms. Grievant pointed upstairs where the office is. The video is 15 plus minutes long. Ex. 100. There is a USB drive with the video.

SC said she did not engage with Grievant. She was worried about Grievant's temper.

The vacation issue was addressed by the Employer. The Union and the Employer had a settlement agreement. Employees were on 11 months of part time status including Grievant. This means for 11 months these part time drivers were not accruing vacation. All of the relevant employees signed the overtime settlement agreement except for Grievant.

Driver CC walked into the scope of the video. When CC walked in, Grievant left. According to DH, the video supported SC's version of the incident. DH concluded that Grievant made the statements and should be discharged. Grievant was then discharged. It was a workplace rule violation. There is a zero tolerance for violence in the workplace. Grievant had made the threats and therefore no lesser discipline was justified.

DH was filling in for three weeks. That is why the complaint came to DH. Sometimes disputes arise when stuff is reassigned “on the fly.”

Grievant made complaints. DH does not know if Grievant complained to a government agency.

According to DH, just cause includes a full and fair investigation. DH interviewed employees first and then watched the video. DH's meeting with Grievant lasted approximately 30 to 45 minutes. DH does not recall who was interviewed first. DH created an individual plan. No one assisted DH. Ux. 109. Grievant denied specific questions. DH considered Grievant's demeanor in the video. He was leaning. He was “pointing upstairs” toward dispatcher KD. DH made the discharge decision recommendation.

On a prior occasion, there was an allegation of harassment. Dispatcher ER made the complaint. No discipline was issued. Grievant filed a complaint with the Employer concerning ER. These complaints were managed by the local team.

ER and Grievant were separated in the workplace via a schedule change. DH could not determine who was right or wrong.

Grievant denied the allegations.

Testimony of Window Dispatcher SC

Window Dispatcher SC has worked for the Employer since 2016. SC does not route calls. She has no authority to approve overtime for a driver. Dispatcher Manager HB would do that. SC works behind the window. She collects the manifest, keys, and lost and found items. SC knows Grievant. At the June 29, 2021, incident, SC was doing the closing. That was the extent of their interactions.

Grievant would be upset with other people but not with SC. He would rant. He was never upset with SC.

On June 29, 2021, according to SC, “he went off.” Grievant said “Do you know what happened with [ER]?” Grievant kept getting angrier and angrier. He was indicating what he would do with ER. “I just let him go off.” ER made Grievant so angry and coming to the back and shouting at her. Grievant said nobody listens to him. This lasted around 15 to 20 minutes. It escalated. SC said nothing to Grievant. According to SC, “What could I do. … I was by myself in the window. … I'm scared. … It was night time. … I'm a woman. I'm by myself.”

SC testified that:

> Q: Do you recall when he said what he wanted to do to her? What do you recall, sitting here today, what he said about that?
>
> A: … So he basically said that she had made him so angry that he had, like, these thoughts, these ideas of, like, coming to our job and shooting up the – shooting – coming back and shooting us – or shooting her. And then he had said that he – wanted to kill her, and then he went on being like, no, I

> don't want to kill her. I just want to do it enough to where, like, she – she can't, like – she's not active like where she is unable to do things.
>
> And he was, like. I've seen stuff, and I've seen what they did to women. And he just kept going on that she just angers him and that she does it on purpose, and that she – it's just pushing him, and he's getting angry and angrier, and nobody is listening to him. And he has to take things, basically, so – so that it's serious, or that he can – like, he can solve the problem by doing what he – like, what he can do, and it just–yeah. …
>
> Q: And you said he was – as the conversation went on, he continued to get more and more angry?
>
> A: It escalated. Yes, it just escalated and to worse and worse. It started off with just like how they got into a fight at the window, and if I knew about the fight at the window, but I'm not there when she's there. I'm not – I don't – I don't know anything that was going on.
>
> So I told him, like, no, I don't know what's going on. I'm not asking you about it either. So he just – because I wasn't saying anything, I guess that just meant to continue.
>
> Q: And as he was making these statements as to what or thought about doing to [ER], did you say anything to him? Did you – what did you do?
>
> A: Absolutely not.
>
> Q: And why didn't you say anything?
>
> A: I sat there and stayed quiet.
>
> Q: I'm sorry you what?
>
> A: I sat there and I stayed quiet. What was I gonna do? [Grievant] is one of those people that if you disagree with him or if he's upset about something, you need to let him just – just talk because if you disagree or you say anything different from him, he is gonna continue. And this was not somewhere – I was by myself in the window. I didn't have anybody in there. I didn't want to be part of that conversation.
>
> For him to be, like, yeah, I'm threatening to come in the back and shoot. I'm not – I'm not continuing this conversation. I'm not trying to continue this conversation. I'm not even gonna say anything because I'm scared. Tr. 88-102.

SC also testified:

> A: … I was literally left speechless, because I didn't know what to say; I didn't know what to do. I literally just sat there. I did not know what just happened because I've never experienced something like this before. Not in school, not at any of my workplaces. Nowhere. Tr. 742.

Driver CC walked in the door. At that point, Grievant left. CC asked if SC was OK. SC did not know what to do. SC was scared to report it. SC is the last person out of the door.

SC testified further that:

> A: And when she [CC] asked me if I was okay, and I had told her, I don't think I'm okay. And then I had told her what – what – kind of, like, a brief – like, he was threatening to her and to kill her, and now I don't know what to do because I'm scared. I don't want to go outside. I don't know where he's at. And then that's when she had told me, like, you need to report it. And I was scared to report it

> because I didn't know if something was gonna happen to me because I didn't want him to be mad at me. Tr. 103.

SC reported it to JH. There was an incident report. Incident reports are commonly used. Rx. 1. The email was written by SC. SC wrote this on her phone that night. She sent it the next day. SC's June 30, 2021, email is an Appendix at the end of this Decision and Award.

Grievant had done this type of thing before but he had never gone this far before. SC felt Grievant would follow through on his threats. The top paragraph of email was added in later by SC.

According to SC, the interactions of that event impact on SC today. SC does not discuss this with anyone. If Grievant returns to work, SC is leaving. SC testified that in that case, “I'm not staying.”

ER and SC semi-work together. SC has no relationship with ER outside of work.

SC does not recall having anything to do with the overtime issue.

SC's husband works for the Employer. SC does not give overtime.

SC talked with the Employer's attorney. SC did not review any document.

On June 30, 2021, SC discussed the situation with her husband. Her husband agreed SC should make a statement. Her husband knew that SC was crying.

The Road Supervisor could be in the office or could be on the road. The Road Supervisor's room has a door. SC does not recall if the Road Supervisor was there that night.

SC works in a unit represented by the Union. SC wrote the June 30, 2021, email herself. No one had any input into it. According to SC, the email is “all me.” All of this happened the night before. The bullet points were there already. At the meeting the next day, the Employer told SC to submit a statement. SC already had the bullet points from the night before. The Union never talked to SC about this incident. Everything in the email is 100% true. SC gets shakes and anxieties over this. SC feels like she is at risk. There is no additional protection. SC will stop working for the Employer if Grievant returns to work. SC reported something that was unsafe.

When CC showed up, Grievant walked out of the room. There were tears in SC's eyes. CC said to SC that SC has to report this.

SC stands by her statement today. SC had not heard Grievant threaten ER before. If SC had, she would have reported it.

SC did not say “I hope you're happy now because you're getting all that overtime.”

This situation has caused SC nothing but anxiety and stress. SC testified that “now I'm in danger.”

ER and SC do not work the same shift. ER is not SC's supervisor.

SC had a good relationship prior to all of this with Grievant.

SC did not know of Grievant's complaint concerning overtime.

SC provided the statement to the Employer. SC witnessed KD's alleged harassment.

The incident was approximately 11:00 p.m. the night before. SC was terrified. SC talked with the managers first. She had never experienced this before in her life. She cannot change how Grievant feels.

SC testified that if Grievant were to be returned to work that “… I am finding another job. I am not staying here.” Tr. 741. She testified why she would leave if Grievant returns:

> A: Because if [Grievant] was trying to hurt somebody because he got upset with her, imagine what he would do to me, because I reported something that was unsafe, because he got mad with me. Tr. 741.

Testimony of Driver CC

CC has been a Driver for the Employer for nine years. She has also worked as a trainer. CC interacts every day with the dispatchers. There is check in and check out. Window dispatchers do not assign overtime. Window dispatchers are not supervisors.

CC does not really know Grievant. She knows who he is.

On June 29, 2021, the dispatcher was SC. CC recalls the conversation with SC. Grievant was at the dispatch window talking with SC. When Grievant saw CC, he grabbed his stuff, said goodnight, and left. There was an expression on SC's face. SC was shaking and she had tears in her eyes. SC said she was not alright.

SC said Grievant threatened to harm an employee. CC told SC that SC had to tell upper management. “She was about ready to cry.” CC thought that is not right. Grievant was standing at the dispatch window. CC never talked about that night later. CC knows DH. CC does not recall if DH called her on this issue.

Sometimes there is a tension between drivers and dispatchers. A driver can get upset. All the drivers are on a time schedule. A client can get upset if off schedule.

If it takes over 15 minutes, the driver can decline overtime.

CC five years ago worked the same shift with Grievant for around six months.

CC is friends with ER just at work. CC has no calls or text to ER.

CC testified that:

> Q: And what do you mean by the expression on [SC]'s face?
>
> A: Well, you could tell something was said that wasn't right because she was shaking and she had tears in her eyes.
>
> Q: And did you go up to the window after [Grievant] left the area?
>
> A: Yeah, because I had to check out.
>
> Q: Okay. And did you ask her any questions, her being –
>
> A: Yea, I asked her – I asked her if she's all right, and she told me no, and she told me what happened.
>
> Q: And to the best of your recollection today, what did she – what did Sam tell you?
>
> A: [SC] – as best as I remember, because it's been so long, is that [Grievant], like threatened – threatened to harm [ER].
>
> Q: Okay. Do you recall anything else about the conversation?
>
> A: I told her she needs to tell upper management.
>
> Q: And why did you make that recommendation to her?
>
> A: Because the look on her face, and you don't go around threatening employees. You just don't, not with their life. Tr. 128-130.

Testimony of Dispatcher ER

ER is a Dispatcher with the Employer. ER's work hours are 11:00 a.m. to 7:30 p.m. If a driver comes in late ER asks why. ER has no authority to discipline employees. ER has no authority to assign overtime. The schedulers or supervisors do that. ER was hired in February 2015. ER started as a radio dispatcher in 2021. There are window dispatchers and radio dispatchers.

ER knew Grievant. Grievant was a driver. They worked there at the same time. Among ER's first interactions with Grievant, Grievant asked for a statement to give to law enforcement. There was an envelope with a ticket. Grievant wanted ER to write a statement that the police were racist. ER said ER could not write it. ER did not create any document for Grievant to provide a statement. Grievant got upset. After that Grievant was “short” with ER. He would not talk with ER like he used to.

According to ER, ER never put ER's hand in Grievant's face.

ER told Grievant that he falsified his time. ER said “you're lying.” There was a discrepancy between the clock and what Grievant wrote.

The Employer separated ER and Grievant from each other after many complaints. There were no future complaints after that.

There is an exception form at the end of the day for all drivers if come in late. “That's what we tell them.”

Grievant would talk a lot. There were times when ER would come in early to cover for the morning dispatcher.

If an employee is 15 minutes late, the employee files an exception form. 15 minutes is the rule. This is going by the computer clock.

Ux. 105. March 19, 2021, incident report. ER does not recall.

Grievant likes to argue. ER has received no disciplines. VL is a window dispatcher. ER did not ask VL to give a statement.

When ER heard threats had been made by Grievant, ER was scared. “4 by 4 and make me unable to work.” “Hang me from a tree.” ER would be uncomfortable if Grievant returned to work.

Testimony of Director of Labor Relations HH

Director of Labor Relations HH has been employed by the Employer since May 2021. HH represents the Employer in Labor Relations. HH did not work there when Grievant was discharged. HH was there when Grievant was hired.

The first discharge of Grievant was in 2011. This concerned an overturned wheelchair. There was an administrative leave document. The return to work of Grievant was on November 9, 2011.

There was an August 14, 2011, incident with Grievant. Grievant called HH a Nazi.

Grievant complained about safety awards.

Labor Relations Director HH testified that MB was a driver, a good employe, and has never been discharged. HH has never discussed MB with Grievant.

There was a 2011 discharge of Grievant concerning Grievant's failure to report an incident. The Employer did not determine that the 2011 discharge of Grievant was a mistake. The Employer reinstated Grievant without back pay as part of a grievance settlement with the Union.

HH's move from Phoenix to Las Vegas was a promotion.

HH does not have the authority to return Grievant to work.

Concerning Grievant's overtime allegations, HH did an investigation, did a computer review of the records, and prepared a summary. Rx. 23. HH did not see any preference concerning overtime for JC.

Concerning the Family Medical Leave Act testimony of Grievant, the employee calls dispatch and, if dispatch does not answer, the employee can leave a voicemail message. The FMLA call in system is set up to have voicemail.

MG was not discharged. MG resigned. MG returned to the Employer and later passed away.

Several dispatchers have been discharged.

Rx. 25. Workplace workforce statistics.

The reinstatement of Grievant is not a good idea.

HH testified that if Grievant were returned to work “it would be introducing a powder keg into the division.” Tr. 802. HH indicated,

> A: I think the morale would be affected. I think there would be just a general upset that we would allow someone to threaten a co-workers' life and then reinstate them into the population. Tr. 802-803.

Testimony of General Manager NT

General Manager NT has been an employee for 24 years. NT knows Grievant. NT last saw Grievant in 2019.

There has been a bargaining relationship between the Employer and the Union since 2001. There is an Employee Handbook.

NT was not involved with the allegations against Grievant. Rx. 11. Rx. 5.

Testimony of General Manager JH

General Manager JH has worked for the Employer for three years. JH is the General Manager in Phoenix. JH oversees the day-to-day operations. JH is aware of Grievant.

Grievant was one of the senior drivers. JH worked there when Grievant was discharged. Grievant made verbal threats toward an employee. TP made a written report.

SC is a window dispatcher. SC raised concerns concerning statements Grievant made concerning ER and management.

JH's office is upstairs. SC wanted to talk with JH privately. SC said that Grievant made verbal threats. JH listened to SC. JH asked SC to report her recollections in writing. There was an Incident Report. It is standard procedure to put something in writing.

JH received the June 30, 2021, email from JC. JH believed it was a serious allegation. JH did not tell SC what to write. JH had not seen allegations of this magnitude before. JH went to DH for guidance.

DH conducted the investigation. There was a July 2, 2021, Zoom meeting with the Union, the Employer, and Grievant. JH vaguely recalls that meeting. Grievant was placed on administrative leave.

There was a Section 2 hearing via Zoom. Grievant was on the call. The Union did not jump on the call. It was rescheduled but the Union did not attend.

Rx. 20. On July 12, 2021, there was an employee discipline virtual hearing scheduled. JH was concerned that Grievant could be dangerous.

As of July 12, 2021, Grievant was not discharged yet. Union representatives did not show up for this meeting. After this meeting, Grievant was discharged. The Employer said the investigation documents were privileged. The Employer could not share the documents. JH does not recall if there was an agreement to put the grievances on hold.

Grievant complained that he had more wheelchair passengers. There were several different occasions. JH looked into it. Concerning some days Grievant had a point. On other days Grievant had few wheelchairs.

Grievant complained that ER had stolen time from Grievant. JH remembers something about time. JH looked into it.

There were frequent complaints from Grievant. These were on a variety of issues.

Grievant complained he had more routes or more pickups. He had more overtime and more trips. According to JH, Grievant had routes or pickups comparable to that of his peers.

JH heard that Grievant had filed an Industrial Commission claim or an EEOC charge. Employees have the right to do this. JH did not take any negative steps against Grievant because of this.

There was a time when the manifest for Grievant was frozen. This was done in order to address his complaints.

JH wanted to have an open door policy. It is okay to meet and talk.

JH looked into Grievant's complaints. There was no basis for them if one looked at the whole week.

Shop Steward TH raised complaints on behalf of Grievant. JH looked into them. Then JH froze the manifests.

JH is familiar with ER. Grievant complained about ER. Grievant and ER did not get along. Grievant alleged that ER gave him more trips. Grievant also only alleged that ER was taking time away from him. This happened more than once. On one occasion, Grievant was correct.

In May 2021 there was the end of the day situation. Grievant complained concerning ER. There was a conflict. They raised their voices. There were other occasions when there were conflicts.

Grievant would say the issues caused him stress. Grievant's complaints did not cause JH stress. JH believed that he did the best he could.

Grievant was put on administrative leave with pay pending investigation. Grievant never made a threat about anyone to JH.

JH called Grievant into JH's office with the police there. JH felt best to have the police there when he issued the administrative suspension to Grievant.

Testimony of Grievant

Grievant was hired on August 3, 2009. He was a driver the entire time that he worked for the Employer. According to Grievant, there was no history of discipline with the Employer. Grievant served as a civilian employee with the U.S. military in Iraq. Eventually he came to the USA.

Grievant received annual awards from the Employer for safe driving, and numerous passengers personally expressed their appreciation for his helpful manner. Tr. 237; Ux. 117.

Grievant has awards for working for the Employer. Rx. 117. He has awards and commendations. Rx. 118.

Grievant had duties as a driver. There is a typical day. He is given a manifest. He interacts with the dispatchers. There is a relationship between drivers and dispatchers. The dispatchers would all go against Grievant.

He was asked for a statement. Grievant said he could not do this.

ER's behavior changed from that viewpoint. ER would throw paper.

Rx. 105. Show complaints. December 27, 2020. Grievant is complaining. The dispatchers give Grievant more calls than anyone else. The Employer did not respond to Grievant's complaints. There were no responses to any of Grievant's complaints.

March 19, 2021, incident report says “ER called me a liar.” “I have never lied in my life.”

Grievant did not then interact with ER after the shift.

Grievant said “Any damage to my health and I will sue the manager.”

Grievant was instructed not to interact with ER.

There was a vacation hours issue. August 3, 2020. There was a cash out of the vacation pay issue.

Grievant went to the Union. The Union called DH.

Other claims were filed with the government.

The June 29, 2021, video was reviewed at the arbitration hearing. According to Grievant, SC was smiling all the time. Grievant believed the film had audio. Then he was told the camera has no audio. Ux. 104.

Reviewing the video, Grievant testified that SC told him “She hopes I'm happy getting overtime and I'm not writing her up, nor her husband.” Tr. 298. He explained that he responded that he would not write-up a co-employee unless they violated his rights. Tr. 302. Grievant pointed to the location where he and dispatcher N _____ were standing when SC requested the overtime be given to her boyfriend. *Id*. The discussion continued with Grievant raising his concerns about the lack of protection from management over the unfair treatment he received, and noted that throughout the video, “when I point my hands up, I refer to the management.” Tr. 303. He resumed noted that he continually referred to management while pointing up and to the door while discussing how ER causes issues when he leaves or returns from his shift. Tr. 305. Grievant then asked SC whether she had heard about the May 30, ’2021, incident and the Employer's direction to take home his manifest, without mentioning ER. *Id.* SC responded that she knew the situation must have involved ER. *Id.*

Grievant testified that he then stated to SC that “the problem is right there upstairs. It's actionless management, careless about us. Every time I go there, they have no solution.” Tr. 306. Grievant referred to ER's harassment during the March 19, 2021, incident and management's lack of action at that time. Grievant testified that he discussed dispatchers targeting him by giving him more rides and more wheelchair passengers than other drivers, and stated that “I remember I told her, ‘I already filed two complaints on the Attorney General and the EEOC against management.’ I point up.” Tr. 310. He again referred to the May 30 incident and ER pointing in his face.

Grievant testified that after approximately seven and a half minutes of conversation, he began to pack his papers into his bag when he hears the driver's door open. He then stepped aside to let the driver approach the window since he was physically in the way, apologized for taking her time, and waved to SC as he grabbed his bag from the window counter. Tr. 312. Grievant calmly gestures to the window to say “go ahead” before he walks away without saying anything to the driver, CC. *Id.* Tr. 311-313. At approximately 11:30, Grievant left the office.

Grievant finished his shift. The next day there was no indication that there was anything wrong. Grievant went to get the manifest. Grievant went upstairs with. Two police officers were there. They asked Grievant to shut the door. Grievant was confused. Grievant was not informed of the allegations. They gave him some hints. Grievant said that a lot of people were harassing him. He was told he was on paid leave. But he never got paid.

The next day there was a meeting with the General Manager, the Union Representative, and Union Recording Secretary FG.

There were vacation hours issues.

DH appeared. This was by Zoom. DH told Grievant the allegations. Grievant said review the video. Grievant believed the camera had audio.

Grievant told employees on the Zoom call about the history with other two employees including ER and SC.

On July 2, 2021, there was an investigatory Zoom call. Grievant denied the allegations.

Grievant later got a discharge notice via e-mail.

There was a July 22, 2021, meeting. Eventually the Union Recording Secretary FG attended.

Grievant provided the names of two employees to DH. According to Grievant, DH called one but did not call the other

The Employer ignored Grievant's vacation request.

Grievant had filed a complaint with the government on May 27, 2021.

Ux. 122 concerned overtime distribution. The Employer ignored Grievant's complaints concerning overtime distribution.

There were January 2021 complaints concerning the wheelchair situation. Grievant is always honest.

There is a United States District Court lawsuit in which Grievant is suing the Union. In that case there was a November 20, 2024, hearing concerning the Union's motion to dismiss. At that court hearing, Grievant stated, “The Employer attorney had a stroke.” Grievant believes that the Employer and the Union are colluding.

Grievant filed a NLRB charge against the Union concerning vacation time.

Grievant filed a grievance with the State Bar against the Employer's attorney.

According to Grievant, ER is evil. Grievant testified that “All of the window dispatchers harass [me].”

Grievant testified that SC was stealing overtime opportunities from Grievant in favor of SC's husband.

Anybody who breaks the law is acting lawlessly. According to Grievant, “The law should dominate and it should dominate always.”

While Grievant said those things to SC on the day in question, SC was sitting comfortable drinking water.

Grievant testified that Director of Labor Relations HH was removed.

SC gave overtime opportunities to SC's husband. Grievant has more seniority than SC's husband. The Union went to the Employer. There was no solution.

Grievant was assigned more wheelchair customers. Grievant reported this to HH.

ER was pointing her finger in Grievant's face. This was in the window dispatch area. They were at least three feet apart. There was a window in between them.

ER stole five minutes of time from Grievant. The Employer gave the five minutes to Grievant.

The Employer did not hire Grievant fast enough.

Grievant filed a charge with EEOC one week before the discharge. He also filed a complaint with the Industrial Commission.

Grievant testified that DH lied. Grievant testified that they stole his money. According to Grievant, “DH is lying over and over and over.”

Grievant was suspended on July 20, 2021.

On one occasion, ER docked Grievant's pay.

Grievant mentioned his EEOC charge to the Employer in an email.

Grievant testified that the alleged disrespect that the Employer showed began in retaliation for his filing of a complaint against management in 2013.Tr. 379-382. Grievant and other drivers filed the complaint with the Attorney General's Office against two managers who left the company and current Labor Director HH. The Employer settled the complaint by reaching terms with the Union, which included removing HH from her position in Phoenix. Grievant suggested that HH may be the one preventing his reinstatement in retaliation for the complaint.

Testimony of Union Representative TH

Union Representative TH was employed by the Employer for 24 years. She is a driver. She has also done dispatch. She discusses problems with the Employer. She gets involved with investigations. She talks with employees. Sometimes there is an informal resolution. There can be six to ten complaints a week. One or two of the complaints are formal. Issues between drivers and dispatchers come up on a daily basis.

TH is familiar with Grievant. They have been friendly the whole time. They interacted a couple of times a week. Grievant complained concerning the dispatchers. It was determined that the dispatchers were messing with Grievant's manifest unnecessarily. The Employer said to stop it. This resolved the situation for a while.

Some of the dispatchers were a problem for drivers. This still persists today.

There were some complaints concerning ER. Two or three of the male drivers complained about ER.

TH has never known Grievant to be violent. Grievant speaks with passion. “That's normal.”

TH had some issues with dispatchers and the way they talked to drivers.

TH believes the Employer investigated the ER versus KD situation. It ended up going to court. TH believes there was no discipline.

TH does not recall if she attended a Zoom investigatory meeting. No one asked TH her opinion on the situation. There was a phone call about the situation. DH was on the call.

The manifest can change during the work day. This is a regular thing.

There are overtime opportunities. SC would give overtime to SC's husband.

TH had some problems with dispatchers TL and MP. They were rude.

TH had no issues with ER or SC.

TH had not seen Ex. 104 SC email before TH read Ex. 104 at the hearing. The camera does not have audio. TH has never seen Grievant behave in that manner before. TH could not imagine Grievant saying those things alleged in Ex. 104. Grievant is very vocal.

Testimony of Union Recording Secretary FG

FG is the Union's Recording Secretary. FG has been with the Union for 20 years. The Union represents approximately eight entities. The Employer is one of them. FD handles suspensions and discharges. He does not often handle day-to-day issues.

FG is familiar with Grievant. The Employer sent a request. There was a Zoom meeting. On July 2, 2021 Grievant was put on administrative leave. There were six persons present including Grievant.

FG's only role at that meeting was to take notes. Ux. 108. After the July 2, 2021, Zoom meeting, the Employer was to get back to the Union. The Union requested information. The Union wanted to see what the Employer's decision making was. The Employer did not promptly respond to the information request.

FG testified that the Union refused to attend the July 2, 2021, meeting because the meeting was scheduled to take place via Zoom and the Union's position was that it must take place in person. Tr. 600, 612, 616.

DH is the General Manager.

“We work together.” The Employer's attorney was vetting information.

The Union filed a grievance concerning the requested documents. Ex. 102. The Union filed an unfair labor practice charge with the National Labor Relations Board concerning the Union's information request. FG believes the NLRB charge was settled and the Union received the requested information. This would have been approximately three years later. The Union got the information approximately one year ago. The grievance was processed by the Employer.

The July 22, 2021, discharge notice, Ux. 106, was “held in abeyance.” The Employer agreed to this.

The Union also represents dispatchers and drivers. FD was aware of SC's email to the Employer.

There was a July 2, 2021, phone call with DH. FG has not spoken with SC about this. FG has never spoken with SC. The Union Vice-President is DK.

FG has not talked with ER. FG would review documents submitted to the Employer. FG was concerned with all aspects of the situation. Grievant was discharged. It was a “he said, she said” situation. FG has no opinion on whether SC concocted the events in the email. According to FG, “People do the dumbest things.”

FG does not know either party. FG has no viewpoints on the trustworthiness of either one.

Grievant filed a lawsuit against the Union concerning national origin discrimination.

There was a July 2, 2021, meeting between the Union and the Employer. FG does not recall how long Grievant at the meeting. The notes are in yellow. Ex. 108. FG's focus was on the investigation. Grievant denied the allegations.

Concerning the Section 2 hearing, the issue was Zoom versus in person. The Union did not attend. There was no hearing because the Union believed it should have been in person.

There was the issue of Zoom. The Union did not zoom in.

S _____ and FG had a good relationship. JH agreed to this and to put it into abeyance.

FG was not concerned with the meeting getting out of hand.

FG has no concerns about returning Grievant to this work environment.

FG would recommend both employees go to EAP. They would complete the EAP course and then return to work. EAP does not have to be ordered.

FG recommends doing anything it takes to get everybody back on the same page and back to work.

CP's email turned up in Union office after the discharge. FG does not know when she received the June 30, 2021, document.

FG does not believe the Union filed a grievance concerning SC giving overtime to SC's husband.

Testimony of Window Dispatcher VL

VL has worked for the Employer for 17 years. VL is a window dispatcher. VL has also been a radio dispatcher. VL was familiar with Grievant for all of the 17 years. They would interact at checkout. VL is aware when drivers file complaints. There would be an incident report. Sometimes Grievant was not happy with the routing. ER and Grievant have a personal history. They went to the same high school. They all worked for VL's brother. ER was talking behind VL's back. ER was making up lies. VL would refuse to get involved with ER's drama.

ER asked VL for a witness statement. VL declined because VL was not there. Grievant is an honest person. VL never heard Grievant threaten anyone. VL did not believe Grievant could have said those things.

Grievant believed ER mistreated him.

VL recalled Grievant saying no one was answering the phone at dispatch.

VL had no problems with SC. VL has no reason to believe SC is untruthful.

The manifest may be changed. This happens daily. It happens to all drivers.

The dispatcher might know who a better driver is.

VL goes by miles, not by who is better.

Grievant talks to himself a lot. VL knows how to handle Grievant.

Testimony of Driver/Dispatcher KD

KD has worked for the Employer for 18 years. KD has been a driver and a dispatcher. KD is familiar with Grievant. KD is familiar with ER.

There is a two page letter from ER saying KD sexually harassed ER. The Employer investigated. The Employer denied ER's claim. ER received a restraining order from a court because of ER's false allegation. Then KD had a poor relationship with ER.

ER was overriding calls for KD's route. KD filed complaints with the Employer. Nothing ever happened.

KD is a co-employee with Grievant. KD does not see SC as a truthful person. ER was the ringleader. KD never heard Grievant say anything threatening.

KD felt safe working with Grievant. ER was not honest at all.

Testimony of former driver AA

AA previously worked for the Employer as a driver. AA resigned from the Employer in 2023. AA is friends with Grievant. Grievant has always had problems. AA tried to stay on the right side of ER.

ER asked AA to write a statement. AA did not provide a statement.

AA never heard Grievant make a complaint.

During the July 2021 investigation, DH called AA.

CONTENTIONS OF THE PARTIES

For the Employer

The Employer contends that this arbitration concerns the discharge of Grievant in July 2021 for, among other things, making threats to kill or disable a female co-employee that he described as a “four ton slut” who should be “hung up” and other inappropriate statements, including homophobic against management. The Employer contends that Grievant's threats and repugnant comments violated the work rules in the CBA as well as the Employer's anti-discrimination and workplace violence policies in its employee handbook and that it discharged Grievant for cause. The Union contends that the female employee who was subject to and reported Grievant's threats “fabricated” her complaint with the assistance and/or direction of employee(s) and the Employer in a conspiracy to set Grievant up to be discharged.

On June 30, 2021, employee SC, Window Dispatcher, reported to her supervisor, General Manager JH, that at the end of her shift the previous evening, Grievant approached her and engaged in a threatening, harassing, discriminatory and disgusting ten minute tirade directed against female co-employee, ER, Window Dispatcher, and management representatives. According to SC, Grievant said, among other things, that:

- He was so upset with ER following his last argument with her [May 30, 2021] that he was going to hurt her;
- He felt that he had enough anger to go into the dispatch area where ER worked and kill or hurt her enough so that she was disabled;
- that ER was a four ton slut that needed to be hung up like a slut ass bitch;
- talked about workplace shooters; and
- that management representatives were “faggots,” “bitches,” and “crooks.”

JH testified that SC was visibly shaken as she reported the incident from the night before. Pursuant to the Employer's standard practice, JH asked SC to provide a written statement detailing the incident, which SC did via email later that afternoon.

After receiving SC's written complaint, the Employer placed Grievant on paid administrative leave pending investigation. The Employer's investigation was handled by its Director of Human Resources located in Dallas, Texas, DH. DH is a credentialed and experienced human resources professional who has conducted hundreds of workplace investigations.

On July 2, 2021, DH met (virtually) with Grievant and several Union representatives to discuss SC's complaint and provide Grievant with the opportunity to respond. During that interview, Grievant denied the allegations in

SC's complaint and claimed that SC “fabricated” all the statements she attributed to him because he had filed a complaint with the Union claiming SC had assigned two more hours of overtime to her husband rather than him three weeks earlier. During the two-hour meeting, Grievant described the litany of personal gripes he had against ER and the Employer. Grievant told DH that if the Employer did not fix his complaints he would go to the Arizona Attorney General's Office

DH also interviewed SC, ER, out-cry witness CC, and driver AA (at Grievant's request) as part of her investigation. DH also reviewed video (no audio) of the June 29, 2021, incident. After reviewing all the relevant facts, DH concluded that SC's complaint had merit and that the evidence indicated to her that Grievant made the statements attributed to him in violation of the CBA and work rules and approved his discharge.

The Employer had just cause to discharge Grievant. The CBA expressly provides that the type of conduct that Grievant engaged in constitutes “just cause” for immediate discharge. This conduct included making inappropriate verbal statements to co-employees and violating the Employer's harassment policies. The Employer is within its rights to strictly enforce the agreed upon standard for just cause in its CBA. The Employer met its burden that Grievant violated the work rules in the CBA by making threats against ER and highly inappropriate statements and homophobic slurs about management representatives. To set aside Grievant's discharge as requested by the Union would modify the CBA which the arbitrator is not authorized to do. CBA Art. 9.4. “The arbitrator shall be without authority or jurisdiction to add to, remove from, alter, or otherwise amend in any way any provision of this Agreement.”

The Employer contends that the discharge of Grievant did not violate the NLRA. The Union carries the burden of proof to prove this claim. The Union failed to establish that Grievant engaged in any activity protected by the NLRA. All the activity the Union raised at the hearing was “personal gripes” Grievant had against co-employees and the Employer in general. There is no evidence that Grievant was acting in concert with or the authority of any other employees. Grievant's complaints involved personal gripes about things such as his pay, vacation pay, work assignments and overtime hours. Grievant's personal gripes do not constitute concerted activity and the Union cannot meet its burden of proof under the NLRA.

Even if Grievant engaged in protected activity under the NLRA, the Union failed to establish that the Employer bore animus toward his activity such that it constituted a motivating factor in the discharge of Grievant. The Employer strongly encourages employees to report any unusual incident in the workplace (Incident Reports), no matter how small. The Employer provides and maintains a complaint hotline for employees to call if they feel they have been subjected to inappropriate conduct. The Employer provides employees with contact information for government agencies to report any perceived inappropriate conduct. Grievant testified that he regularly filed Incident Reports with the Employer complaining about a variety of issues throughout his employment. The Employer addressed Grievant's concerns, although he did not always agree with the outcome.

The Employer requests that I deny the grievance.

For the Union

The Union grieved the decision of the Employer to discharge Grievant. The parties stipulated that I had binding jurisdiction to determine whether the Employer had just cause to discharge Grievant as required by the CBA. In settling an NLRB matter brought by Grievant against the Employer, the parties further stipulated that I could decide whether the Employer violated the NLRA when discharging Grievant.

On the night of June 29, 2021, Grievant returned to the driver's room at the end of his shift and had a conversation lasting approximately eight minutes with Window Dispatcher SC. Long after noon the next day, SC emailed Employer managers claiming that Grievant when speaking to her had threatened another employee, ER, who was not present. The Employer's video of the conversation had no audio – nonetheless, the Employer took SC's allegations as true based on a biased, flawed, and incomplete investigation that failed to consider crucially important evidence and context. The Employer's sole investigator and decision-maker failed to even

allow Grievant a chance to give his side of the story before deciding to discharge Grievant based solely on SC's version of events.

The Employer not only decided discharge was in order before speaking with Grievant, but the Employer also ignored undisputed facts and circumstances making SC's version implausible or otherwise suggesting discharge was harshly excessive. The Employer's sole investigator and decision-maker ignored Grievant's nearly flawless 12-year record with the Employer. The Employer failed to consider Grievant's reputation for being a friendly person and that he often passionately spoke while gesturing with his hands. However, it appears the Employer did hold against Grievant his propensity for vociferously raising complaints about the Employer's mistreatment of him and others to co-employees and managers. The Employer seemed to conclude that Grievant lacked the right to “complain” about SC and the other dispatchers, who multiple drivers saw as bullies that ganged up on those they disliked. The Employer failed to question the credibility of SC's claims against Grievant, and the witness statements it received from other dispatchers “on the inside” of the group despite Grievant having filed numerous complaints in the months preceding the allegations against him – and filing a complaint against SC only weeks before.

Based on such a flawed investigation, the record fails to support the Employer's conclusion that discharge was appropriate. The Employer failed to prove by clear and convincing evidence that it had just cause to discharge Grievant. *United Parcel Service*, 121 LA 207 (Wolff, 2005).

DISCUSSION AND DECISION

Introduction

The CBA provides that an employee cannot be disciplined without just cause. It is well established in labor arbitration that where, as in the present case, an employer's right to discipline an employee is limited by the requirement that such action be for just cause, the employer has the burden of proving that the discipline was for just cause. “Just cause” is a term of art in CBAs. “Just cause” consists of a number of substantive and procedural elements. Primary among its substantive elements is the existence of sufficient proof that the employee engaged in the conduct for which he was disciplined. Other elements include a requirement that an employee know or could reasonably be expected to know ahead of time that engaging in a particular type of behavior will likely result in discipline; the existence of a reasonable relationship between an employee's misconduct and the punishment imposed; and a requirement that discipline be administered even-handedly, that is, that similarly situated employees be treated similarly and disparate treatment be avoided.

For the following reasons, I conclude that the Employer did not violate the CBA when it discharged Grievant. I further conclude that the Employer did not violate the NLRA when it discharged Grievant.

Discipline

Grievant was discharged for allegedly violating the “inappropriate verbal conduct directed towards coworkers” work rule which is embedded in the CBA. CBA, p. 12.

The Employer contends that Grievant violated the embedded rule. The Union contends that Grievant did not violate the embedded rule.

The CBA provides that:

> The following violations of Company policies and rules are considered serious infractions and **shall be just cause for discharge** of the employee, although the Company may impose a lesser penalty **at the *sole discretion* of the Company.**
>
> …
>
> (f) Any form of harassment prohibited by company policies.

(j) Inappropriate, unprofessional or disorderly verbal or physical conduct directed towards, passengers, clients or any third party while acting as a representative of the Company.

(p) ***Inappropriate verbal conduct directed towards coworkers.*** *Id.* [Emphasis added]

The Employer's Employee Handbook contains expanded similar provisions. Rx. 7, pp. 5 to 7, and 31 to 32.

Burden of proof

The Employer has the burden of proof in a discipline case. Elkouri & Elkouri, *How Arbitration Works* (8th ed.), pp. 15-26 to 15-32; Abrams, *Inside Arbitration* (2013), pp. 206-209.

The Union contends that the burden of proof is by clear and convincing evidence. The Employer contends that the burden of proof is by the preponderance of the evidence.

I will apply the preponderance of evidence standard in determining whether the Employer has established just cause. As indicated by Professor Abrams, “the employer must convince the arbitrator what occurred.” Abrams, p. 208. See generally Nolan, *Labor and Employment Arbitration* (1998), pp. 238-242.

The Union has the burden of proof concerning the ULP allegation. *Wright Line*, 251 NLRB 1083 (1980), enfd. on other grounds 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), approved in *NLRB v. Transportation Management Corp*., 462 U.S. 393 (1983).

Witness Credibility

The Employer contends that SC's recollection is accurate. The Union contends that Grievant's recollection is accurate.

One of my duties is to decide how credible each witness was. It is up to me to decide if a witness's testimony was believable, and how much weight I think it deserves.

I start my credibility analysis with the viewpoint that all witnesses are equal and deserving of equal deference concerning their recollections. At the onset, neither Employer nor Union witnesses should be given higher deference. Supervisors should not necessarily be given greater credibility. It has been suggested that neither the disciplined employee, the steward, nor the supervisor who made the discipline decision is inherently more credible. Elkouri & Elkouri, pp. 8-96 to 8-98.

Here are some things I consider in evaluating witness testimony. (A) Was the witness able to clearly see or hear the events in question? Sometimes even an honest witness may not have been able to see or hear what was happening, and may have an incorrect recollection. (B) How good the witness's memory seemed to be? Did the witness seem able to accurately remember what happened? (C) Was there anything else that may have interfered with the witness's ability to perceive or remember the events? (D) How did the witness act while testifying? Did the witness appear honest? Or did the witness appear to be mistaken? (E) Did the witness have any relationship with any party, or anything to gain or lose from the case that might influence the witness's testimony? Did the witness have any bias, prejudice, or reason for testifying that might cause the witness to testify incorrectly or to slant the testimony in favor of one side or the other? (F) Did the witness testify inconsistently while on the witness stand, or did the witness say or do something or fail to say or do something at any other time that is inconsistent with what the witness said while testifying? If I believe the witness was inconsistent, I ask myself if this makes the witness's testimony less believable. Sometimes it may; other times it may not. I consider whether the inconsistency was about something important, or about some unimportant detail. I ask myself if it seemed like an innocent mistake or if it seemed deliberate. (G) How believable was the witness's testimony in light of the other evidence? Was the witness's testimony supported or contradicted by other evidence that I found believable? If I believe a witness's testimony was contradicted by other evidence, I realize people sometimes forget things, and even two honest people who witness the same event may not describe it exactly the same way.

These are some of the things I consider in deciding how believable each witness was. I consider other things that I think shed light on the witness's believability. I use my common sense and my everyday experience in dealing with other people. Then I decide what testimony I believe and how much weight I think it deserves. Abrams, pp. 189-192.

I consider all the circumstances of all the witnesses when assessing which testimony is the most credible.

Fair investigation

The Union contends that the Employer did not conduct a fair investigation before it imposed discipline. The Employer contends that it did conduct a fair investigation before it imposed discipline.

“Industrial due process … requires management to conduct a reasonable inquiry or investigation before assessing punishment.” Elkouri & Elkouri, p. 15-49. It is a fundamental principle of employment law that the issue of due process and following correct procedures can impact on the issue of just cause and the amount of discipline, if any, that should be approved or imposed. *Id*. at 15-47 to 15-50. Arbitrators will, in many cases, refuse to uphold the employer's action, where the employer failed to fulfill some procedural requirement specified by the CBA. *Id*.

> Procedural fairness requires an employer to conduct a full and fair investigation of the circumstances surrounding an employee's conduct and to provide an opportunity for him to offer denials, explanations, or justifications that are relevant before the employer makes its final decision, before its position becomes polarized. *Shaefer's Ambulance Serv*., 104 LA 481, 486 (Calhoun, 1995).

Federated Dep't Stores v. United Food & Commercial Workers Union, Local 1442, 901 F.2d 1494, 1496 (9th Cir. 1990) (arbitrator appropriately determined due process to be component of good cause for discharge), said,

> In *Chauffeurs, Local Union No. 878 v. Coca-Cola Bottling Co*., 613 F.2d 716 (8th Cir.), cert. denied, 446 U.S. 988 (1980), the Eighth Circuit, faced with a very similar collective bargaining agreement, which included procedures for termination, noted that “arbitrators have long been applying notions of ‘industrial due process' to ‘just cause’ discharge cases.” *Id*. at 719. In *Coca-Cola Bottling Co*., the arbitrator found that despite the employee's dishonesty, the lack of procedural fairness afforded to him by the company fell short of the just cause standard. Like the Company here, *Coca-Cola Bottling Co.* did not provide the employee an opportunity to tell his side of the story prior to termination. Drawing upon scholarly articles which studied arbitration awards, the court found that an arbitration award that interpreted just cause to include due process “drew its essence” from the agreement. *Id*. at 719-20. See also *Super Tire Eng'r Co. v. Teamsters Local Union No. 676*, 721 F.2d 121 (3rd Cir.1983) (enforcing an arbitrator's award where employee was reinstated because he was not given a warning before his discharge for drinking alcoholic beverages during working hours), cert. denied, 469 U.S. 817 (1984). We agree with the Third Circuit that because it is not unusual for an arbitrator to apply due process notions to just cause, the arbitrator derived his decision from the essence of the collective bargaining agreement.

Chauffeurs, Local Union No. 878 v. Coca-Cola Bottling Co., 613 F.2d 716 (8th Cir.), cert. denied, 446 U.S. 988 (1980), said,

> arbitrators have long been applying notions of “industrial due process” to “just cause” discharge cases. As Professor Summers noted, “[o]n the bare words ‘just cause’ arbitrators have built a comprehensive and relatively stable body of both substantive and procedural law.” Summers,

> *Individual Protection Against Unjust Dismissal: Time for a Statute*, 62 Va. L. Rev. 481, 500 (1976) (footnote deleted). Professor Summers also commented that the retention of the bare "just cause" language in newly negotiated agreements is an indication of the widespread acceptance of arbitrators' due process interpretations. *Id.* at 505. To a similar effect are the comments of Professor Getman: To enhance its chances of winning at arbitration, a company needs to establish careful disciplinary procedures consistent with arbitration awards defining the concept of just cause. Arbitrators generally insist on equal punishment for the same offense, and they require that employees be given advance notice of company rules and a chance to explain their behavior before they are disciplined. Getman, *Labor Arbitration and Dispute Resolution*, 88 Yale L.J. 916, 921 (1979) …. See also *Combustion Engineering, Inc.*, 42 Lab. Arb. 806 (1964) (Daugherty, Arb.).

Abrams, p. 211, states "… [T]he concept of "due process" is inherent in the just cause provision."

The Employer conducted a reasonable investigation. During the course of the investigation, Senior Director of Human Resources DH interviewed Grievant, SC, CC, ER, and VL. Rx. 13, 14, and 15. DH's investigation meeting with Grievant and the Union was more than an hour long. Union Recording Secretary FG took extensive notes. Ux. 108. At that investigatory meeting were General Manager JH, Union Vice-President DK, Union Representative TH, Union Recording Secretary FG, Senior Director of Human Resources DH, and Grievant. The notes of the beginning of the meeting state:

> [Union Representative] TF [TH]: Informed [Grievant] DH is facilitating meeting hear what she has to say. We just want to get through this peacefully, come with a solution that's going to work for everybody and not just cause chaos. …
>
> DH: purpose for this meeting – speak to [Grievant] about allegations involving some unprofessional, inappropriate and potentially threatening conduct. She let us handle any other internal issues amongst ourselves. Wants [Grievant]'s response to the allegations made involving his conduct (today's meeting).

The Union was free to add anything to the investigation that it wanted to. DH did not decline to talk with any Union representative.

The Employer provided a copy of SC's email statement to the Union. Rx. 1. Union Vice-President DK's July 2, 2021, email says "In light of the team meeting at 10 am concerning allegations from dispatcher [SC] … and her email that was sent to me …." Rx. 9. DK did not testify at the arbitration hearing.

The Employer took appropriate steps to make sure that it was reaching the correct conclusion about what happened with June 29, 2021, situation.

Grievant was given a meaningful opportunity to tell his side of the story before discipline was imposed. There was an adequate check against the possibility of an incorrect decision.

Grievant knew of the "inappropriate verbal conduct towards coworkers" rule

The "inappropriate verbal conduct towards coworkers" is imbedded in the CBA.

Grievant was aware of the Employer's rule. *First Transit*, 128 LA 586 (Goldberg, 2010) (denying grievance when the grievant received adequate notice of the rule). The CBA rule is basically repeated and expanded in the Employee Handbook. Rx. 7, pp. 5 to 7 and 31 to 32. Grievant signed for the Handbook on January 28, 2010. Rx. 8.

Grievant knew or could reasonably be expected to know that in light of the CBA imbedded work rule that he was subject to discharge at the "sole discretion" of the Employer.

SC's email states that Grievant said:

> …. that he felt that he had enough anger to go back in dispatch and kill [ER] but then changed it to not kill but beat but enough to hurt her to be disabled. But then he thought of his kids and he knew he couldn't.
>
> - [Grievant] discussed how upstairs is corrupt and faggots and assholes and bitches and he didn't care if I told upstairs that. …
> - He stated [ER] was a 400-ton slut that needed to be hanged up as a slut ass bitch. Rx. 1.

The "inappropriate verbal conduct" rule was a reasonable work rule

Management has the right to establish reasonable work place rules not inconsistent with the CBA. Elkouri & Elkouri, pp. 13-144 to 13-145. The rule is embedded in the CBA. The CBA embedded rule is reasonable. Abrams, p. 261.

The rule was applied evenly and without discrimination

There is no evidence that the rule was not applied evenly and without discrimination.

There is a preponderance of proof that there was a violation

Neither Employer nor Union witnesses should be given higher deference.

> [S]upervisors should not necessarily be given greater credibility …. [It has been suggested that] neither the discharged employee, the steward, nor the supervisor who made the [discipline] decision [is] inherently more credible …. Elkouri & Elkouri, p. 8-97.

I have considered all the circumstances of all the witnesses when assessing testimony. I have considered the totality of the circumstances. Abrams, pp. 189-192; Elkouri & Elkouri, pp. 8-93 to 8-98.

Furthermore:

> The arbitrator's decision in discharge and discipline cases must reflect the parties' values and interests, not the arbitrator's personal conception of how the workplace should be run." Abrams, p. 202.

The "inappropriate verbal conduct towards coworkers" rule violation is evidenced by the testimony of SC, SC's almost contemporaneous email, and the "this was SC's demeanor when she told me" testimony of CC and JH. The preponderance of the evidence proves that the recollection of SC, CC, and JH is correct and the recollection of Grievant concerning June 29, 2021, is incorrect.

SC credibly testified regarding the June 29, 2021 incident. She was subject to pointed cross-examination. Her recollection of the incident did not change. SC made contemporaneous notes on her phone the night of the event. She provided a detailed account of the incident via email to the Employer the next day. Rx. 1.

SC had no animus against Grievant. She credibly testified that she worked the same shift as Grievant and did not have prior issues with him. Grievant testified that other than the overtime issue, he did not have any real issues with SC during the five to six years that they worked together. SC testified that while Grievant would get "mad, mad" with or about other people at work, including management, he never got mad with her personally

to her knowledge. Tr. 750. SC testified that prior to the June 29, 2021, incident she was unaware of any issues between Grievant and ER. SC credibly denied any personal relationship with ER.

I find that Grievant violated the “inappropriate verbal conduct towards coworkers” rule that is embedded in the CBA.

Furthermore:

> The arbitrator's decision in discharge and discipline cases must reflect the parties' values and interests, not the arbitrator's personal conception of how the workplace should be run.” Abrams, p. 202.

The NLRA issue

The Union contends that the discharge was in retaliation for Grievant's alleged protected activity and violated the NLRA. The Employer contends that the discharge was not in retaliation for Grievant's alleged protected activity and did not violate the NLRA.

The *Wright Line* analysis applies to the Union's allegation that the Employer discharged him because he engaged in protected concerted activity. Under *Wright Line*, the Union must first show that (1) Grievant engaged in protected concerted activity; (2) the Employer knew of the activity; (3) the Employer had animus toward the activity; and (4) the activity was a substantial or motivating factor in the Employer's action. *Wright Line*, 251 NLRB 1083, 1088-89 (1980), enf'd, 662 F.2d 899 (1st Cir. 1981), cert. denied, 455 U.S. 989 (1982). Gorman and Finkin, *Labor Law* (2d ed. 2004), pp. 158-162.

I find that the Employer acted for legitimate, non-discriminatory reasons when it discharged Grievant for violating the CBA imbedded work rule and the Employer would have done so absent any alleged protected activity.

An employer may legitimately rely on threats of violence as a reason to discipline and discharge employees. *CF Taffe Plumbing Co., Inc.*, 357 NLRB 2035 (2011) (employee's comments “Keep talking your shit and see what I do” and “Your days are over starting tomorrow” threaten physical violence, which is the type of conduct for which an employer would discharge an employee.); *Sara Lee*, 348 NLRB 1133 (2006) (employer lawfully discharged employee for engaging in workplace violence); *Tenneco Packaging, Inc.*, 337 NLRB 898 (2002) (“Employers justifiably are more concerned today than ever about workplace violence and they must remain free to quickly address genuine threats. The Board's sound policy is not to second-guess well-intended employer efforts to provide a safe workplace.”). *National Sec. Technologies, LLC*, 356 NLRB 1438 (2011) (employer lawfully took employment action against union supporter who had a history of creating a hostile work environment and harassing fellow employees); *Bridgestone Firestone S. Carolina*, 350 NLRB 526 (2007) (employer lawfully disciplined employee for engaging in a “threatening tirade” toward co-employees and would have done so absent protected conduct).

The Employer discharged Grievant for legitimate, non-discriminatory, reasons which were imbedded in the CBA. The Employer's decision was not pretextual. The Employer had disciplined other employees for workplace violence and inappropriate comments. *Jordan Marsh Stores Corp.*, 317 NLRB 460 (1995) (employee must demonstrate employer's reason amounted to mere pretext); *Frierson Bldg. Supply Co.*, 328 NLRB 1023 (1999) (timing of employee discipline a coincidence where employee engaged in unsatisfactory work performance contemporaneously with protected concerted activity); *Keco Industries, Inc.*, 271 NLRB 634 (1984) (no inference of discriminatory motive where no evidence exists that the employer treated charging party differently than similarly-situated employees).

The Union did not prove that the Employer violated the NLRA when it discharged Grievant.

***AT&T Mobility*, 139 LA 763 (Fowler, 2019)**

The Union discussed *AT&T Mobility*, 139 LA 763 (Fowler, 2019), in its Post-Hearing Brief. The Brief indicates that in *AT&T Mobility* the grievant was accused of making threats against a co-employee and discharged under the employer's "zero tolerance" policy. The employer's investigator took the allegations against the grievant as true without clear corroboration, and failed to consider the grievant's decade of service free of any suggestion of violence or threatening behavior. The employer failed to consider that the employee making the accusations was in a relationship with an individual whom the grievant had previously accused of sexually harassment. The arbitrator sustained the grievance and returned the employee to work with full backpay.

AT&T Mobility is different from the case before me. In the case before me, there is collaboration of SC's testimony. There is SC's comprehensive detailed contemporaneous email document. There is the coming upon the scene by CC who observed SC's demeanor. There is the reporting of the situation to JH witnessing SC's reactive demeanor to Grievant's statements. There is no allegation that SC "was in a relationship with an individual who the grievant had previously accused of sexually harassment." I have read the *AT&T Mobility* award very carefully. It is a different case than the case before me.

Requested documentation

The Union argues that during the grievance procedure it requested relevant documents from the Employer. The Employer did not provide the documents This resulted in the Union filing a Unfair Labor Practice charge with the NLRB. After approximately two years, there was a settlement of the NLRB charge and the documents were provided by the Employer to the Union.

The Record does not explain what the requested documents were and what the ultimately provided documents were. Neither the ULP charge nor the ULP settlement document are in the Record.

The Union does not request any specific relief to this document production issue from two to four years ago. In the fullness of time, the parties have had four full days of hearing, outstanding Post-Hearing Briefs, and now, my Decision and Award.

U.S. District Court Order and deposition

The Employer in conjunction with the filing of its Post-Hearing Brief has filed in this arbitration case what are apparently a U.S. District Court August 2025 Order and a September 2024 deposition transcript. The Employer argues that I should take judicial notice of these documents and take them into consideration in making my decision. The Union argues that I should not do this.

I am not reopening the Record to let these documents in. I have not read the documents.

Abrams, p. 209, states,

> Just cause for discipline must be evaluated on the basis of the grounds asserted by management for its action at the time it took action. It cannot change its grounds later. It cannot investigate further after the discharge too add more charges to bolster its case.

Nolan, p. 232, states,

> Virtually all arbitrators agree that an employer may not introduce at the hearing a new reason to justify a discharge.

Penalty

It has been indicated that the remedy to be fashioned will be fact-specific. An arbitrator can consider mitigating circumstances. An arbitrator may reduce the penalty if, given the facts of the case, it is clearly out of line with generally accepted industrial standards of discipline. Elkouri & Elkouri, pp. 18-46 to 18-49. See generally *ConAgra Foods, Inc.*, 137 LA 169, 178-180 (Ross, 2017). " **Absent a specific provision establishing that violation of a provision [of the CBA] results in [a certain level of discipline]**, the arbitrator has broad leeway to determine whether the discipline imposed fits the charge of misconduct." Farrell, "Due Process/Just Cause Issues," *References For Labor Arbitrators* (American Arbitration Association, 2005), p. 32. [Emphasis added.]

The United States Supreme Court affirmed this broad grant of authority to labor arbitrators in *United Paperworkers International Union, AFL-CIO v. Misco, Inc.*, 484 US 29, _____ (1987), stating:

> As the Court has said, the arbitrator's award settling a dispute with respect to the interpretation or application of a labor agreement must draw its essence from the contract and cannot simply reflect the arbitrator's own notions of industrial justice. But as long as the arbitrator is even arguably construing or applying the contract and acting within the scope of his authority, that a court is convinced he committed serious error does not suffice to overturn his decision.

As indicated at Elkouri & Elkouri, p. 15-33,

> … as *Misco* recognized, the parties may limit the discretion of the arbitrator to modify the discipline imposed by the employer by employing express language to that effect in the collective bargaining agreement. Consequently, courts will not hesitate to set aside an arbitrator's decision when the language of the collective bargaining agreement prohibits the arbitrator from fashioning remedies once just cause for an employer's action is found.

It has been said that, when an employee "has violated a rule or engaged in conduct meriting disciplinary action, it is the function of management to decide the proper penalty." *Park Geriatric Village*, 81 LA 306, 311 (Lewis, 1983). The fact that the employer may have imposed a somewhat different or more severe penalty than the arbitrator might have fixed "had he had the decision to make originally is not justification for [the] arbitrator to change the penalty." *SA Slenk and Co.*, 26 LA 395, 396 (Stouffer, 1956). An arbitrator "should not substitute his personal judgment for that of management because he does not agree with management in its disciplinary decision." *Parkview-Gem Inc.*, 59 LA 429, 431-432 (Dugan, 1972). *Emerson Electrical Co.*, 89 LA 512, 515 (Traynor, 1987) (once "the evidence demonstrates just cause exists for discipline, an arbitrator is not warranted in overruling its decision to discharge unless the evidence shows management acted in an arbitrary, capricious, discriminatory or inequitable manner"). Elkouri & Elkouri, pp. 15-32 to 15-35. Abrams, p. 212. *Rabanco Ltd*, 137 LA 328, 337-338 (Latsch, 2017).

It has been said that arbitrators should not alter the employer's choice of penalty unless the employer's actions have been arbitrary or in violation of a statute or the CBA. This principle is summarized in *Davison Chemical Co.*, 31 LA 920, 924 (McGuiress, 1959), as follows:

> Where proper cause for a disciplinary action exists, a penalty imposed in good faith by management should not be disturbed by the arbitrator. It is not for the arbitrator to substitute his judgment for that of one having proper authority to discharge, where there has been no abuse of discretion or no conduct forbidden by statute or the labor agreement.

Arbitrator Whitley P. McCoy summarized management's discretion to determine the appropriate level of discipline.

> Where an employee has violated a rule or engaged in conduct meriting disciplinary action, it is primarily the function of management to decide upon the proper penalty. If management acts in good faith upon a fair investigation and fixes a penalty not inconsistent with that imposed in other like cases, an arbitrator should not disturb it. The mere fact that management has imposed a somewhat different penalty or a somewhat more severe penalty than the arbitrator would have, if he had had the decision to make originally, is no justification for changing it. The minds of equally reasonable men differ. A consideration which would weigh heavily with one man will seem of less importance to another. A circumstance which highly aggravates an offense in one man's eyes may be only light aggravation to another. If an arbitrator could substitute his judgment and discretion for the judgment and discretion honestly exercised by management, then the functions of management would have been abdicated, and unions would take every case to arbitration. The result would be as intolerable to employees as to management. *Vertex Aerospace, LLC*, 120 LA 767, 768 (Kilroy, 2004) (quoting *Stockham Pipe Fitting Co.*, 1 LA 160 (McCoy, 1945)).

Arbitrators respect explicit CBA provisions that prohibit arbitrators from changing or modifying contractual terms. *Danis-Shook Joint Venture*, 111 LA 1095 (Klien, 1999) (cited at Elkouri & Elkouri, p. 18-9, fn 38) (arbitrator refrained from imposing requirement that would violate the admonition agreed to by the parties that the arbitrator "shall have no power to add to, subtract from, or modify this Agreement in any way but shall instead be limited to the application of the terms of this Agreement in determining the dispute.");

Grievant's conduct on June 29, 2021, violated the CBA imbedded "inappropriate verbal conduct towards co-workers" rule.

Additional allegations and arguments

The parties have made additional allegations and arguments that I have not discussed in depth. These allegations and arguments concern whether the Employer hired Grievant fast enough in 2009, finger pointing, overtime, sexual harassment, wheelchairs, deduction of pay, safety awards, FMLA leave, vacation time, why HH was moved, and the time clock. I have rendered a Decision and Award concerning the just cause and NLRA allegations and arguments. The National Academy of Arbitrators, American Arbitration Association, and Federal Mediation & Conciliation Service, Code of Professional Responsibility for Arbitrators of Labor Management Disputes, C(1)(a), states:

> C. Awards and Opinions
>
> 1. The award should be definite, certain, and as concise as possible.
>
> a. When an opinion is required, factors to be considered by an arbitrator include: **desirability of brevity**, consistent with the nature of the case and any expressed desires of the parties; need to use a style and form that is understandable to responsible representatives of the parties, to the grievant and supervisors, and to others in the collective bargaining relationship; necessity of meeting the significant issues; **forthrightness to an extent not harmful to the relationship of the parties; and avoidance of gratuitous advice or discourse not essential to disposition of the issues.** [Emphasis added] Abrams, pp. 297-298.

Conclusion

The crucial points in this case include:

1. The Employer has the burden of proof on the CBA issue;

2. The Union has the burden of proof on the NLRA issue;
3. The “inappropriate verbal conduct” rule is embedded in the CBA;
4. Grievant's recollection of what he said during the June 29, 2021, situation is inconsistent with the credible recollection of SC;
5. SC's recollection of what Grievant said during the June 29, 2021, situation is supported by her almost contemporaneous email, the credible testimony of CC, and the credible testimony of JH;
6. The Employer proved by a preponderance of the evidence that there was just cause for the discharge;

5. The Employer conducted a fair investigation;

6. The Employer proved by a preponderance of the evidence that Grievant violated the CBA provision concerning “inappropriate verbal conduct;”

7. CBA, Art. 14, provides that the Employer “may impose a lesser penalty [than discharge] at the sole discretion of the” Employer;

8. The Union did not prove by a preponderance of the evidence that the Employer violated the NLRA;

9. Ordinary meaning given to words unless they are clearly used otherwise;

10. The totality of the circumstances; and

11. The CBA.

This decision neither addresses nor decides issues not raised by the parties. “An arbitrator is not, using Judge Cardozo's words, a ‘knight errant, roaming at will in pursuit of his own ideal of beauty or of goodness.’” Cardozo, *The Nature of the Judicial Process* 141 (1922), quoted at Abrams, p. 81.

AWARD

Having heard or read and carefully reviewed the evidence and argumentative materials in this case and in light of the above discussion, I deny the Grievance.

November 28, 2025

/s/ LEE HORNBERGER

Lee Hornberger

Arbitrator

Traverse City, Michigan

APPENDIX – SC's email – Rx. 1.

On 06/29/2021 I was closing windows and was clocking [Grievant] out. After telling him good night he started talking about the incidents that has happened with [ER]. I have typed up in bullet points what he talked about. I realize that the cameras can only record visual and not audio, but I felt it was important management knew what he was saying. I want to make it very clear I did not in any way start or engage in this conversation. I stayed silent and did not respond because with [Grievant's] temper I did not want any arguments or anything worse to happen. [Grievant] did say during this he did not care if I told management because they all already know about how he feels. I know that his temper was not directed at me on 06/29/2021 but if he felt like he was going to do that with a colleague I don't know what he can do to me. After 06/29/2021 I no longer feel comfortable being alone here with [Grievant]. I did not feel safe or comfortable to come into work 06/30/2021 knowing all this as I was still feeling uneasy and scared to be alone with him. I knew that I had a shift I needed to cover. I am still in shock that a person would come into their place of employment and say the things he did to another person about someone who also works with him. I requested that I not be here when the managers speak to [Grievant]

because I will be here alone with him tonight and I don't trust [Grievant] temper. I feel unsafe to be walking to my car at night because I feel anything could happen once he finds out I reported him.

• [Grievant] talked about [ER] being corrupt and harassing him for asking [AK] why they were late but he claims he was in the bathroom and [AK] was his witness and they had to call P _____ called out so [Grievant] could talk to her.

« He talked about [ER] harassing him about times because I asked her if she knew how to do them the day prior due to concerns [Grievant] brought up.

» [Grievant] brought up that he can no longer give the keys and papers to [ER] due to the argument and fingers being pointed at each other faces. That management told him that there was disciplinary action being taken but nothing was done. He would only give papers to road supervisor or take them home if [ER] was closing.

« He explained that the last argument had had him so upset he was going to hurt her. He had brought up some news thing he saw where they shoot up. He then proceeded to say that he felt that he had enough anger to go back in dispatch and kill [ER] but then changed it to not kill but beat but enough to hurt her to be disabled. But then he thought of his kids and he knew he couldn't.

• [Grievant] discussed how upstairs is corrupt and faggots and assholes and bitches and he didn't care if I told upstairs that.

• He then went on claiming [ER] pulled him and [AA] aside to see if they would testify against [KD] for the assault and if they would give a statement. [Grievant] said he told her no because he and [AA] were not there. That's why she harasses him because he didn't do what she wanted.

• [Grievant] brought up that [ER] would try starting up drama by bringing other drivers like [MD] and H _____ by telling them that they left nights to get away from [Grievant].

• He stated [ER] was a 400-ton slut that needed to be hanged up as a slut ass bitch.

• [Grievant] stated they should have fired her after the first incident.

• When [Grievant] saw [CC] open driver's door, he rushed to grab his stuff and said good night. [CC] saw my face and asked if I was okay and I told her w hat happened, and she advised me to go to management.

Thank you