

BEFORE  
MARGO R. NEWMAN  
ARBITRATOR

In the Matter of the Arbitration Between	)	
	)	
AMS EARTHMOVERS	)	
Company	)	
	)	FMCS Case No. 150123-52982-A
and	)	
	)	
INTERNATIONAL UNION OF	)	
OPERATING ENGINEERS,	)	(Brian Winters grievance)
LOCAL NO. 150, AFL-CIO	)	
Union	)	
	)	

DECISION AND AWARD OF ARBITRATOR

This matter was heard in Lake Villa, Illinois on August 7, November 16 and December 15, 2015, before the undersigned arbitrator mutually selected by the parties through the procedures of the Federal Mediation and Conciliation Service.

Representing AMS Earthmovers, hereinafter called the Company or AMS, was Charles A. Krugel, Counsel. Also present for the Company was Julie Savitt.

Representing the International Union of Operating Engineers, Local 150, hereinafter called the Union, was Steven A. Davidson, Counsel. Also present for the Union were John Horn and Brian Winters.

At the hearing the parties were afforded the opportunity to examine and cross-examine witnesses, and to present documentary and other evidence. The hearing was

transcribed. The parties filed post-hearing briefs which were received by the arbitrator on March 25, 2016.

## I. THE ISSUE

The parties were unable to stipulate the issue and agreed that the arbitrator would determine the issue after hearing all of the evidence. The Union frames the issue as follows:

Did the Company have just cause to discharge grievant, Brian Winters, and, if not, what is the appropriate remedy?

The Company frames the issue as follows:

Did grievant quit his employment on November 26, 2014, or was he discharged sometime thereafter?

After hearing the evidence, the arbitrator finds that the grievance presents the following issues:

1. Did grievant, Brian Winters, quit his employment on November 26, 2014?
2. If not, was he discharged for just cause thereafter?
3. If there was no just cause for discharge, what is the appropriate remedy?

## II. RELEVANT CONTRACT PROVISIONS

The following provisions of the May 1, 2014 through April 30, 2018 Material Producers Agreement between the Northern Illinois Material Producers Association and the Union, to which the Company is signatory, and the Employee Handbook, are relevant to the issues in this case.

### **ARTICLE V - MANAGEMENT RIGHTS**

The Company has the right to discharge any employee for just cause.....

## EMPLOYEE HANDBOOK

### 3.9 PERSONNEL DATA CHANGES

It is the responsibility of each employee to promptly notify their manager or AMS Human Resources Department of any changes in personnel data such as:

- Name and number of dependents

### 3.13 CORRECTIVE ACTION

AMS holds each of its employees to certain work rules and standards of conduct (see Section 4). When an employee deviates from these rules and standards, AMS expects the employee's manager to take corrective action.

Corrective action at AMS is progressive. That is, the action taken in response to a rule infraction or violation of standards typically follows a pattern increasing in seriousness until the infraction or violation is corrected.

The usual sequence of corrective actions includes an oral warning, a written warning, probation, and finally termination of employment. In deciding which initial corrective action would be appropriate, a manager will consider the seriousness of the infraction, the circumstances surrounding the matter, and the employee's previous record.

Though committed to a progressive approach to corrective action, AMS considers certain rule infractions and violations of standards as grounds for immediate termination of employment. These include, but are not limited to:

\* \* \* \* \*

- Insubordinate behavior

### 3.14 EMPLOYMENT TERMINATION

Termination of employment is an inevitable part of personnel activity within any organization, and many of the reasons for termination are routine. Below are a few examples of some of the most common circumstances under which employment is terminated:

- **Resignation** - voluntary employment termination initiated by an employee.

- **Termination** - involuntary employment termination initiated by AMS.

\* \* \* \* \*

When an employee intends to terminate his/her employment with AMS, AMS would appreciate at least two (2) weeks written notice.

Any employee who terminates employment with AMS shall return all files, records, keys, and any other materials that are property of AMS.....

\* \* \* \* \*

Additionally, all resigning employees should complete a brief exit interview prior to leaving....

### III. RELEVANT FACTS

AMS is a construction material hauling company and limestone aggregate supplier. Julie Savitt has been sole owner of the Company since 2007. She met, [REDACTED] grievant at the end of 2010, and hired him as an Operator to load trucks in October, 2012. Shortly thereafter, grievant introduced Savitt to the Union and she signed the instant collective bargaining agreement. [REDACTED]

[REDACTED]

[REDACTED]

Sam [REDACTED] [REDACTED] had worked for the company that cleaned AMS offices prior to grievant offering her the position of scalemaster, and she began working for the Company in April, 2013. She later assumed the job of dispatcher. Grievant and Sam [REDACTED] began dating in the summer of 2014, and were married on August 23, 2014. While Savitt

[REDACTED]

Savitt testified that grievant did a good job at work until the nature of their relationship changed, and he started having frequent blow ups at work, including incidents of insubordination where he verbally abused her, bullied and was rude to her. Since Savitt did not spend much time at the office prior to the Fall of 2014, and left grievant in charge of getting things done and overseeing the office, she was unaware of the interactions between, and dissatisfaction of, her office staff. She noted that she did not realize that he was bullying others until September or October, when Bookkeeper/Account Manager Li [REDACTED] [REDACTED] convinced employee Ki [REDACTED] to come to her and tell her what was going on. Savitt began spending more time in the office and started keeping track of these incidents, writing notes of what occurred, including what she referred to as

disciplinary warnings, which she placed in grievant's personnel file, even though she did not share them with grievant.<sup>1</sup> Savitt stated that grievant became very protective of Sam [REDACTED] and always interfered when people tried to approach or talk to her.

[REDACTED] Savitt

sought help from her counsel about how to deal with the issues in her office.<sup>2</sup>

[REDACTED]

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<sup>1</sup> For example, there are two Discipline Action Forms dated 9/11/2014, one involving grievant's failure to use safety wear in the yard and speaking rudely to Savitt in front of staff and vendor, and another regarding grievant's using a company fuel card for personal use. Savitt sent herself an email on October 17 regarding the need for parts for the trucks and grievant's refusal to order them, despite direction to do so. She also included notes from speaking to grievant in mid-October about the timeliness of his repairs and driver complaints, the fact that he changed the dispatch phone log in and password without authority, intentionally broke the ethernet chord so the DVR cameras he set up would not make an internet connection, and disconnected the controller so the plow could not be used on a company truck. The file also contains notes of meetings held by Savitt and each of her employees on 10/1/14 concerning their strengths and weaknesses (indicating that grievant had great managerial skills). There is also a sheriff's

[REDACTED]

<sup>2</sup> One of the documents contained in the file Savitt maintained concerning grievant is an email to her attorney, [REDACTED] detailing her knowledge of, and concerns about, the situation developing at the office with grievant and Sam [REDACTED] and their impact on other employees. In this email, she makes clear that she is not in a relationship with grievant and it is not personal for her, but she believes that they think it is all because of her finding out that they are married and their personal relationship. Savitt expresses her concerns about how they behave and are working in the office, indicating that she is unable to get rid of grievant at that time due to a side agreement they have for maintenance of her trucks and its connection to a vehicle he has that she owns, and the difficulty in finding someone that can do two part-time jobs as one full time one with perks, as grievant does. In the email Savitt asks for advice on how to handle the situation until she has a replacement, indicating that they are going to make problems for her no matter what she does.

[REDACTED]

harassing them. He admitted never filing any grievances or sexual harassment complaints against Savitt.

Grievant and Sam [REDACTED] closed on their house on November 25, 2014 and moved in that night. Grievant was under the impression that Wednesday, November 26, 2014, the day before Thanksgiving, was a double time holiday under the Union contract, and he agreed to come in to work on the trucks in the yard. Savitt stated that grievant was disgruntled when she told him that had she spoken with John Horn, Union Business Agent (BA), and he confirmed that it was not a holiday. Savitt received a call from a customer in the afternoon complaining that grievant took Sam [REDACTED] with him in a company truck to their yard on Saturday and she got out of the truck without a hard hat, which is a safety issue. Savitt testified that employees are supposed to ask permission for someone else to be in the truck with them, and she confronted grievant about this when he was in the yard, asking if it was true. Savitt stated that grievant got very upset, stormed into the office in a tantrum and said "I quit and I am going to bring the police to get my stuff," which she understood referred to his possessions [REDACTED]. She testified that grievant said this in front of everyone in the office, yelled and made a scene, and walked out at about 2:30 p.m.<sup>3</sup> Employees [REDACTED] and [REDACTED] testified that while they did not overhear the conversation between Savitt and grievant beforehand, they heard grievant say that he quit before walking out. [REDACTED] stated that she heard grievant say "I fucking quit and I'll be back with the police to get my shit."

Grievant testified that after Savitt confronted him about Sam [REDACTED] being in the truck without safety gear, and reprimanded him for it, she kept repeating herself, as she

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<sup>3</sup> A November 26 note written by Savitt at 2:39 p.m. repeats what occurred, indicating that she was accepting his resignation and intended to call the Union to get a new operator on Friday.

followed him into the office. He stated that, after being told he wasn't getting holiday pay and this exchange, he had enough and said "I quit for the rest of the day," and he left around 2:30 pm. Sam [REDACTED] testified that she heard grievant say that he quit for the day, Savitt asking if he quit, and grievant saying "for the day." All of the other employees present in the office, as well as Savitt, deny that grievant said anything about quitting "for the rest of the day."

N [REDACTED], who owns [REDACTED] Auto & Truck Repair located around the corner from AMS, and who works on the Company's trucks, testified that he has known grievant for years, and that sometimes he and Sam [REDACTED] parked their personal trucks at his location after work before going out. [REDACTED] stated that on November 26 grievant came in and said that he quit, and that he and Julie had a big fight and he did not want her bullshit any more. [REDACTED] recalls that sometime after this conversation grievant told him that he was trying to get his job back there in whatever way he could. [REDACTED] recalled Savitt telling him not to deal with grievant any more after he quit, and just to deal with her regarding the Company's vehicles.<sup>4</sup> He opined that he knows grievant not to be a good person, while Savitt's word is good.

The record contains text messages between Savitt and grievant that day regarding

[REDACTED]  
[REDACTED] Savitt was going out of town for the holiday weekend. Grievant phoned Horn later that day explaining that upon learning that he was not being paid double time for the holiday, and feeling harassed by Julie about Sam [REDACTED] being in the truck, he said that's it and he was quitting for the day. The record contains text messages

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<sup>4</sup> John E [REDACTED], a long time friend of grievant and owner of American Snow Removal, which had an agreement with AMS to lease a piece of equipment for a shopping center project, with grievant as the Operator, testified that at the last minute in December Savitt called him and said that he had let grievant go and he no longer works for her. The record indicates that AMS was successful in a lawsuit it filed against American Snow for monies unpaid on a contract.



between grievant and Savitt on Friday, November 28, where she said he quit and he said he only quit for the rest of the day.

Horn testified that Savitt called him on that Friday saying that she had an issue at work and that grievant quit, he said that he heard he had quit for the day, and they agreed that they would meet the following Tuesday and that Horn would contact grievant to be at the meeting, as grievant had been informed not to come to work on Monday. [REDACTED] testified that she saw grievant and Sam [REDACTED] at Walmart on Black Friday, and in response to her saying he quit, was told by grievant that he would be there on Monday. When Savitt returned from being out of town for the holiday weekend on Monday, she contacted the Union hall and requested an operator for the following two days. They sent [REDACTED] e [REDACTED].

A meeting was held in Savitt's office on Tuesday, December 2, 2014. Horn testified that he saw Julie's whiteboard with writing on it when he entered her office,<sup>5</sup> and he asked her what it was about and she said she did not want to talk about it as it had nothing to do with the Union. Horn recalled grievant saying he thought Wednesday was a double time holiday, and Julie was harassing him and he had enough and said he was out of here for the day, and Julie saying that is not what he said, repeating that he quit and said he would get the police to get his stuff. Horn recalled them discussing personal things. Savitt testified that grievant lost his temper and accused her of harassing Samantha, and that he stormed out the office, breaking her lego truck located on a table on the landing outside her office door. Horn recalled asking Savitt if there was a problem with grievant's work, and her responding that he did a good job. Both grievant and Horn stated that Savitt had some paperwork on her desk, and that she stated that she was going

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<sup>5</sup> The Union introduced what it stated was a picture of the writing on Savitt's whiteboard, which, among other things, stated - "Per Brian: I am not his friend and I am out to fuck him!" Grievant and Sam [REDACTED] said that was Savitt's handwriting and that it was on the whiteboard for everyone to see earlier in November. All of the other employees denied seeing this on the board in Julie's office. Savitt was never shown this picture or questioned about it when she testified.

to give grievant a 3 day suspension, but because of his attitude exhibited in the meeting, she was going to terminate him.

Savitt and Horn remained after grievant left the meeting, Horn instructed her to send him a copy of any discipline she issues, and they discussed her obligations under the contract. Savitt asked him if he wanted to speak to each employee about what grievant had said, and [REDACTED], [REDACTED] and [REDACTED] came in individually and confirmed that they heard grievant quit on November 26, and not indicate that he was quitting for the day. [REDACTED]

[REDACTED] testified that after she spoke with Horn on December 2, Sam [REDACTED] came into her office (with [REDACTED] present) and asked if they signed any affidavits. When [REDACTED] said they couldn't tell her, she got upset with them for not lying to the BA and saying that they did not hear anything. [REDACTED] stated that while Sam [REDACTED] was teaching her to do some dispatching around this time, Sam [REDACTED] told her that she and grievant were planning on quitting after the first of the year, and [REDACTED] recalled Sam [REDACTED] telling her after she secured her house, that they would use unemployment to

pay off their mortgage. The record reveals that Sam [REDACTED] left the Company [REDACTED] on January 6, 2015.

After the instant grievance was filed, grievant filed for unemployment compensation, and the Company contested his entitlement to benefits. An IDES hearing was conducted on February 20, 2015, and a Referee issued a decision on February 23, 2015. The Company appealed, and the Board of Review issued a decision on June 30, 2015, a copy of which was entered into the record because it specifically addresses the issue of whether grievant quit or was discharged.<sup>6</sup> The Union raised some question about the propriety of the Company's service of process of its appeal, but the record contains no evidence that the Board of Review decision is actually being appealed by grievant or his counsel. Grievant testified that he received unemployment benefits.

[REDACTED] testified that he received a phone call from BA Horn on February 3 regarding the upcoming IDES hearing for grievant, and that he had never received a phone call from a BA before. [REDACTED] stated that Horn said that he did not have to testify unless he was subpoenaed, and that he could be prosecuted. Since he was afraid, he

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<sup>6</sup> The Board of Review found, in pertinent part:

"Our review of the totality of the evidence leads us to the conclusion that the claimant quit work, and was not discharged. The claimant's actions and statements show that he was the moving party in his separation from work. He was upset about being reprimanded by the employer's president and by working on what he erroneously believed was a holiday, and walked off the job after telling the president that he quit. He added that he would bring police with him when he came back to get his belongings. The claimant maintained that he stated he was quitting only for that day, or, in other words, merely leaving work early, before the end of his shift. If so, the claimant's choice of words is curious, when he had only thirty minutes left on his shift. He did not say he was leaving, or that he was out of there. He did not say that he would see the employer on Monday. He said that he quit. He also maintained that he stated he was bringing police to the president's house, but he did not offer any corroboration for that statement. As noted above, the claimant did not bring this up in his testimony until the employer's witnesses had already testified about this statement. For these reasons, we find that the claimant's testimony lacks credibility, supporting the conclusion that he quit. ....

We also find that the claimant did not have good cause for leaving work. The employer reprimanded him about an alleged policy violation, but he did not contend that he was in danger of being disciplined or that his job was in jeopardy as a result of the reprimand. The employer did not alter the terms or conditions of the claimant's employment so as to render the job unsuitable for him. The preponderance of the evidence establishes that the claimant voluntarily left work for reasons that were not attributable to the employer... the claimant is disqualified for benefits..."

reported the conversation to Savitt, who notified her counsel, who, in turn sent an email to the Union concerning threatening [REDACTED]. Horn called [REDACTED] back to apologize and clarify that he misunderstood his statement, and that the Union could not do anything to him for testifying, but that another member could file charges against him.

The Union also filed an unfair labor practice charge with the NLRB on February 2, 2015 alleging that the Company, by its attorney, interfered with grievant and the Union's right to file and pursue a grievance. Savitt and employees at the Company gave affidavits in response to the charge, which was eventually withdrawn by the Union on May 29, 2015.

#### IV. COMPANY POSITION

The Company argues that the preponderance of the evidence establishes that grievant quit voluntarily and without good cause attributable to the Company on November 26, 2014, and there is no reason to question his intention to quit. It maintains that grievant quit in response to learning he would not be paid the double time holiday rate for November 26 and after being verbally reprimanded for taking his wife on an unauthorized trip to a client's worksite without proper protective gear. The Company asserts that all credible evidence supports grievant unconditionally quitting, noting that all 4 people in the office (other than grievant's wife) testified that they heard him say he quit and not "for the day" before he left work 30 minutes early, and their evidence is consistent with similar statements they made to the NLRB and IDES prior to the arbitration and shortly after the incident. It notes that the IDES Board of Review found that grievant quit based on the same evidence as that presented here, and that he was not eligible for unemployment benefits, relying on *Walls v. Department of Employment Sec. Bd. of Review*, 2013 IL App (5th) 130069; *White v. Department of Employment Sec.*, 376 Ill. App. 3rd 668 (2007); *Lojek v. Department of Employment Sec.*, 2013 IL App (1st) 120679 (2013).

The Company contends that the Union's witnesses were incredible, self-interested, and gave inconsistent accounts of what occurred, pointing out that even grievant and his wife have different versions of what he said, and whether he said he quit once or repeated it, citing *UNITE HERE Kick 49 v. Khanm* 2013 WL 6907507 (Hoh, 2013). It notes that neither [REDACTED] nor Horn were eye witnesses to the conversation on November 26, and neither are believable since one is being sued by the Company and the other threatened an employee to prevent him testifying against grievant in the IDES hearing. The Company alleges that the Union's exhibit purporting to be a white board entry from Savitt's office written by Savitt was manufactured, is nonsense, and proves nothing, since no other employee saw it there despite testimony that it was exhibited in November, its contents were never raised in any other forum, and it first surfaced after Savitt completed testifying at the arbitration hearing, and it was never put to her. It asserts that [REDACTED]'s evidence supports grievant's intention to quit, since grievant informed him that he did, as well as the grievant's general lack of credibility and his motivation to get back at Savitt by fighting to get back to work.

The Company argues that it is entitled to rely upon grievant's clear and unequivocal words that he quit in managing its business, since the collective bargaining agreement has no language covering quitting, does not restrict the Company, and grants it broad rights in managing the workplace, citing *Bruce Hardwood Floors & United Brotherhood of Carpenters, Local 2509*, 19 WL 1747794 (King, 1989); *Gill Studios & Sign, Display and Industrial Workers Union, Local 820*, 2005 WL 6713541 (Margolin, 2005). It notes that grievant never quit before or left early, exhibiting a clear intention to quit on this occasion, there was no prior notice, and there were no allegations of any unilateral or substantial changes to his job amounting to a constructive dismissal or fault on the part of the Company, relying on *Arroyo v. Doherty*, 695 N.E.2d 1350 (1st Dist., IL App Ct., 1998); *AAA* 2014 WL 4418628 (Dickemper, 2014); *AAA (Education Services)*, 2014 WL 5513797 (deGrasse, 2014). The Company asserts that what is important is

grievant's state of mind (his intention) and the Company's perception regarding his intention, pointing out that all present took him at his word and had no reason to doubt his intention to quit, citing *AAA (Private Households)*, 2013 WL 4921329 (Tanzman, 2013).

The Company contends that, since grievant was totally at fault in this case, the grievance should be denied, and, even if the arbitrator was to find that grievant did not quit, no back pay or other monetary remedy would be appropriate. It requests that it be awarded costs and fees in this matter, relying on the fact that the Union has refused to talk to the Company, it threatened an employee if he testified in the IDES hearing, filed charges with the NLRB that it had to withdraw after the Company was obliged to spend time and money responding, and has engaged in a pattern of unprofessional behavior. The Company notes that it informed the Union that intended to seek costs and fees immediately after it filed its arbitration demand. It relies on *Electro-Static Finishing, Inc. & IBEW, Local 292*, 1991 WL 11754353 (Pribble, 1991) in support of its request for costs and fees based on the fact that the Union acted in bad faith, dishonestly, and may even have fabricated evidence in this case.

#### V. UNION POSITION

The Union asserts that grievant did not quit, even it he said he did on November 26, 2014, since he did not clearly intend to sever his employment, and Savitt knew that. It points out that none of the witnesses to the conversation could hear everything grievant said, some heard him say he would bring the police back to get his stuff, others did not, and some heard him say "for the day," while others did not. The Union insists that grievant's emotional state at the time must be considered, since he was being harassed by Savitt and had finished the work he had come to perform. It relies on the absence of any other signs of resignation, including his failure to turn in his keys or have an exit interview, citing *International Mill Service*, 88 LA 118 (McAlpin, 1986); *Nile*


*Healthcare*, 115 LA 1005 (Daly, 2001). The Union maintains that grievant's texts in the days immediately following November 26 explain that he only quit for the rest of the day, and Savitt's expressed intention to give him a 3 day suspension in the December 2 meeting, shows that she understood he did not voluntarily resign.


The Union posits that, even if grievant did resign, he did so in anger, haste and due to job and personal problems, and he should be allowed to rescind his resignation, relying on *Atlantic Southeast Airlines*, 102 LA 656 (Feigenbaun, 1994). It reiterates that Savitt did not rely on his statement and did not believe grievant quit, since she only ordered an operator from the Union hall for 2 days (in line with her intended 3 day suspension). The Union maintains that grievant immediately rescinded his resignation before the Company relied on it, pointing to grievant telling [REDACTED] on Friday that he intended to work Monday, immediately calling Horn and explaining the situation, texting Savitt, and telling [REDACTED] only that he and Julie had a fight.

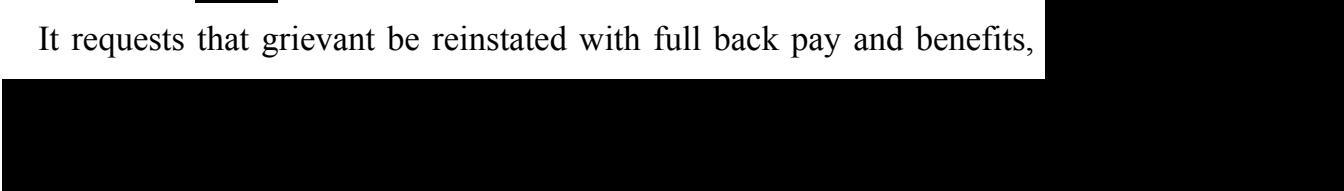
The Union argues that the Company failed to meet its burden of proving that there was just cause for termination, noting the higher burden (beyond a reasonable doubt) applicable in discharge cases, relying on *S.D. Warren Co.*, 89 LA 688 (Gwiazda, 1985). It asserts that Savitt was not a credible witness, noting the contradictions in her testimony and within her texts, saying she is not jealous but revealing otherwise, citing *Western Condensing Co.*, 37 LA 912 (Mueller, 1962). The Union points out that Savitt could not provide any specifics with respect to her claims that grievant constantly blew up, ranted and raved and attacked her, and was left with unsubstantiated exaggerations. It offers that Savitt admitted that grievant was a good employee (even at the December 2 termination meeting), and performed duties over and above his Union Operator's responsibilities for which he received additional remuneration.

The Union contends that grievant's spontaneous reactions and cursing do not warrant termination, citing *Marin Honda*, 91 LA 185 (Kanowitz, 1988), noting that the

only reason Savitt decided to terminate him, rather than suspend him, was due to his attitude in the December 2 meeting, and despite the lack of warning or prior disciplinary record.



The Union maintains that, if the arbitrator were to find that grievant's conduct merited some type of discipline, termination is too severe a penalty, relying on *Bethlehem Steel Co.*, 2 LA 187 (Dodd, 1945); *City of Bell Gardens*, 2000 LA Supp. 108017 (Pool, 2002). It stresses that the Company's Employee Handbook, as well as due process, require progressive and corrective discipline, and there was none in this case, citing *San Francisco Housing Authority*, 118 LA 283 (Bogue, 2002); *Jamison Door Co.*, 199 LA Supp. 104064 (Sergeant, 1999); *Meyer Products, Inc.*, 91 LA 690 (Dworkin, 1988). The Union points out that grievant stated to Savitt that he would not repeat the mistake of taking Sam  in his truck, which should be considered a mitigating factor in this case. It requests that grievant be reinstated with full back pay and benefits,



In the event that reinstatement is not deemed appropriate due to the potential of unusual conflict, the Union requests front pay and benefits for a period of a year in lieu thereof. The Union notes that the collective bargaining agreement does not allow for the award of attorney's fees to the Company, since Article II, Section 2 Step 3(e) states clearly that the parties are to pay for their own expenses at arbitration, and the arbitrator



is not empowered to add to the contract. It contends that it would be unfair to assess damages against the Union for fulfilling its responsibility to fully represent employees.

## VI. DISCUSSION AND CONCLUSION

As noted at the outset, this case raises the issue of whether grievant quit his employment on November 26, 2014 or whether he was discharged thereafter. In the event I conclude that grievant did not quit, I must determine whether he was discharged for just cause and the appropriateness of the penalty. To say that this case is a perfect example of why it is dangerous to mix business and pleasure is an understatement. The record is replete with evidence that can only be described as overly personal, [REDACTED] in many ways. However, in making my assessment of the sufficiency of the evidence and credibility of witnesses, I am mindful that this is a workplace, and the facts and testimony must be seen and understood within that context. Where it is unnecessary for a resolution of the issues in this case for me to recite my specific reasons for crediting certain witnesses or evidence, I will not do so.

For the purposes of resolving this case, I accept and credit the evidence that grievant said that he quit on November 26, 2014 and would bring the police to get his belongings (regardless of whether he meant to work or Savitt's house), not that he quit "for the rest of the day." He left work early and even told [REDACTED] that he had quit immediately after doing so. The record establishes that within minutes of his departure, Savitt wrote a note to herself indicating that she was accepting his resignation and intended to call the Union on Friday to get a replacement Operator.

That being said, grievant's intention to return to work was voiced almost immediately to Horn, Savitt (via texts), [REDACTED] on Friday, and [REDACTED] shortly thereafter. Text messages between grievant and Savitt on Friday show another example of a clashing of wills, with grievant saying that he only quit for the day, and Julie saying that is not what he said and he could not just decide to unquit on his own. While Savitt may well have been within her rights in managing her business to accept grievant's resignation, [REDACTED]

[REDACTED]

The evidence suggests that Savitt told Horn and grievant (and perhaps [REDACTED]) at or after the December 2 meeting that her intention going into the meeting was to suspend grievant for 3 days for his actions on November 26. Savitt's intention to take disciplinary action undermines the contention that she really believed that grievant intended to quit or decided to deal with him as if he had. Thus, I conclude that, even if grievant quit on November 26, Savitt accepted his attempt to withdraw his resignation over the weekend, and determined to initiate corrective discipline for his serious conduct in walking off the job and being disrespectful to her in front of others after her warning about his safety violation. See, e.g. *Atlantic Southeast Airlines*, supra.

The issue in this case then becomes whether there was just cause for grievant's termination on December 2, 2014. It is undisputed that during the meeting with Union BA Horn, where Savitt and grievant discussed what had occurred on November 26 and what grievant said, things turned personal, once again, they argued, grievant lost his temper, got angry, and was insubordinate in his behavior toward Julie. At that point Savitt determined that she could no longer tolerate grievant's insubordinate actions and conduct toward her and the disruptive effect he had on the office, and she decided to terminate his employment. After hearing this, grievant stormed out of the office, intentionally breaking her lego truck model displayed on a table on the landing. Savitt sought Horn's assistance in dealing with the situation by discussing grievant's contractual entitlements and having him listen to employees individually concerning their interactions with grievant, what went on in the office, and what he said on November 26. [REDACTED] recalled Horn telling Savitt that she did not have to bring grievant back to what was obviously a hostile work environment created by his presence and the friction between him, Julie, and others.


While the Union is correct that progressive discipline is an accepted tenet of just cause, and is provided for in Employee Handbook, that document makes clear that

insubordinate behavior is grounds for immediate termination. The fact that grievant had a pattern of insubordinate behavior toward Julie in the past that did not lead to discipline - primarily because Savitt was either unaware of it or chose to ignore it [REDACTED] - does not negate her ability to rely upon his current rude and insubordinate actions in determining not to give him a lesser form of penalty and to discharge him instead. That grievant's conduct was shown not to be correctable is evidenced by his actions in a meeting called with his Union BA to determine his job status. These actions were an exacerbation of his continuous rude and derogatory conduct. These facts distinguish this case from those relied upon by the Union where the penalty was deemed too severe, or progressive discipline was found to be appropriate under the circumstances. See, e.g. *Marin Honda*, supra; *Jamison Door*, supra; *International Mill Service*, supra.

I am unable to accept the contention that Savitt's actions toward grievant during the period leading up to, and including, the date of discharge on December 2, amounted to *quid pro quo* harassment. [REDACTED]

[REDACTED] Rather, I find that grievant's insubordinate conduct on December 2 was the straw that broke the camels back, woke Savitt from her reverie, made her understand that a working relationship between them was no longer possible, and that grievant's presence had an adverse affect on her office and employees.

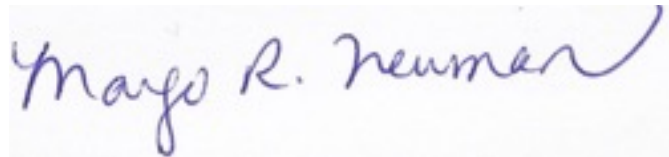
Under the strange and peculiar circumstances of this case, I conclude that the Company established just cause for the termination of grievant. This finding is independent, and different, from the IDES Board of Review decision with respect to whether grievant quit or was entitled to benefits, and I conclude that the cases relied upon by the Company for finding that grievant's leaving was not the fault of the Company are not relevant herein. See, e.g. *Walls*, supra; *White*, supra; *Lojek*, supra. [REDACTED]



amount of trust and responsibility with grievant, she cannot be faulted for putting an end to an employment relationship that had obviously become destructive to her business and untenable, as well as undermining her authority with her employees and reputation within the business community. For all of these reasons, I find that the Company had just cause to terminate grievant on December 2, 2014.

VII. AWARD

The grievance is denied.



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Margo R. Newman, Arbitrator

Dated: May 29, 2016