BEFORE
JOSEPH V. SIMERI
ARBITRATOR

THE ARBITRATION	)	
	)	
Between	)	
	)	
C_____,	)	
	)	**COOK PLANT GRIEVANCE**
Grievant,	)	**CK-12-08**
	)	
And	)	
	)	
AMERICAN ELECTRIC POWER CO.,	)	
	)	
Company.	)	

ARBITRATION AWARD

This dispute was arbitrated on January 29, 2013, in Bridgman, Michigan. American Electric Power Company ("the Company") was represented by its Manager of Labor Relations, Thomas H. Dawson. The Grievant, C_____, was represented by John T. Burhans, Esq.[1] The Company and the Grievant presented witnesses and introduced evidence. The Company and the Grievant filed post-hearing briefs on April 10, 2013. This Award is issued within 30 days from the filing of the post-hearing briefs.

[1] I commend both Mr. Dawson and Mr. Burhans for the quality of their advocacy during the hearing and the quality of their post-hearing briefs.

ISSUE

The agreed issue is whether the Company's discharge of the Grievant was for just cause? If not, what is the appropriate remedy?

APPLICABLE EMPLOYEE HANDBOOK PROVISIONS

This Grievance and this Arbitration arise in a non-union setting. The Company has in effect an Employee Handbook, which contains a grievance procedure culminating in final and binding arbitration. The following provisions of the Employee Handbook apply to this case.

Attendance and Punctuality

As a major supplier of energy and related services, the company must maintain a high level of efficiency and productivity. We must furnish service to our customers when and where it's needed 24 hours a day. Therefore, the work force is scheduled to provide a sufficient number of employees on the job every day to ensure that this service is available.

Employees of the company are expected to be at the job every day, excepting time off for illness, vacation and other excused absences. It may be necessary for another employee to fill in when an employee is absent. Therefore, it is evident that absenteeism is not only costly to the company but may also impair the service that is provided to customers.

If you must be absent from duty for any reason, contact your immediate supervisor and give an explanation of the circumstances and the probable duration of your

absence. This contact may be made by telephone, and it should be done as far in advance of your regular starting time as is reasonably possible.

If your absence is prolonged, keep in touch with your supervisor so that work can be properly scheduled.

Recurring absenteeism and/or tardiness will subject you to disciplinary action, up to and including discharge.

CORRECTIVE DISCIPLINE POLICIES AND PROCEDURES

Introduction

In any well-ordered community, laws are necessary to protect the rights of the citizens, as well as their lives and property. The same situation prevails in this company, where a large number of employees work together. One person's misconduct may harm all the rest. Therefore, employees should expect standards of conduct to be established and maintained. It is the responsibility of management to make and enforce reasonable rules to increase or maintain efficiency. To this end, the company now has in effect – and will establish from time to time – such rules, as it considers necessary.

Rules of Conduct

The large majority of employees will maintain an acceptable standard of honesty and ethical human behavior. For the few exceptions found in any large group of people, however, rules of conduct have been established. Any one of the following offenses or any self-evident breach of discipline not forbidden by any published policy or rule, but which is clearly harmful to the orderly conduct of the business, to the safety of employees or equipment, or which is against generally accepted standards of moral conduct, will be grounds for disciplinary action varying from written warning to discharge, depending upon management's judgment as to the seriousness of the offense:

13. Loafing on the job or improper performance of job.

20. Violations of rules of conduct or safety.

21. Tardiness or absenteeism.

Types of Disciplinary Action

It is company policy to recognize and apply three forms of disciplinary action:

1. Written warning.

2. Suspension, either (a) without pay and without work, or (b) with pay and with work (working suspension);

3. Discharge.

A supervisor as a matter of information and training may give oral warnings, but such warnings will not be considered as formal discipline.

Initial discipline for a particular offense is normally a written warning, followed by a suspension without pay, and finally discharge for recurrence of the same or similar offense. Discipline for exempt and supervisory employees who are not covered by the Grievance and Arbitration procedure may differ.

A working suspension may be given when the offense is failure to meet financial obligations, which causes the company to become involved, as loss of pay would only make the situation worse. A working suspension may also be given for absenteeism, as a suspension from work would only result in the company being further deprived of the employee's services. There may be other circumstances in which the discipline would be a working suspension.

For the purpose of progressive discipline and for disciplinary record purposes, there is no difference between the two types of suspension listed above. Discipline may progress from either form of suspension to another suspension or to discharge, depending on the circumstances and the offenses.

Generally, a suspension given as discipline will not be less than three working days. In instances where it is appropriate for the employee to be off the company property immediately while the company investigates the incident, as in suspected theft, fighting or gross insubordination, the employee may be suspended without pay for

more or less than three working days while investigation of the incident proceeds. After completion of the investigation, a final decision on discipline will be reached and the employee notified.

Whether or not the employee has received any prior discipline of any kind, suspension or discharge may be imposed when the seriousness of an individual offense and/or the employee's accumulated employment record indicates that such action is required.

Arbitration Procedure

In the event of failure to satisfactorily settle or adjust any grievance involving a suspension or discharge, or a specific provision of an applicable Employee Handbook Supplement, a regular nonexempt, non-supervisory employee not represented by a union may refer the grievance to arbitration in the following manner, provided that the grievance procedure as outlined has been followed.

If, after reviewing the third step answer you believe your grievance is not satisfactorily resolved, you may bring the matter before a neutral arbitrator. This must be done by giving written notice to the appropriate HR Region Manager within 15 calendar days after receipt of such answer, of your desire to have the matter brought before a neutral arbitrator. Upon receipt of such notice from you, the company will promptly request the American Arbitration Association to propose a list of neutral arbitrators. From this list or a subsequent list, you and the company will jointly select an arbitrator.

If you desire professional counsel to represent you in preparing and presenting your case to the neutral arbitrator, you have the right to select as your own counsel an attorney who maintains an office in the county or parish, or any adjoining county or parish, in which your assigned headquarters is located.

The company will pay a reasonable fee for such counsel, as well as the cost of the arbitration itself. The legal fee, as determined by the neutral arbitrator, will represent reasonable compensation to your attorney in accordance with the standards for legal fees prevailing in the area.

In considering the grievance, the neutral arbitrator will not add to, detract from or modify any part of the Employee Handbook or any Supplement thereto. After hearing the case, the arbitrator will render a written decision, which will be final and binding

on both parties.

If you request it, you may select another non-represented employee from your work location (including members of management other than those who have been or might be involved in the processing of your grievance) to assist you in any way in presenting your grievance and processing it at any or all steps.

FACTS

This case presents little, if any, dispute over the facts. I am not confronted with issues of credibility. It would be an easier road to final judgment were it so. Instead, I must determine whether the undisputed facts reasonably justify the Company's business judgment to discharge a good and decent man.

The Company operates a nuclear power generating facility, known as the Donald C. Cook Nuclear Plant, in Bridgman, Michigan ("Cook Nuclear Plant"). As Americans, we are painfully aware that immunity from terrorist acts is no longer possible, even in this great land. Thus, security at the Cook Nuclear Plant is paramount. The Nuclear Regulatory Commission regulates security at the Cook Nuclear Plant. And absolute compliance with security regulations is essential to the continued safe operation of this nuclear facility.

As a part of its security plan, the Company maintains a cadre of 24-hour armed security officers. Entrance in, and access to all of the Company's facilities in Bridgman, both exterior and interior, are strictly regulated. The Grievant

worked for the Company, in his own words, as an "Armed Nuclear Security Officer." He was discharged by the Company on April 21, 2012. The reason, in the Company's judgment, was "…tardiness, absenteeism and your overall performance."

Before his discharge, the Grievant's work record evidenced the following:

1. On April 14, 2011, a three-day suspension without pay for leaving his area of responsibility, such action resulting in a National Regulatory Commission logable security event, and

2. On January 13, 2012, a two-week suspension without pay for his failure to perform a lock check as designed and required.

ANALYSIS

A. The Company's Position.

Mr. Arbitrator, says the Company, this is a straightforward case of progressive discipline. The Company did not act in haste. It repeatedly worked with the Grievant in an effort to improve his performance. It encouraged him to be a better employee through various performance-improvement plans. Nevertheless, from April 2011 through April 2012, about one year, he had been suspended for three days, and then for two weeks. Finally, after his tardiness, the Company,

using its policy of progressive discipline, had no alternative but to discharge the Grievant.

B. The Grievant's Position.

The Grievant counters that to impose the ultimate employment penalty, discharge, for a tardiness of somewhere between two and three minutes is excessive. To be sure, the Grievant had been suspended for three days, then later suspended for two weeks, but he had been placed on performance improvement plans by the Company, and he had successfully completed the requirements imposed by the Company in those performance improvement plans. Moreover, being late one time is not the same as a work performance issue. The three-day and the two-week suspensions had nothing to do with tardiness or attendance. The incident on April 16, 2012 is a de minimus tardiness issue. It surely cannot be the basis for discharge.

C. The Merits

During World War II, the following verse was framed and hung on the wall of the Anglo-American Supply Headquarters in London, England:

> For want of a nail the shoe was lost;
> For want of a shoe the horse was lost;
> For want of a horse the battle was lost;
> For the failure of battle the kingdom was lost –
> All for the want of a horse-shoe nail.

The Grievant was late to his post on April 16, 2012. Why was he late? It is the story of the lost horse-shoe nail. The Grievant must wear a special security badge. That badge is part of his uniform. Without it, he cannot access any portion of the facility. He left home for work duty but when he arrived at the plant entrance, he realized he had forgotten his security badge. Without it, he could not even enter the facility, much less his place of assigned duty, and so he turned around and returned home to retrieve the security badge. He then drove back to Bridgman, arrived at the plant gate entrance, cleared the checkpoint and proceeded to the parking lot. This fateful morning, the plant was in what is termed an "outage." This meant that parking spaces, normally open, were full. Faced with this reality, the Grievant, already pressed for time, could have parked at one of the out lots and, in an effort to timely arrive at his post, briskly walk, jog or run to his place of duty. Instead, he decided to wait for a shuttle bus because he believed the bus would be faster. But, the stars were not aligned and it took longer than what he thought it would take for the shuttle bus to arrive. Once the bus arrived, he boarded. Then, there was another delay while the bus driver waited for other passengers to board. The Grievant, all the while realizing that time was critical, asked the driver to bypass one of the stops. The driver refused. Finally, the Grievant arrived at his duty post. But he was too late. The door to the squad room,

where he was to be present for the daily required security briefing, was locked.

At no time during this odyssey did the Grievant call anyone at the plant to inform them that he would likely be late. And why did he not call? Well, he does not have a telephone landline at his home. He does have a cell phone, but his cell-phone battery was dead. Thus, but for the Grievant's curious failure to put on his security badge when he dressed for duty that morning, and but for his inability to notify his employer he might be late because he failed to monitor the status of his cell-phone battery, and but for his mistaken choice to rely on the shuttle bus instead of briskly walking, jogging or running to his post, his job, his kingdom, if you will, was lost.

First, I address the Grievant's position that attendance or tardy issues are distinct from work performance issues. They are not. A part of any job is to satisfactorily perform the work assigned, and, in this significant security position, to be there on time.

Indeed, this is not just any security job. I am not presented with an employee on a manufacturing line who is late, resulting in a company being a widget short of its normal production. The Grievant is not a retailer's rent-a-cop snooping for shoplifters. He is a sentinel. He is the first line of defense against those who would inflict unspeakable damage on innocent people. The Grievant

could have prevented this performance failure, either by carrying his security badge, which was part of his uniform, or by having a working cell phone when his cell phone was his only means of telephonic communication, or by jogging or running from the parking lot, instead of relying on a shuttle-bus driver, or by simply getting up an extra 20 or 30 minutes earlier every morning to make sure that if there was a problem, he would have time to correct it.

This performance failure was his third performance failure in a year and two days. In April 2011, the Grievant left his area of responsibility. The Company's Security Officers must be where they are supposed to be when they are supposed to be there. He was suspended for three days without pay. Then, within nine months, in January 2012, he failed to perform a lock check on the perimeter of a protected area, and was suspended for two weeks without pay. He was notified in writing on January 29, 2012 that any further violation of Company policies or procedures would result in his termination or discharge. Yet, not much more than 60 days after that notice, he was late.

As part of its personnel policies, the Company uses, when necessary, what it terms Performance Improvement Plans ("PIP"). These PIPs, are not discipline, but are plans that are intended to improve the employee's work performance. On January 30, 2010, the Company implemented a PIP Plan for the Grievant because

of what the Company termed a "decline in performance." The PIP required the Grievant report to work as scheduled. While the PIP is not discipline, it is specifically intended to improve the Grievant's job performance. The PIP language states that "failure to make improvements in the specified areas could result in discipline up to and including termination."

On August 22, 2011, the Grievant received a written attendance warning and was placed on a PIP through February 22, 2012. While still under that PIP, on January 13, 2012, the Grievant received a two-week suspension without pay based on his failure to adequately perform a perimeter padlock check. The writing notifying the Grievant of the two-week suspension also notified him that, within the past 12 months, he had received several documented written coachings in the area of human performance, was given a three-day suspension, and had received a written warning for attendance. Further, the written notice dated January 13, 2012 specifically notified the Grievant that his job performance was unacceptable and needed to improve immediately.

In addition, the PIP, which had been in effect at the time of the two-week suspension, and which was to have ended on February 22, 2012, was extended until July 30, 2012. As part of the PIP, the Grievant was required to read certain security requirements, discuss those with a supervisor, perform certain additional

tasks, and prepare "… a white paper on at least two non safeguard error likely situations that you have encountered and choose what HU tools should be employed and how." The Grievant did complete those requirements on April 1, 2012. Then, just 15 days later, the Grievant was late to arrive at his duty post, a tardiness preventable by the Grievant and resulting from a series of poor decisions.

Both the Grievant and the Company agree that the PIPs are not in and of themselves discipline. The Grievant earnestly believes, however, that successful completion of the PIP is absolution of all workplace sins. The Company sees the PIPs differently. From the Company's perspective, the PIPs are intended to help the employee avoid further sin, not to absolve past sin. I agree with the Company. The performance improvement plans are just that — they are efforts by the Company to improve the work performance of the employee. I understand why the Grievant might conclude that, since he successfully completed the PIP, he earned a fresh start. Perhaps the Company's oral explanation of the PIP was not clear to the Grievant. But, I cannot turn the blade inward and use the PIP against the Company. The PIP is not a get out of jail free card. The Grievant's total work record is what it is.

The Company has an Attendance Guideline Policy. That policy covers

attendance instances, including tardiness, and charts those issues over a 12-month rolling period. Based on the Company's own attendance guidelines, the most discipline the Grievant should have received solely for his April 16, 2012 tardiness would have been a written warning. Thus, the Grievant posits that attendance failures must be judged separately from work performance.

But attendance and tardiness are an integral part of job performance. A three-day suspension, followed by a two-week suspension, followed by the tardiness, all within one year and two days, present the Grievant's quilt of work performance. I must examine all of it. This is baseball season. A waist-high pitch over the heart of the plate is a strike. A pitch above the knee and below the waist, but not quite over the heart of the plate, is also a strike. And a pitch, just at the bottom of the knee, and at the very outside corner of the plate, is also a strike. All strikes are not the same, but they are all strikes.

Finally, I give significant weight to the nature of the business of this particular employer at this particular location, and the Grievant's job duties. Maintenance of security at this nuclear-power facility is absolutely essential. The Grievant is an Armed Nuclear Security Officer. He serves as guardian and protector. Like Ceasar's wife, he must be above reproach.

I do have the power under the Employee Handbook to reinstate the

Grievant, with or without loss of pay. But, I do not have the right to exercise that power, unless I find the Company did not have just cause to discharge him. Just cause does not mean whatever I think is fair. I am not the supreme personnel commander. What I must decide is whether the Company, not I, had a reasonable basis for its decision. Here, the Company weighed three performance offenses in barely over a year committed by an employee holding a position essential to the security of a nuclear facility. It applied progressive discipline. Under these circumstances, I cannot say the Company's decision was unreasonable.

AWARD

Thus, I make the following Award:

1. The grievance is denied. The discharge of the Grievant is sustained.

2. Nevertheless, the Grievant shall have fifteen calendar days from the date of this Award to submit a written resignation of his employment to the Company. If submitted, it must be accepted by the Company.

3. Within 30 days from the date of this Award, the Company must provide the Grievant, on Company letterhead, a neutral letter of reference setting forth only the Grievant's name, the beginning and ending date of his employment, his job title and job duties, and his rate of pay.

4. Pursuant to the agreement of the Company, the Company must pay the

Arbitrator his fee and expenses as provided in the Company's Employee Handbook.

5. The Arbitrator retains jurisdiction over this case for implementation of the remedy.

Dated: May 1, 2013

s/Joseph V. Simeri_____
Joseph V. Simeri, Arbitrator