ARBITRATION DECISION NO.:
230

UNION:
OCSEA, Local 11, AFSCME, AFL-CIO

EMPLOYER:
Department of Transportation
District 8

DATE OF ARBITRATION:
January 29, 1990

DATE OF DECISION:
February 17, 1990

GRIEVANT:
Rick R. Tishner, Sr.

OCB GRIEVANCE NO.:
31-03-(89-06-27)-0037-01-06

ARBITRATOR:
Anna Smith

FOR THE UNION:
Penny Lewis
Yvonne Powers

FOR THE EMPLOYER:
Michael Duco
Carl C. Best

KEY WORDS:
Removal
Insubordination
Theft of Property
Timeliness
Burden of Proof
Just Cause

ARTICLES:
Article 24-Discipline
- §24.01-Standard
- §24.02-Progressive Discipline
- §24.04-Pre-Discipline

Article 25-Grievance Procedure
§25.06-Time Off, Meeting Space and Telephone Use
§25.08-Relevant Witnesses and Information

FACTS:

The grievant is an Equipment Operator I employed by the Ohio Department of Transportation. He was assigned to snow and ice control on I-275 and State Route 27. A private citizen reported seeing the grievant nine miles off his route, spreading salt on a city street, on the grievant's own driveway and filling a thirty gallon can with salt. A supervisor investigated the report, saw salt on the ground and in a can. He took a written statement from the citizen. The supervisor checked the radio logs for the grievant's truck and found no notations for the time of the incident. The grievant was removed for violation of Directive A-301, Rules (1)(a), (2)(c), (6), (8), (13), (18), (34), (36).

EMPLOYER'S POSITION:

There is just cause for removal. The grievant was seen out of his assigned work area, in the employer's truck, appropriating employer owned goods. The private citizen witness is credible and other area residents have seen the grievant appropriating salt.

Procedural defects alleged are not valid. Witnesses for the grievant are not required to be produced at Step 3 under Section 24.04. Discipline is timely as the employer acted as soon as the private witness agreed to testify. The penalty is commensurate with the offense. The grievant has less than one year seniority and the offense is serious. The evidentiary burden is only that the Arbitrator be convinced of the employer's claims.

UNION'S POSITION:

There is no just cause for dismissal. It has not been proven that the grievant left his route and appropriated employee-owned salt. Mileage logs of the grievant's truck are not determinative. The private witness is not credible due to an on-going conflict with the grievant. It was not proven in fact that the salt found at the grievant's residence was employer owned. The grievant was not reported absent without leave for the time of the incident. The grievant has no prior discipline.

The employer did not conduct a fair investigation. Discipline was not imposed timely and charges are stacked. The employer violated Section 25.08 by not producing requested witnesses at the Step 3 meeting. The name of the private witness was not provided at the A-302 meeting, thus precluding rebuttal by the union.

ARBITRATOR'S OPINION:

The charges against the grievant are excessive. Charges are essentially two: 1) insubordination and 2) theft of State property. The employer has met the burden of proof that the grievant was off his assigned route and taking employer owned salt. The employer's evidence has not been successfully rebutted.

The employer's investigation was not arbitrary or capricious. Timeliness was not violated. The delay was reasonable due to a witness' refusal to testify. There is no violation of Section 24.04 as the union had knowledge of the private witness' name and address prior to the A-302 meeting. The employer violated Sections 25.06 and. 25.08. There is just cause for discipline but violation of Sections 25.06 and 25.08 affects the penalty.

AWARD:

Grievance sustained in part and denied in part. The grievant is to be reinstated without back

pay and loss of seniority. The employer will allow a reasonable time for the grievant to claim his job.

TEXT OF THE OPINION:

In the Matter of Arbitration
Between

THE STATE OF OHIO
DEPARTMENT OF TRANSPORTATION

and

OHIO CIVIL SERVICE EMPLOYEES
ASSOCIATION, LOCAL 11,
A.F.S.C.M.E., AFL-CIO

OPINION and AWARD
Anna D. Smith, Arbitrator

Case No. 31-08-(89-06-27)-0037-01-06
Removal of Rick R. Tishner, Sr.

I. Appearances

For the State of Ohio:
Michael Duco, Advocate, Office of Collective Bargaining
Carl C. Best, Department of Transportation
William H. Joiner, Hamilton County Superintendent,
District 8, Department of Transportation
Ralph W. Smith, General Superintendent, District 8,
Department of Transportation
Sharon E. Koehler, Witness
Marjorie Koehler, Witness

For OCSEA/AFSCME Local 11:
Penny Lewis, Staff Representative and Advocate
Yvonne Powers, Associate General Counsel, OCSEA
Rick R. Tishner, Sr., Grievant
Robert B. Dougoud, Sr. Department of Transportation
Bobby B. Revis, Mechanic I, Sharonville Outpost,
Department of Transportation
Judy Collins, Witness
John Rockefeller, Witness

II. Hearing

Pursuant to the procedures of the Parties a hearing was held at 10:00 a.m. on January 29, 1990 at the offices of O.C.S.E.A., 1860 Watermark Dr., Columbus, Ohio before Anna D. Smith, Arbitrator. The Parties stipulated that the case is properly before the Arbitrator. The Parties were given a full opportunity to present written evidence and documentation, to examine and cross-examine witnesses, who were sworn and excluded, and to argue their respective positions. No post-hearing briefs were filed and the record was closed at the conclusion of oral argument, 3:00 p.m., January 29, 1990. The opinion and award is based solely on the record as described herein.

III. Issue

The Parties stipulated that the issue before the Arbitrator is:

Did the Department of Transportation remove the Grievant, Rick Tishner, from his position of Equipment Operator 1 for Just Cause in accordance with Article 24 of the Agreement?

If not, what should be the remedy?

IV. Stipulations

In addition to arbitrability and the issue, the Parties stipulated the following facts:

1) Grievant was employed with the Department of Transportation as Equipment Operator I from July 11, 1988 through June 16, 1989.

2) Grievant has no prior disciplinary record.

3) Directive A-301 is posted on the bulletin board and Grievant had knowledge of the policy.

The following documents were received as Joint Exhibits #1-#4:

1) State of Ohio/OCSEA Local 11 Contract, 1986-89;

2) Grievance Trail;

3) Discipline Trail;

4) Directive A-301, "Disciplinary Actions."

V. Relevant Contract Clauses

Article 24 - Discipline
Article 25 - Grievance Procedure

VI. Case History

The weather in Hamilton County, Ohio on March 6, 1989 was bad. By the Parties' stipulation, testimony of witnesses, and exhibits (Employer Exhibit #2 and Joint Exhibit #10), there was freezing rain and the roads were icy and snow-covered. The Grievant, Rick R. Tishner, Sr. had

been working for the Ohio Department of Transportation for about eight months. On this day he was driving a dump truck (T8-992) on the 7:30-4:00 shift and his duties were snow and ice control on I-275 and State Route 27 (Colerain Avenue). Chase Avenue was not part of his route and the 1900 block is about 9 miles from his route. William H. Joiner, Hamilton County Superintendent, District 8, Ohio Department of Transportation, received a call from a private citizen reporting that she had seen the driver of ODOT truck T8-992 dumping State salt on a city street, the private driveway of the house next door to hers, and in a can in the house's garage. (This driver was later identified as the Grievant, a resident of the house.) Mr. Joiner called his superintendent seeking directions. He was told to investigate. Taking a lead worker with him, he went to the citizen's residence, 1927 Chase Avenue, Cincinnati. At the end of the dead-end street he saw a pile of blue and white salt mixture. The citizen reported to him that she had seen the driver take some salt from the truck, place it in a garbage can and take the can into the garage of her neighbor's house. That garage's door being open, he looked in. He saw a 30-gallon garbage can full of salt. The citizen supplied a statement that she had written before Mr. Joiner arrived (Union Exhibit #4). In it, she states that her name will be confidential. By her testimony, the citizen released her name, Sharon E. Koehler, a couple of months later, in April or May.

Mr. Joiner also researched the radio log for the day. There were no notations for T8-992 for the part of the day when the witness allegedly saw the truck and its driver on her street (approximately 12:45-1:00 p.m.). He did not question the Grievant or his partner, Anthony Haygood, or take any other witness statements, nor did he contact the Highway Patrol, although he did talk with the Grievant's immediate supervisor, Mr. Dougoud.

In a letter dated April 24, the Grievant was informed of a pre-disciplinary hearing to be conducted on April 28 to consider his supervisor's decision to remove him from employment. The charges were violation of Directive A-301:

1(a) Neglect of Duty (major)
2(c) Insubordination (failure to follow written policies)
6 Theft
8 Deliberate destruction, damage and/or theft of State property
13 Leaving the work area without permission
18 Misuse of State vehicle
34 Violation of §124.34 Ohio Revised Code
35 Other actions. . .. (Joint Exhibit #3).

On April 26, the Union requested documents and witnesses, including Anthony Haygood, from the Employer, but Mr. Joiner testified he could not recall the date he received the letter (Union Exhibit #8).

On April 28, the pre-disciplinary hearing was held at the Hamilton County Garage. Here, the Grievant told his side of the story. Essentially his version as testified to at the arbitration hearing is that he had taken his usual lunch break between 11:30 and noon. After lunch he worked I-275 westbound while his partner, Anthony Haygood, worked the eastbound side. On his return, Haygood radioed with a problem. The Grievant found his partner's truck hung up in mud to its axles. They did not radio for assistance or file an accident report because Haygood had been in trouble and the partners covered for each other. They got the truck pulled out about 2:00 p.m., but when Haygood flipped the chain up, it got caught in the auger. When they got back to the garage, they told Mr. Dougoud, their direct supervisor how it went. The chain was pulled out by the next day. The Grievant was driving his own truck (992) on March 6 and he states that he did not take it home. Haygood, however, was driving a different truck from usual, 896 instead of 850, which was

down. The Grievant further testified that at the A-302 hearing, he said he bought the salt found in his garage from Central Hardware and that the amount he had on hand was not unusual, given the length of his driveway.

In support of the Grievant's claim that he did not go home during working hours, the Union offers the testimony of Judy Collins, friend and housekeeper to the Grievant, who states she was at the house from 8:00 a.m. until 4:00 or 4:15 p.m., and the Grievant did not come home during that time. Affidavits of the Grievant's spouse and a neighbor were also submitted (Union Exhibit #7).

In support of the contention that the Grievant assisted Haygood during the time he was allegedly at home, the Union offers the affidavit of Haygood (Union Exhibit #7) and the testimony of two witnesses. Robert Dougoud, immediate supervisor of the Grievant, who recalled that a truck had a chain caught in its auger--he thought 850--and that Haygood and Tishner told him later in the day about having to pull a truck out of the mud. Witness Bobby Brevis, Mechanic 1, stated that he did not see the Grievant at lunch on March 6 and that he did pull a chain out of 850's auger the next day.

On June 9, a letter was written informing Mr. Tishner that he was removed from employment effective June 16, 1989 for violation of the eight items listed in the pre-disciplinary hearing notice (Joint Exhibit #3). On June 20, the removal was grieved and processed through to arbitration where it presently resides (Joint Exhibit #2).

VII. Positions of the Parties

Position of the Employer

The Employer contends that the Grievant left his assigned duties during a snow and ice storm, taking a State-owned vehicle to his own residence where he appropriated State-owned salt for his own use. The best evidence that this occurred as alleged is the written statement and testimony of the private citizen who reported him. The Employer answers the Union's challenge to this witness's credibility thus: at the time of the incident, the witness did not know that the person she observed was her neighbor. Rather, she thought the driver of the truck was her neighbor's brother or other relative. Therefore, her statements cannot have been motivated by a personal vendetta against the Grievant. Moreover, her March 6 statement identified the truck by number, a number which could hardly have been remembered from the prior July 4 when the Grievant claims he showed her a picture of himself with his truck.

The Employer also contends that following the telephoned report of the citizen, an effort was made to investigate the charges. A supervisor visited the scene, talked with the witness, and attempted to determine the whereabouts of the Grievant during the period in question. The results of this investigation supported the citizen's claim.

The Employer also alleges that this is not the first time the Grievant has been seen appropriating Ohio Department of Transportation salt and gives the testimony of Marjorie Koehler, who also lived next door to the Grievant.

In rebuttal to the Union's procedural challenge, the Employer argues said challenge is mere subterfuge. It is true that a witness requested by the Union for the pre-disciplinary hearing did not appear, but Article 24.04 requires that a "list" of witnesses be supplied. Therefore, there is no violation to the article or its intent when the Employer does not have witnesses. The Employer goes on to point out that arbitration is where the Grievant gets a full evidentiary hearing. Haygood did not appear at the arbitration hearing. Therefore, there is no evidence that the accident involving his truck occurred and there is no proof the Grievant was not where the citizen says she saw him.

With respect to the Union's timeliness argument, the Employer points out that it could not initiate disciplinary action against the Grievant until the witness agreed to the release of her identity. Fear of retaliation kept her from doing so until April or May. Once she agreed to release her name, the Employer acted. Without her, there would have been no evidence upon which to base discipline.

With respect to the penalty, the Employer points out that Article 24.04 requires that disciplinary action be commensurate with the offense. It agrees that although this is the Grievant's first offense, he is a short-term employee (less than one year) and his actions constitute serious infractions. The Grievant left his post and failed to perform his duty during bad weather, thereby jeopardizing the safety of the traveling public and placing his employer at a liability risk. Even without the theft of the salt and misuse of State property this is so serious as to justify discharge.

The Employer contends that it need not meet a particular degree of proof; it must merely convince the Arbitrator (Arbitrator Graham in ODOT/OCSEA 31-05-880314-0018-01-06 (Grosenbaugh)). It therefore concludes that it has met its burden of proof and requests that the grievance be denied. However, if the Arbitrator sustains the grievance, it requests that back overtime pay not be granted since this is counter to the practice of the Parties, the amount is too speculative, and it had not been sought by the Grievant prior to arbitration.

Position of the Union

The Union defense is both procedural and substantive. First it contests the Employer's charges of theft, insubordination, misuse of State property, etc. It claims that it has accounted for the Grievant's whereabouts during the period in question by the Grievant's testimony supported by affidavits and testimony of other witnesses.

It also calls into question the quality of evidence submitted by the Employer:

1. At the A-302 hearing the Employer contended that the Grievant could not have driven his route because mileage logs showed only 38 miles for the day. Later it was discovered that the mileage of the Grievant's truck on March 6 could not be determined because the log entries were in error (Union Exhibit #5).

2. At the A-302 hearing Mr. Joiner stated there was no way to tell whether the salt found in the Grievant's garage was State property. He also stated that he did not know the color of the salt he saw, nor did he know whether Department of Transportation salt is a different color from hardware salt. Here he says he saw blue-and-white salt.

3. The credibility of the Employer's chief witness is suspect because of her animosity toward the Grievant and their continuing conflict.

4. The fact that the Grievant's supervisor did not report him absent without leave for 2-1/2 hours and did not dock his pay supports the contention that the Grievant was working (Union Exhibit #5).

5. The Grievant has no prior disciplinary record and received acceptable performance ratings (Union Exhibit #2).

6. Article 24.01 requires the Employer to establish just cause for discipline. The Employer has not met its burden.

The procedural defenses raised by the Union are:

1. The Employer did not conduct a fair and objective investigation as required by just cause principles and the Employer's own policy (Union Exhibit #6). It did not file an incident report, it did not contact any law enforcement agency, it did not take a sample of the salt found in the Grievant's garage, it did not question the Grievant until the A-302 meeting, nor did it interview any of the Grievant's co-workers regarding the citizen's allegations.

2. Article 24.02 requires disciplinary action to be initiated as soon as reasonably possible. Approximately fifty days elapsed between the date of the incident and notice of pre-disciplinary hearing. Arbitrator Drotning (ODOT/OCSEA 3107-890323-0020-91-06 (Hosier)), found 44 days between incident and removal enough to raise questions about management's view that the Employee's actions were sufficient to warrant discharge (Union Exhibit #1).

3. Charges against the Grievant are stacked. Two arbitrators have found global charges such as #34 and #35 of Directive A-301 irrelevant (Pincus in DYS/OCSEA G87-2810 (King) (Union Exhibit #2) and Rivera in ODOT/OCSEA 31-05-880314-001801-06 (Grosenbaugh) (Union Exhibit #3).

4. Article 25.08 requires the Employer to produce documents and witnesses relevant to the grievance. The Union requested witnesses and documents for the pre-disciplinary hearing (Union Exhibit #8), and for the Step 3 hearing. This request was denied. Specifically, Haygood, who could have clarified the event of March 6, was not made available.

5. Article 24.04 states that "If the Employer becomes aware of additional witnesses or documents . . ., they shall also be provided to the Union and the Employee." In April or May the citizen-witness said she would testify, but her name was not given at the A-302 hearing or after, denying the Union the opportunity to rebut her testimony.

For all these reasons, the Union seeks reinstatement of the Grievant to his former position, full back pay including overtime, all benefits and to be made whole.

VIII. Opinion

The charges against the Grievant as specified in the pre-disciplinary hearing notice and removal order are numerous and, in the opinion of this Arbitrator, excessive. No evidence or argument was presented by the Employer on Item #34 or #35 (violation of Ohio Revised Code and other actions). Some charges are redundant with or contained in others, and violation of any of the rules would constitute "Insubordination (failure to follow written policies)" (Item 2(c)). The charges boil down essentially to two: theft of State property (salt) and major neglect of duty.

Has the Employer met its burden of proof as required by §24.01 of the Collective Bargaining Agreement? In the opinion of this Arbitrator, the testimony and exhibits introduced by the Employer were sufficiently substantial to convince her that on March 6, the Grievant was seen in his State-owned truck off his route during working hours appropriating State-owned salt.

While the witness who testified to these actions was confused about the name of the person she saw, she was very clear about the number of the truck she saw, the identity of its driver as the Grievant, what she saw him doing, and the difference between State and City road-control materials. To be sure, she was also hostile towards the Grievant, both in her written statement

given at the time of the incident and her testimony. Indeed, her display of animosity and the history of the conflict she recounted would have undermined her credibility had her testimony been the only evidence against the Grievant. However, her mother's testimony confirmed in part the daughter's written statement. And Mr. Joiner's direct observation of salt in the garage and at the end of the street supported both witnesses' stories. The radio log neither refuted nor proved them (Employer Exhibit #1). Although the supporting evidence is circumstantial and inconclusive by itself, it is entirely consistent with Sharon Koehler's testimony. While I am inclined to believe that this witness was motivated to report the incident by her animosity towards her neighbor, I do not believe she fabricated the events she reported.

What, then, of the Union's case? The Grievant claims he was elsewhere doing other things at the time Ms. Koehler claims to have seen him. Again the Arbitrator looks to other testimony and evidence for corroboration. The testimony and affidavits of Collins, Rockefeller and Glass (Union Exhibit #7) were offered to support the claim that the Grievant did not go home during the day. All being friendly with the Grievant and the latter two not subject to cross-examination, one turns to other offerings. By affidavit the Grievant's partner, Anthony Haygood, states they were together during the time in question. This statement, too, was not subject to cross-examination and was made by a person friendly to the Grievant. By the Grievant's own testimony, "Tony had been in trouble. We cover for each other." While this statement was made to explain why they had not filed an accident report, it provides Haygood with two possible motives for lying: animosity towards management and the return of a favor to his partner. Moreover, while this Arbitrator is generally reluctant to draw too much of a conclusion from the absence of a witness, the absence of this parti-cular witness is noteworthy since the Union has made much of the Employer's alleged refusal to question him and make him available as a witness at pre-arbitration hearings and meetings. The Union cannot blame management for his absence here since the Employer does not control Union appearances in arbitration. In short, Mr. Haygood's affidavit cannot be given any weight at all.

Two other witnesses testified that a truck did, indeed, have a chain caught in its auger. However, the Grievant said it was T8-896, Brevis said it was T8-850, and Dougoud was not sure. There was also inconsistency about another truck the Grievant may have seen being towed and when it was, in fact, towed.

The radio and mileage logs (Employer Exhibit #1 and Union Exhibit #5) are of no help either way. The former has no entries for the Grievant's or his partner's truck, and the latter has incorrect entries making mileage determination impossible.

In sum, the case offered by the Union on the substance of the charges is not strong enough to rebut the Employer's. I do believe that a chain was caught in an auger, but when and which truck cannot be determined from the record. Moreover, while the Grievant may have helped his partner as he said he did, I do not believe it was between 12:30 and 1 p.m. on March 6. Taken as a whole, the fabric of evidence convinces me that the events occurred essentially as the Employer claims and the Grievant took State salt for his own use. Moreover, the uncontroverted fact of the weather and the Grievant's duty to reduce road hazards to the traveling public makes his actions major neglect of duty.

The Union also raised issues of procedure which must be considered. First, conventional standards of just-cause discipline require that the Employer investigate the charges before imposing discipline. Although the investigation must be a real one, not superficial or bogus, this Arbitrator holds the view that the Employer is not required to do everything possible to exonerate the employee. The Employer must merely make a reasonable inquiry without prejudice. In this case the Employer did not contact a law enforcement agency, take a salt sample, or question co-workers of the Grievant. It did, however, seek to substantiate the charges of the private citizen. A

member of management went to the scene and talked with the witness. He also sought independent evidence that would substantiate or refute the charges. He examined radio and mileage logs, and spoke to the immediate supervisor about the Grievant's assigned route. These actions do not support the position that the Employer acted in an arbitrary, capricious or discriminatory fashion prior to the imposition of discipline.

The second procedural issue raised by the Union is the contractual requirement for timeliness. It argues that fifty days is unreasonable delay and cites Arbitrator Drotning. In that case the Employer had the evidence to proceed but did not do so for 44 days. This case is different: without the witness's agreement to disclose her identity, the Employer had no probative evidence. If the delay was caused by a witness's refusal to testify, it is a reasonable delay. There is some ambiguity as to whether the witness released her identity before or after the pre-disciplinary hearing, but clearly she did so before the removal decision was made in June, and not until April at the earliest. Moreover, the Union has not shown that the delay prejudiced the Grievant's case. The Union's argument of unreasonable delay is rejected.

A third question of procedure has to do with the Employer's production of documents and witnesses. Section 24.04 of the Contract requires the Employer to provide "a list of witnesses . . . known of at that time . . . used to support possible disciplinary action" no later than at the pre-disciplinary meeting. The Union and Employee must also be informed of similar additional witnesses. At issue are Haygood and Sharon Koehler. There is no contractual requirement for the Employer to supply Union-requested witnesses prior to the grievance procedure (as in §25.06 and §25.08), and Mr. Haygood was not relied on in the disciplinary action, so there is no violation by the Employer's failure to produce him for the A-302 hearing. As for Witness Koehler, the Union and Employee were aware of her existence and the substance of her statement, and had concluded her identity prior to the pre-disciplinary hearing because Mr. Rockefeller makes reference to her in his affidavit of April 24, 1989. The specifications of her name and address, then does not constitute genuinely new evidence so much as greater detail of the original evidence. Furthermore, her identity was not deliberately withheld to gain an unfair advantage or mislead the Union. Neither did the Union show that not being specifically supplied with her name and address by the Employer adversely affect its representation of the Grievant.

On the other hand, §25.06 and §25.08 do require the Employer to honor reasonable requests from the Union during the Grievance process for access to witnesses relevant to the case. The Union claims that it requested Anthony Haygood's presence at both the A-302 and Step 3 hearings and that neither request was honored. Mr. Joiner did not know whether Staff Representative Lewis requested witnesses at the A-302 hearing. The report of the Step 3 hearing (Joint Exhibit #2) shows that Haygood was not present. It also states the Union contention "that another employee could testify that the Grievant was working at the time in question . . .." Thus, while the Union claim of Employer obstruction is not established with certainty, it is unrebutted by the Employer. The claim is thus more likely correct than incorrect. Therefore, since Mr. Haygood's account of March 6 is relevant to the grievance and the Employer has not shown that the Union's request was unreasonable (its argument of cost containment is weak justification), it must be concluded that the Employer violated §25.06 and §25.08 of the Agreement.

This is a most odd situation: the Union seeks the overturn of a discharge because the Employer would not earlier hear a witness the Union does not now choose to produce. I am inclined to conclude from his absence here that the missing witness would have contributed little, if any, towards resolution of the grievance. If this is true, the Grievant's case would not have been prejudiced by the Employer's lapse. Nevertheless, I cannot ignore the Employer's breach of §25.06 and §25.08. To do so would be to excise these sections from the Agreement, clearly beyond arbitral authority. Moreover, for the Employer consistently to refuse or otherwise avoid

hearing the only witness who might have placed the Grievant elsewhere deprives the Grievant of a fair consideration of his case. Section 25 of the Contract clearly does not permit this. I cannot, however, ignore the offense committed by the Grievant or its seriousness. The procedural error of the Employer does not exonerate the Grievant of his actions. Discipline is warranted, but the Employer's action must be modified in light of its violation of the terms agreed to at the bargaining table.

IX. Award

The Grievance is sustained in part, denied in part. The Employer is found to have discharged the Grievant for just cause, but to have violated §25.06 and §25.08 of the Collective Bargaining Agreement. The Employer is ordered to reinstate the Grievant to his former position as Equipment Operator 1, but without back pay or seniority. The Employer is further required to afford the Grievant reasonable time to return to the area to claim his job.

Anna D. Smith, Ph.D.
Arbitrator

Shaker Heights, Ohio
February 17, 1990