ARBITRATION DECISION NO.:
333

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

EMPLOYER:
Department of Transportation - Crawford County Garage

DATE OF ARBITRATION:
February 21, 1991

DATE OF DECISION:
March 26, 1991

GRIEVANT:
Susan Clime

OCB GRIEVANCE NO.:
31-03-(90-07-10)-0058-01-06

ARBITRATOR:
Rhonda Rivera

FOR THE UNION:
Robert L. Goheen
Steve Wiles

FOR THE EMPLOYER:
Gil Sellers
John Torres

KEY WORDS:
10 Day Suspension
Just Cause
Burden of Proof
Circumstantial Evidence
Mitigation

ARTICLES:
Article 24 - Discipline
§ 24.01 - Standard
§ 24.02 - Progressive Discipline
§ 24.06 - Prior Disciplinary Actions
Article 25 - Grievance Procedure
§ 25.03 - Arbitration Procedures

FACTS:

On June 25, 1990, the Grievant, a Highway Worker II with 6 years seniority with ODOT, was suspended for ten days for three violations of ODOT work rules. They were: Neglect of Duty - Major, insubordination,

and Deliberate theft of the property of another employee.

This particular suspension grew out of events which began on March 14, 1990. The events which took place occurred in the following context: 1) tension existed within the Union, 2) a personality conflict existed between the Superintendent and the Grievant, 3) there was a perception among a number of employees that the Grievant was singled out and given the worst jobs because she was an outspoken woman and a Union activist, and 4) a work situation existed which was antagonistic to women.

On March 14, 1990, an employee reported his locker was broken into. This break-in caused the Superintendent to ask the Highway Patrol to investigate. In the course of the investigation another employee admitted his locker had been broken into on January 8, 1990. That employee claimed that on January 8, 1990 he had written a letter to a Union Staff Representative asking that the Grievant be removed from her Union position. He testified that he mailed the original of the letter and placed a copy in his locker. He said he subsequently found his lock hanging open on the locker. He next saw what appeared to be a copy of the letter on a locked Union bulletin board with a rebuttal from the Grievant tacked up next to it. The Highway Patrol could produce no evidence to charge any person for any of the locker break-ins. From the outset of these events, the Grievant admitted receiving a copy of the letter, having it in her possession, writing a rebuttal to it, and posting a copy and the rebuttal on the Union bulletin board. on April 9, 1991, the Superintendent requested a severe disciplinary action for the Grievant for theft.

The Superintendent then testified that subsequent to the discipline request being in "plain view", tires were slashed on certain ODOT equipment.

Next, the Grievant and another employee were assigned to work together. The employee accidentally dropped a tread on the Grievant. The Grievant called the Superintendent and told him that she regarded the employee as unsafe to work with, and that he had purposefully dropped the tread on her. The Superintendent found that it was just an accident and maintained that this was an internal matter, but the Grievant persisted in her request to call the Highway Patrol to investigate and proceeded to do so even after the Superintendent told her not to do it.

The Grievant and that same employee were working together again on April 17, 1990 when the third incident occurred. The employee was injured in the incident and claimed that the incident occurred because of the Grievants deliberate action. The Grievant maintained that it was simply an accident. As a consequence of the April 17, 1990 incident, the Superintendent again requested a severe disciplinary action for the Grievant.

EMPLOYER'S POSITION:

The State maintains that the incidents for which the Grievant was disciplined were part of a series of evident retaliatory actions. The State contends that it had just cause to impose the discipline as the Grievant had in her possession the stolen letter, she called the Highway Patrol to investigate an incident despite being told by her supervisor that it was against Agency procedures, and because she caused severe injury to a fellow employee by her deliberate actions.

UNION'S POSITION:

The Union maintains that the letter involved was laying in plain view of all the workers in the facility and was given to the Grievant by another co-worker. The Union also stated that at the pre-disciplinary hearing Management conceded they could not place Grievant at the locker or prove the locker or lock was damaged. The Union claims that by testimony and documentation the Superintendent relinquished his authority and relied upon the decision of the Safety Supervisor with relation to the charges of insubordination (calling the Highway Patrol). The Union further maintained that Management had no witnesses to the incident of injury to the co-worker. Finally, the Union claims that the Grievant is continually treated differently from the other employees in the garage by Management.

ARBITRATOR'S OPINION:

The Arbitrator found no just cause to discipline the Grievant for theft. No evidence was produced that linked the Grievant with the break-in. In fact, evidence indicates only that another employee handed the

allegedly stolen item to the Grievant after the item was in plain sight for a period of time. No evidence was produced that the copy received by the Grievant was the same copy allegedly taken from the locker. On the other two charges, the picture painted by Management was a complex one of conspiracy and malevolence on the part of the Grievant. No evidence connects the Grievant with the tire slashings. The Arbitrator suggests a scenario where the Grievant and the employee involved in several of the incidents are on opposing sides in an internal Union battle. The falling tread was an accident and the Grievant believed reporting the incident to the police was proper after being told by the Superintendent that she was "on her own". The Arbitrator found that the Grievant had a good faith belief that she was in danger.

With regard to the injury incident, the Arbitrator found that the Grievant knew or should have known that you do not release a tailgate (which caused the injury) unless you are sure that your co-worker is clear of the vehicle.

The Arbitrator found that the Grievant violated the work rule on Neglect of Duty. There is just cause to discipline the Grievant for Minor Neglect but there are also mitigating circumstances present in the other employee's prior behavior and in the failure of adequate supervisory guidance.

AWARD:

Grievance denied in part, upheld in part. Ten day suspension reduced to a I day suspension, with nine days back pay.

TEXT OF THE OPINION:

In the Matter of the
Arbitration Between

OCSEA, Local 11
AFSCME, AFL-CIO

Union

and

Ohio Department of Transportation
Office of Collective Bargaining

Employer

Grievance No. 31-03-(07-10-90)-0058-01-06
Grievant (Susan Clime)
Hearing Date: February 21, 1991
Award Date: March 26, 1991
Arbitrator Rivera

For the Employer:
Gil Sellers
John Torres

For the Union:
Robert L. Goheen
Steve Wiles

Present at the Hearing in addition to the Grievant and the Advocates named above were the following persons: Williard Woken, Superintendent II (ODOT) (witness), Tracy Achterman, Equipment Operator I (ODOT) (witness), Lucy Stewart, Stores Clerk (ODOT) (witness), Fred Horne, Safety Inspector II (ODOT) (witness), Tom Hoepf, Highway Worker II (ODOT) (witness), Bruce L. Miller, Highway Worker II (ODOT) (witness), Matt Lydick, Highway Worker II (ODOT) (witness), Charles Ed Hout, Highway Worker IV (ODOT) (witness), Mark Mayer, Health Safety Officer II (ODOT) (witness).

Preliminary Matters

The Arbitrator asked permission to.., record the hearing for the sole purpose of refreshing her recollection and on condition that the tapes would be destroyed on the date the opinion is rendered. Both the Union and the Employer granted their permission. The Arbitrator asked permission to submit the award for possible publication. Both the Union and the Employer granted permission. The parties stipulated that the matter was properly before the Arbitrator. Witnesses were sequestered. All witnesses were sworn.

Joint Exhibits

J-1 The Grievance Trail

J-2 Discipline Trail and Prior Discipline

J-3 Directive A-301

J-4 Directive A-305

J-5 Achterman Letter to Goheen and Grievant's Response to Letter that was Posted on Union Bulletin Board

J-6 Report of Investigation by Ohio State Patrol

J-7 Picture of Achterman Letter and Grievant's Response on Union Bulletin Board

J-8 Safety Report on the April 17, 1990 Incident

J-9 Tailgate Pictures of Dump truck

J-10 Pictures of Injured Thumb

J-11 Contract

Joint Stipulations

1) Grievant was hired by the Ohio Department of Transportation, District #3, on February 25, 1985. She was assigned to the Crawford County garage. At the time of the incidents, Grievant as a Highway Worker II.
2) Grievant is supervised by Willard Woken, Crawford County Superintendent.
3) Directive A-301 is clearly posted in Grievant's work location.
4) Grievant has the following discipline record:

Written reprimand - 12/8/88
1 day suspension - 7/5/89

Written reprimand - 3/21/90

5) On Friday, May 11, 1990, a pre-disciplinary meeting was held and reconvened on Thursday, May 17, 1990.
6) Grievant was suspended for a period of ten (10) days beginning June 28, 1990, for the following violations of O.D.O.T. Directive A-301: items 1A, 2C and 8.
7) Grievant admits she called the Ohio State Highway Patrol on 4/11/90.
8) Grievant admits to having Tracy Achterman's letter to Bob Goheen in her possession, taking it to her home, responding to it and posting the letter and response on the Union bulletin board in the Crawford County garage lunch room.
9) No procedural objections exist.

Issue (Mutually Stipulated)

Did the Department of Transportation suspend t he Grievant for ten (10) days for just cause, in accordance with Article 24? If not, what shall the remedy be?

Employer's Exhibits

E-1 (A) Chronology of Events by W. Woken, Superintendent, Crawford County to G. Prinz, Deputy Director (3/14/90 to 4/17/90) (B) IOC from Woken to Prinz requesting discipline for Grievant 4/30/90 (5 pages).
E-2 Statement dated 4/17/90 by Stewart (Dispatcher).

E-3 Statement dated ?/11/90 by M. Lydick.
E-4 Undated statement by Charles Hoyt.

Union's Exhibits

U-1 Statement of W. Woken dated 4/11/90

U-2 IOC from Melody McClaren, Safety Inspector I, to Brian Murray dated 4/17/90.

Relevant Sections of Directive A-301

OHIO DEPARTMENT OF TRANSPORTATION
DISCIPLINARY GUIDELINES

VIOLATIONS	OCCURRENCES WITHIN 24 MONTH PERIOD			
	lst	2nd	3rd	4th
1. Neglect of Duty				
a. Major (endangers life, property, or public safety)	Suspension/ Removal		Removal	
b. Minor (other)	Written Reprimand	Suspension	Suspension/Removal	Removal
2. Insubordination				
a. Refusal to carry	Written	Suspension	Removal	

out assignment	Reprimand/ Suspension			
b. Willful disobedience of a direct order by a superior	Suspension	Suspension/ Removal		
c. Failure to follow written policies of the Director, Districts, or offices	Written Reprimand/	Suspension	Removal	

VIOLATIONS	OCCURRENCES WITHIN 24 MONTH PERIOD			
	lst	2nd	3rd	4th
8. Deliberate destruction, damage, and/or theft of State property, property of visitors to department facilities, or the property of another employee.	Suspension/ Removal	Removal		

Relevant Sections of Directive A-305

A. Purpose
This Directive establishes a uniform procedure for reporting vehicle accidents, incidents, and traffic citations involving state-owned motor vehicles and equipment and privately owned vehicles used on a mileage basis.

B. Definitions
2. A Motor Vehicle Accident shall be defined as any accident, occurrence or event arising from the use of a state vehicle or state equipment resulting in bodily injury to any person including yourself, or resulting in property damage including the state vehicle. Any accident which may have civil implications shall be reported as an accident.

3. An Incident shall be defined as damage which is caused by objects which are thrown or deflected from an unknown source, collision with deer, birds or wild animals, damage from wind, hail, lightning, falling trees, etc., mechanical failure, vehicle defects, vandalism, theft and fire ' Reportable incidents also include vehicle and equipment leaving the roadway unintentionally or due to evasive action. (NO ACCIDENT SHOULD BE CLASSIFIED AS AN INCIDENT IF ANY CONTACT IS MADE BETWEEN THE STATE VEHICLE OR EQUIPMENT AND ANOTHER VEHICLE, FIXED OBJECT OR PERSON.) Any event which occurs with such force as to reasonably suspect damage should be reported as an incident even though the damage may not be evident.
C. Reporting Requirements:
2. The following accidents are excluded from being reported to the State Highway Patrol or other law enforcement agency, but will be reported to the District Safety Office or Central Office Bureau of Health, Safety and Claims for subsequent in-house investigation.

c. State vehicles or equipment involved in an accident which results in minor personal injury to a state employees.

D. Reporting Procedures for Vehicle/Equipment Accidents

1. Responsibilities of driver/operator involved and immediate supervision:

a. Arrange for medical care required for any physical injury.
b. Those employees involved, when in doubt, will immediately notify their supervisor to ascertain if the accident is to be investigated by a law enforcement agency.
1. If in doubt, supervisor will contact the District or Central Safety office and verify with a safety representative that the accident is exempt or not exempt from a law enforcement agency investigation.

E. Reporting Procedures for Vehicle/Equipment Incidents as Defined on Page 1, B, 3:

1. The employee or operator to whom the vehicle or equipment is assigned, the superintendent or designated employee will:
a. Notify the State Highway Patrol for those incidents which involve:
   1. Theft
   2. Vandalism
   3. Major damage of any type
   4. Damage of a suspicious nature

Relevant Contract Sections

§ 24.01 - Standard

Disciplinary action shall not be imposed upon an employee except for just cause. The Employer has the burden of proof to establish just cause for any disciplinary action. In cases involving termination, if the arbitrator finds that there has been an abuse of a patient or another in the care or custody of the State of Ohio, the arbitrator does not have authority to modify the termination of an employee committing such abuse.

§ 24.02 - Progressive Discipline

The Employer will follow the principles of progressive discipline. Disciplinary action shall be commensurate with the offense. Disciplinary action shall include:

A. One or more verbal reprimand(s) (with appropriate notation in employee's file);
B. One or more written reprimand(s);
C. One or more suspension(s);
D. Termination.

Disciplinary action taken may not be referred to in an employee's performance evaluation report. The event or action giving rise to the disciplinary action may be referred to in an employee's performance evaluation report without indicating the fact that disciplinary action was taken.

Disciplinary action shall be initiated as soon as reasonably possible consistent with the requirements of the other provisions of this Article. An arbitrator deciding a discipline grievance must consider the timeliness of the Employer's decision to begin the disciplinary process.

§ 24.06 - Prior Disciplinary Actions

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All records relating to oral and/or written reprimands will cease to have any force and effect and will be removed from an employee's personnel file twelve (12) months after the date of the oral and/or written reprimand if there has been no other discipline imposed during the past twelve (12) months. Records of other disciplinary action will be removed from an employee's file under the same conditions as oral/written reprimands after twenty-four (24) months if there has been no other discipline imposed during the past twenty-four (24) months. This provision shall be applied to records placed in an employee's file prior to the effective date of this Agreement.

§ 25.03 - Arbitration Procedures

Both parties agree to attempt to arrive at a joint stipulation of the facts and issues to be submitted to the arbitrator.

The Employer or Union shall have the right to request the arbitrator to require the presence of witnesses and/or documents. Each party shall bear the expense of its own witnesses who are not employees of the Employer.

Questions of arbitrability shall be decided by the arbitrator. Once a determination is made that a matter is arbitrable, or if such preliminary determination cannot be reasonably made, the arbitrator shall then proceed to determine the merits of the dispute.

The expenses and fees of the arbitrator shall be shared equally by the parties.

The decision and award of the arbitrator shall be final and binding on the parties. The arbitrator shall render his/her decision in writing as soon as possible, but no later than thirty (30) days after the conclusion of the hearing, unless the parties agree otherwise.

Only disputes involving the interpretation, application or alleged violation of a provision of the Agreement shall be subject to arbitration. The arbitrator shall have no power to add to, subtract from or modify any of the terms of this Agreement, nor shall he/she impose on either party a limitation or obligation not specifically required by the expressed language of this Agreement.

If either party desires a verbatim record of the proceeding, it may cause such a record to be made provided it pays for the record. If the other party desires a copy, the cost shall be shared.

Facts

On June 25, 1990, the Grievant, a Highway Worker II with 6 years seniority with ODOT, was suspended for ten (10) days for three violations of ODOT work rules:

1(a) Neglect of Duty: Major - endangers life, property, or public safety.
2(c) Insubordination - failure to follow written policies.
8 Deliberate ... theft of ... the property of another employee.

At the time of this discipline, the Grievant had three prior disciplines on her record:

12/08/88 Written Reprimand (improper backing of a dump truck)
6/28/89 one day suspension (settlement)
3/31/90 Failure to sign an Incident Report (2/27/90)

Grievant is also a Union steward and very involved in Union activity.

The ten (10) day suspension grew out of incidents which the Grievant's Supervisor (W. Woken) interpreted as "a series of related incidents" (his testimony).

This particular suspension grew out of specific events starting 3/14/90, although the testimony of all parties indicate that the events took place in a context of the following atmosphere:

1. Tension existed within the Union; at least two factions existed, one centered about the Grievant and a second group of which Employee Hoepf was one of the dissidents (Hoepf admits he was petitioning for her removal).
2. A personality conflict existed between Superintendent Woken and the Grievant (admitted to by both persons).
3. A perception was held by a number of employees (e.g., Miller, Lydick, Hout) that the Grievant was singled out and given the worst jobs because she was an outspoken woman and a Union activist.
4. A work situation existed which was antagonistic to women (Management's own witness L. Stewart testified that she kept notes because threats were often directed at her and when she reported the threats the "boss," he talked to the males involved who always maintained, "She's a woman, she took it wrong!").

On 3/14/90, employee Tom Hoepf reported that his locker was broken into. This break-in caused Superintendent Woken to ask the Highway Patrol to investigate. This investigation prompted employee Tracy Achterman to volunteer that he believed his locker had been broken into on 1/8/90. Achterman said he waited to report the earlier break-in because he thought, at the time, that Union business was involved. Achterman said that on 1/8/90 he wrote a letter to the Union Representative Robert Goheen asking that Grievant be removed from her Union position. He testified that he mailed the original and placed a copy in his locker. He said he subsequently found his lock hanging open on the locker. He next saw what appeared to be the copy of the letter on a locked Union bulletin board with a rebuttal from the Grievant tacked up next to it. He stated he had no knowledge of the whereabouts of his copy of the letter, had never seen it lying in the break room, and "thought maybe" he had asked the Grievant to return what he presumed to be his copy. The Highway Patrol could produce no evidence to charge any person for any of the locker break-ins. From the outset of events, Employee Ed Hout said he had seen the copy of the letter lying in the break room and had handed it to the Grievant. From the outset of these events, the Grievant admitted receiving a copy of the letter, having it in her possession, writing a rebuttal to it, and posting a copy and the rebuttal on the Union bulletin board. On April 9, 1991, Superintendent Woken requested by IOC a "severe disciplinary action" for the Grievant for Violation of Item 8 (Theft). At the hearing, he said she was, in his view, guilty of theft because 1) the copy was taken without Achterman's consent, 2) never returned, and 3) the Grievant had it in her possession prior to posting that copy (or another) on the bulletin board.

The next events which the Superintendent listed as "related" were that, on 4/110/90, 6 tires were slashed on certain ODOT equipment. The Superintendent testified that the discipline request for the Grievant was "in plain view" and then subsequently the tires were slashed. The Highway Patrol investigated the tire incident and found no evidence to implicate anyone. In his chronology to Prinz, the Deputy Director, about discipline requested for the Grievant, the Superintendent "listed" the tire incident (Exhibit E-1).

The next event occurred on April 11, 1990. The Grievant and Tom Hoepf were assigned to work together. Mr. Hoepf drove the truck while the Grievant got in and out of the truck picking up bags of litter and putting them in the truck. At one point, Hoepf parked the truck; the Grievant went a considerable way down the road to pick up a truck tire tread that was lying on the road side. She dragged the heavy tread back to the truck and asked Mr. Hoepf to help her place the tread in the truck. Mr. Hoepf got up in the truck bed; the Grievant attempted to lift the very heavy item up to him. What happened next is at issue between Mr. Hoepf and the Grievant. Mr. Hoepf says he was unable to grip the tread, that the tread was very heavy, and by accident, the tread fell on top of the Grievant. She stumbled, fell to the ground, and "appeared stunned." Hoepf said he asked if she was all right three times. At first she did not reply. Then she got up slowly and told him "leave that tire tread right there and do not touch it." She then called for the Superintendent to come out to the work site. When Woken came out to the work site, the Grievant told the Superintendent that she regarded Hoepf as unsafe to work with, that she experienced the incident as a purposeful action on Hoepf's part, and that she felt unsafe. She showed him her bent glasses and described her fall. The Superintendent said "it was just an accident" and that she and Hoepf should go back to work.

At this point in the conversation, Grievant and the Superintendent disagreed as to the direction and content of their conversation. The Superintendent says that from this point on that the Grievant wanted him to call the Highway Patrol and that he refused because such a call, he believed, violated ODOT procedures. He said he said from the outset that he would call the Safety Department. The Grievant says that she wanted from the outset to have Safety called but that the Superintendent wanted to just go on and pass over the incident. She went to a nearby home, allegedly to call the Patrol (his version) or to call Safety (her version). Regardless, no one was home. She rode back to the outpost with him. The Superintendent wrote up the conversation from his memory (See Exhibit U-1 dated 4/11/90). According to Woken, their conversation was as follows:

W Sue, if you'll get up in the truck bed I'll show you how this is supposed to be loaded.

Sue got up in the truck bed.

W Tom, hand that tread to Sue.

S I don't want Tom to hand me anything. You hand it to me.

W Now what's the problem.

S I don't to work with Tom. If you're going to show me how to do it, you hand it to me.

I handed it to Sue, she reached down with one hand from the bed of the truck, pulled it in and climbed down.

W I think the only danger you have here is with your work method and attitude. I want you and Tom to get back to work.

S I want to call the Patrol.

W For what?

S Tom shoved me.

T I never shoved you, that's bull and you know it.

W Sue, the patrol has nothing to do with this.

S Are you denying me the right to call the patrol?
W We have procedures to go by. You know what they are. If you want to make a report on anything, we start with the safety department.

S I want to call the Patrol

W To report what?

S What Tom did to me.

W If you're going to do something like that you are doing it strictly on your own.

S I want the Patrol out here.

W Then call them on your own. I told you the safety department takes care of these things.

S I don't feel safe working with Tom.

W Is that what you want to report? I can call safety and tell them that for you.

S I want to report Tom. I want the patrol.

W Well, you're on your own. I've told you the right procedure.

S You're denying me the right to call the patrol?

W Sue, we have a safety department. If the patrol is needed they will call them. What are you going to report here? There is nothing unsafe except the way you are doing your work.

S I want to file charges against Tom.

W Fine, you're doing it-on your own.

S I'll forget this whole thing right now if you just put me to work with someone else but Tom. We can forget it all. I just don't want to work with him.

W I'm sorry, we're not disrupting work assignments over this.

S I don't feel safe.

W Point out to me what is unsafe.

S I don't want to work with Tom, especially on Rt. 30. He's going to hurt me.
W May I suggest that if you go ahead with a little thought to what you are doing you won't have any problems. I don't believe anyone could have loaded that tread the way you were doing it without it flopping down on them. I don't believe you have anything to report to anyone. What is there here beside your work procedure that is unsafe?

S I've done it that way before ... I want the patrol.

W For what?

S I want to file charges against Tom.

W If you do you'll have to do it on your own. I've told you what to do.

S Are you denying me the right to call the patrol?

W I've answered that about five times. I'm telling you now -- "Go to work."

S Well will you take me somewhere so I can call the Patrol?

W I told you to go to work.

S When you leave I'm calling the Patrol. I'll ask your permission to go up to that house and call them.

W If you do you're doing it on your own.

S I'm calling the Patrol.

W You're doing it on your own.

S If I can work with someone else I'll forget the whole thing.

W Sue, go to work.

I got in my car drove down to a driveway, turned around and came back. Sue was out in the middle of the road waving for me to stop, paying no attention to traffic.

S There's no one home at that house will you take me up the road so I can call the patrol.

W Sue, I've told you what to do. I'm not taking you anywhere for anything l like that. You do it on your own.
S Well can I get some aspirin, I've got a headache.

W I can have some brought out unless you want to file an injury report or something.

S Can I call the Patrol from in there?

W Sue, we've gone over that. If you're injured in some way fill out a report. We'll talk to safety and see what they say. Anything else you do is strictly on your own.

She walked back across the road without looking either way, picked up her things and came back. We drove to Bucyrus without speaking.

We arrived at the garage at 9:25.

I called Safety Dpt, talked to Kim, tried to find Ange. Kim said he would call back.

Ange called, I told him what had happened. He said he would call me back in a few minutes. He was talking to Jim Mawhorr and it would take just another minute.

When he called back I told him Sue wanted to talk to him.

I called Sue into my office and she told Ange, on the phone, that she wanted to file charges against Tom. I did not hear what Ange said.

Sue got off the phone and asked me if she could use the phone to call the state patrol.

I told her again that she was doing this strictly on her own.

Sue called the OSP in the outer office. Lt. Erhart asked to talk to me after she had been on a while. Lt. Erhart explained that they did not investigate internal matters. I told him I knew that but asked if he would explain that to Sue while I was on the phone. I asked Sue to get on the extension in the outer office and she asked Lt. Erhart if he would do an investigation. I said, "Sue we have a safety department for that."

S Will you please let him answer the question.

Lt We do not investigate internal problems. Your safety department or management will call us if we are needed.

It's the same with all of the state departments, like when something happens in one of the prisons, we don't go in unless they call us for assistance when we are needed. We don't handle employee problems.

S I didn't know that.

W Really?

S I want to file charges

Lt If you want to file charges you'll have to go to the prosecutor. If he thinks you have enough evidence to prosecute, he will advise you. our department doesn't prosecute.

S Well, the incident took place on a state highway and I want to have it investigated.

Lt That will be handled by the department you work for. We don't handle employee problems.

Grievant's memory of this conversation differs somewhat from Woken's. She said she was afraid and feared for her safety; she believed Hoepf purposely sought to injure her, and she had wanted to file charges against Hoepf but did not know that the Highway Patrol was not the proper resource. She said she would have felt safe it Woken had reassigned her to work with someone else.

The Superintendent alleged that the call to the Highway Patrol made by the Grievant was in violation of ODOT regulations and violated rule 2(c) Insubordination-- Failure to follow written policies of the Director.

At the Arbitration hearing, Dispatcher Stewart was called upon by management to testify to a conversation she allegedly overheard after the 4/11/90 incident, At the hearing, Ms. Stewart testified that she accidentally overheard the Grievant talking to fellow employee Miller. According to her testimony she said that the Grievant was "really mad" and said "I am going to get even with Tom (Hoepf) no matter what it takes. Ms. Stewart was interviewed by the Highway Patrol after the 4/17/90 incident and remembered the events this way.

"She said Tom Hoepf had shoved her while they were putting a tire tread in the back of (the) dump truck. Safety handled this and said it was an accident. But (Grievant) still felt Tom had done this to her on purpose. She wanted OSP called in to investigate it. They told her that safety was taking care of this.

Grievant had left the office and went back to the bull room in back of the garage. I go back to get transfer. I hear Grievant tell Bruce Miller she will get even with Tom no matter what it takes. If the OSP won't help her then the Sheriff department will, Sue tells Bruce Miller when its all said and done she would see who would have a job or not ...

In her testimony at the Arbitration hearing, Ms. Stewart said that at the time she overheard these statements, she felt the Grievant was "blowing off steam."

Apparently between 4/11/90 and 4/17/90, the Grievant and Tom Hoepf were assigned to work together. Hoepf testified that during this period when they worked together he "tried to get along and be pleasant" but that the Grievant would not talk to him and instead kept notes. He said that she "even refused to tell him the time of day" and that he had to radio in to the Dispatcher to find out the time. In his testimony, the Superintendent said that Grievant's refusal to tell Hoepf the time of day was an indication of her refusal to communicate properly with a co-worker.

On April 17, 1990, the third incident occurred. The Grievant and Mr. Hoepf pulled into a park to load

refuse barrels. They both got out and went to the rear of the truck, she to the right rear, he to the left rear. on the right side, the chain for the heavy rear door was already in the "down" position. The chain on the driver's side needed to be loosened. The Grievant pushed up on the right side of the truck door while Hoepf loosened the chain on the left side. At some point, the extremely heavy truck door fell and Hoepf's thumb was caught in the chain and seriously cut and injured. How this injury occurred is also at issue. Grievant says that after Hoepf apparently had relieved the chain, he looked at her. In her prior door lowering experiences, the partner's look meant he was ready to drop the door. So she let go and stepped to the side. The heavy door came down and then Hoepf screamed. She was stunned for a few moments and then she went and crossed her arms and pushed up on the totally lowered door, relieving the pressure and Hoepf was able to free his thumb which was caught in the chain. Then two other ODOT workers came over, helped Hoepf, called various authorities. She described herself as "stunned, as feeling helpless ... seeing the blood run down his arm." She said after getting herself together, she went over and checked on him several times. He was screaming and in great pain. Then she said "I lost it" (after the ambulance came). She said she also began to fear that she would be blamed.

Hoepf in the report made to the Highway Patrol immediately after the accident (4/17/90) said "I was still adjusting the chain when she let go of the tailgate and it fell down trapping my thumb..." He also said she dropped it "on purpose." In a second statement, also dated 4/17/90, Hoepf described the incident as follows:

"Grievant was positioned in the right middle of the tailgate and she pushed the tailgate in so I could adjust the chain on the left side. While I was adjusting the chain and with no verbal sign that I was ready for Grievant to let go of the tailgate, Grievant left (sic) go of the tailgate. When (she) left (sic) go of the tailgate my thumb was trapped between the chain and tailgate. I yelled and tried to lift the tail gate myself but I couldn't because the tailgate was so heavy. At this time, I yelled for (the Grievant) to lift the tailgate, and she just looked at me, and it seemed forever but she finally lifted the tailgate so I could be released."

In his next statement, given 4/23/90, Hoepf added the following "At this time I looked over at (Grievant) and she was just looking at me with a grin. 11 At the hearing, Hoepf said that "it took her a while to lift the tailgate, she must have thought I was kidding." At the hearing, Mr. Hoepf said that this time was the only time in their work time together that they had lowered the tailgate together. He also said he never looked at her before she let go of the tailgate. He maintained that the Grievant did "it" on purpose because "she was angry with me."

Safety Inspector Fred Horne arrived at the scene shortly after Hoepf was assisted by the two nearby ODOT workers. Horne reported on 4/23/90 in writing on the incident (Exhibit J-8).

He wrote as follows:

"I then asked the Grievant to show me what happened." Horne continued "She took me around behind T-3-574 (the dump truck) and stated that Hoepf and herself were letting down the tailgate and she was in the middle and Hoepf was on the end of the tailgate on the left side. She stated as the tailgate started to come down she let go of the tailgate to get a better position. It was then that the tailgate came all the way down and she went over and saw his left hand had got caught ... while they went putting Hoepf into the ambulance (the Grievant) finally broke down and started crying. I told MN to take ... Grievant back to the ... garage as felt she was in no condition to drive. Up until the time we arrived on the scene and they were putting Hoepf in the ambulance Grievant appeared very calm."

Horne was ordered to investigate this accident. He said he didn't want to do it; it wasn't his area, and he was busy: Melody McClarendon was the proper person, he felt. He said he concluded that the accident was "preventable," that the Grievant "meant to shake him (Hoepf) up but not to hurt him." He said he thought the Grievant was "unnaturally" calm and cool and hence not really upset.

As a consequence of the 4/17/90 incident, Superintendent Woken again requested (4/30/90) a "severe,, disciplinary action for the Grievant. In that 5 page memo, he included his 4/9/90 request for discipline, a

second separate page on the locker theft, a page on the tire slashing, a page on the calling of the OSP on 4/11/90 and a page on the thumb injury.

At the Arbitration hearing, Superintendent Woken testified at length. He maintained that the Grievant had failed to follow the proper procedure for lowering a tailgate and that if the tailgate "fell" that the fall showed her act was intentional. He said the proper way was to wait for a verbal signal from the partner, a shout, and then walk the tailgate down. He said that no written procedure existed on tailgate lowering and that he had never conducted a training in his garage. However, he maintained the Grievant had attended the Phase I training course and that lowering tailgates was covered in that training. He said that he had called the Highway Patrol for the thumb incident because it was an injury but that calling the Highway Patrol for the tire tread falling on the Grievant was incorrect because it was not an injury.

Woken was questioned and asked if the charge of theft was substantiated against the Grievant; he replied "no, not really." He was asked "Did you relinquish authority to the Safety Department with regard to the Grievant calling the Highway Patrol "no, I said, she'd be calling on her own." Did the Grievant fill out an incident report on the 4/11/90 events? "Yes, she claimed the next morning that her leg hurt from the fall." He was asked if the Grievant's intent was to press charges? He said "yes," but that to his knowledge she never had done so.

The Union called Bruce Miller, a HW II of 7 years, who said that a copy of Tracy Achterman's letter was lying in the "bull room" for several days prior to being put on the Union bulletin board. He also said he had never been formally trained at any training event on how to lower a tailgate, that no "procedure" as such existed to his knowledge, and that one just used "common sense": One watches and learns. He also testified that Grievant was treated differently than other highway workers. For example, she was assigned to pick up rocks on highway ramps by herself and clean the tar buggy in the rain.

Lydick, a HWV II of 13-1/2 years and a fellow employee, testified that he had seen some copy of the Achterman letter lying on the smoking table. He said he had never been trained on tailgate lowering and did it different way depending on the circumstances. He said that he often just let it drop. He said he knew of two prior tailgate accidents where workers got fingers caught. No one was disciplined over these events. He stated that the Grievant was assigned jobs no one else ever did or ever did alone. Grievant was assigned to paint one isolated I beam on the side of a salt bin, sent out to sweep islands by herself, assigned to rake and pick up rocks, and to clean a tar buggy in the pouring rain.

Charles "Ed" Hout, a HMV IV, testified that he found the Achterman letter lying on the table and subsequently gave it to the Grievant. He said he was charged with theft at a A-302 hearing, but the charges were dropped for insufficient evidence. He said he was never trained either on the job or at training on how to lower a tailgate. He said he preferred to crawl into the truck, loosen the chains, let it drop. He said in his time he had seen 3 persons injured in tailgate accidents. He said the Grievant was given all the bad jobs: constantly flagging (no rotation), clean tar buggy in rain, paint a salt bin. He said he usually assigns his crew and rotates bad jobs, but that when the Grievant is on his crew, he had been given special orders as to what she is to do.

Mark Mayer, a Health and Safety Ins. II with ODOT for +13 years and a Union steward, also testified. He said he was with Fred Horne when they got the call about Hoepf's thumb. "Fred asked me to drive the Grievant back because she was so distraught. On the way back she said she was also worried because she thought Woken would blame her." According to Mayer, while he "gets along with Willie" "the Grievant and Willie don't get along." Mayer said the Grievant filed many grievances against Woken for various forms of harassment. Mayer, on cross, said the injury was serious and that it was never proper to just let a tailgate fall. He said that he had never given nor received training on how to lower a tailgate nor did he know of a procedure. He said two people who were doing the lowering had to communicate and coordinate.

Employer's Position

The incidents for which Grievant was disciplined is comprised of a series of evident retaliatory actions. Tracy Achterman had a copy of a letter he had sent to his union staff representative requesting that Grievant not be involved in representing him in a grievance. He had this copy in his locker which was broken into. Management could not substantiate that Grievant was the one who actually broke into the locker, though

Management can substantiate that Grievant has in her possession the personal letter that Tracy Achterman sent Bob Goheen. The letter was taken when Mr. Achterman had his locker broken into on the night of January 8, 1990. The letter was posted on January 10, 1990 in the locked union bulletin board with Grievant's response posted beside it. This incident came to Management's attention in March or April as a result of a Highway Patrol investigation on other locker break-ins at the garage. Tom Hoepf had his locker broken into on March 14, 1990. The week prior, Tom had been petitioning fellow employees for the removal of the Grievant as union steward. Just cause could not be substantiated against any employee for the break-ins themselves. At the conclusion of the investigation, Superintendent Woken wrote an IOC dated April 9, 1990 requesting disciplinary action be taken against the Grievant for the theft of Mr. Achterman's letter. The garage phone used by employees is beside the desk where he placed this IOC in his basket to be mailed. On April 10, 1990, all six tires were slashed on the grader that is usually assigned to Mr. Achterman to operate. This incident was investigated by the Highway Patrol. Grievant's involvement could not be substantiated.

On April 11, 1990, Grievant and Tom Hoepf were loading a tire tread re-cap on a truck when the tire struck Grievant and caused her to fall. The Grievant contends Mr. Hoepf intentionally pushed the tire toward her. An investigation by the County superintendent and the District Safety Department was conducted. Grievant stated she either didn't want to work with Mr. Hoepf, whom she thought was unsafe, or she wanted to call the Highway Patrol. She was given specific instructions to only call the Patrol if she intended to bring charges against Mr. Hoepf. The Superintendent considered the incident an internal Agency matter. Grievant called the Highway Patrol and made no effort to press charges. Her actions constituted a violation of Directive A-301, Item 2c. (Insubordination: failure to follow written policies of the Director, Districts or Offices.)

On April 17, 1990, Grievant was again assigned to work with Mr. Hoepf. In order to unload barrels from a dump truck the tailgate needs to be lowered. While Mr. Hoepf was making final adjustments to the support chains on the tailgate, Grievant let the tailgate fall. Mr. Hoepf's thumb was caught between the support chain and the tailgate. His thumb was crushed and nearly severed. Mr. Hoepf was transported by Life-Flight to Columbus Riverside Hospital. Grievant is in violation of Directive A-301, Item 1a (Neglect of Duty, Major: Endangers Life, Property, or Public Safety).

Ms. Stewart, another bargaining unit employee, came forward on April 17 and stated she overheard a conversation on April 11, 1990 between Grievant and Bruce Miller where Grievant stated she would get even with Tom Hoepf no matter what it takes.

On May 11, and May 17, 1990, a pre-disciplinary meeting was held in accordance with Directive A-302. Subsequently, Grievant was served with an order of Suspension for Ten (10) days on June 25, 1990.

The State will show that it had just cause to impose discipline as Grievant 1) had in her possession the stolen letter, 2) she called the Highway Patrol to investigate an incident despite being told by her supervisor that it was against Agency procedures because the incident was an internal matter, and finally 3) she caused a severe injury to a fellow employee by dropping the tailgate of a dump truck, a duty she has performed on numerous occasions. All three of these incidents are connected through some sequence of retaliatory behavior by the Grievant. The discipline imposed upon the Grievant for these offenses is commensurate and in line with progressive discipline of the Grievant. (From the Employer's Opening Statement.)

Union's Position

Grievant was suspended for 10 days without just cause for allegedly stealing a letter from a co-worker addressed to the OCSEA Staff Representative, for insubordination - calling the Ohio State Highway Patrol, and for causing injury to a co-worker by dropping a tailgate while in the process of lowering the tailgate to the down position.

To the first charge the Union will, by testimony, prove the letter was lying out in plain view of all workers in the facility; and to the knowledge of her co-worker, Mr. Achterman, and was given to Grievant by another co-worker, Charles "Ed" Hout.

Management will assert Grievant is guilty because she had possession. Management at the pre-

disciplinary hearing conceded they could not place Grievant at the locker or prove the locker or lock was damaged.

To the charges of insubordination calling the Ohio State Patrol. The Union will prove by testimony and documentation that the Superintendent relinquished his authority and relied upon the decision of the Safety Supervisor.

Addressing the charges of causing injury to a co-worker; management has no witnesses to this incident, only the statements taken from the two employees involved.

The Grievant will testify consistent with her statement, proving a lack of just cause.

Further, the Union will present testimony to the fact that the Grievant is continually treated differently from the other employees in the Crawford County Garage by supervision, when making work assignments and the meting out of discipline, etc. (Taken from the Union's Opening Statement.)

Discussion

The Grievant is charged with the theft of another employee's property. Mr. Achterman, an employee and union member, wrote a letter to Mr. Goheen, the Union Representative. This letter asked the Union to remove the Grievant from her position as steward. The original was mailed and is not at issue. Mr. Achterman placed a copy in his locker. Shortly thereafter, he returned and found his locker open, and the lock broken. The copy of the letter was missing. He did not report this apparent theft at that time. Shortly thereafter or concurrently, three fellow employees, also union members, reported seeing a copy of the letter lying around various areas in the facility where employees usually took breaks. One of these employees, Mr. Hout admits picking up the copy which was on a table and giving it to the Grievant. The Grievant admits receiving a copy from Mr. Hout, writing a-response to, it to all union members, and posting her response and the copy she received in the locked union bulletin board. A number of months later, other locker break-ins occurred, and the Highway Patrol was called. At this time, Mr. Achterman reported the earlier break-in to his locker. The Highway Patrol investigated and was unable to discover the culprit or culprits.

At this point, the Employer, in the person of Mr. Woken, entered the picture. His first inclination, he said at the hearing (and perhaps his best), was to stay out of what appeared to be internal Union warfare. However, Mr. Haut was charged with the theft and given an A-302 hearing; the charges were dismissed because of insufficient evidence. Now, the Grievant is before the Arbitrator on theft of the same item as part of a larger grievance. The Arbitrator finds no just cause to discipline the Grievant for theft. No evidence was produced that linked the Grievant with the break-in. In fact, evidence indicates only that another employee handed the allegedly stolen item to the Grievant after the item was in plain sight for a period of time. No evidence was produced that the copy received by the Grievant was the same copy allegedly taken from the locker. In this day of copiers, copies abound. No proof exists of any culpability by the Grievant. Mere possession of a copy of a document that may be a copy which was allegedly taken from someone's locker simply is insufficient to support a charge of theft or even civil conversion. Mr. Achterman could not even remember if he ever. asked for the copy (whichever copy is was) back.

The other two charges are best taken together. The scenario painted by Management involves a complex picture of conspiracy and malevolence on the part of the Grievant. First, she steals the letter. Then when discipline is asked for that theft, somebody (by inference the Grievant) slashes the tires of some equipment. (The Employer prejudices the case against the Grievant on the three allegations in the discipline by including the slashings both in the testimony and in the written documentation.) Not one scintilla of evidence connects the Grievant with the tire slashings.

Concurrently, Mr. Hoepf, an employee, decides to circulate a petition for the removal of the Grievant as the Union Steward. Then while the Grievant and Mr. Hoepf are assigned to work together, a heavy tire tread is dropped by Mr. Hoepf on the Grievant. The Superintendent dismisses this incident as "simply an accident" with no injury. When the Grievant interprets Mr. Hoepf's action as injuring her and as malicious, she wants to call the Highway Patrol. The Superintendent wants to call no one and wants the parties to go back to work. The Grievant ends up calling the Patrol; the Superintendent writes her up for insubordination - violating a written policy, i.e., inappropriately calling the Patrol. Hoepf and the Grievant are put back to work together.

She refuses to talk to him at a worksite, while both parties are attempting to lower a tailgate, Hoepf's thumb is caught in a tailgate chain and seriously injured. The Grievant is charged with a major neglect of duty. She says it was an accident; he thinks she did it on purpose. The Superintendent believes Mr. Hoepf that the injury was purposeful, and consequently, the Highway Patrol is "properly" called. The Grievant is charged with Neglect of Duty - Major. Mr. Woken says the Grievant failed to follow the clear cut, well known procedure for lowering a tailgate and intentionally jumped aside to injure Mr. Hoepf. Mr. Woken's judgment is confirmed by Mr. Fred Horne, the Safety Inspector assigned to carry out the investigation in place of the appropriate inspector, Ms. McClarendon. Mr. Horne concludes that when he arrived the Grievant was unnaturally calm. He attributes this calm to malevolence on her part which shows that she intended to injure Mr. Hoepf.

The Arbitrator suggests another scenario at least as plausible:

The Grievant and Mr. Hoepf are on opposing sides in an internal Union battle. The Grievant has just had discipline requested for allegedly stealing a letter from a cohort of Mr. Hoepf. Mr. Hoepf is circulating a petition for her removal. ODOT is a small family; everyone knows everything; rumors abound. Hoepf and the grievant are placed in a truck all day together. Hoepf drives, and the Grievant has to continually get out, haul bags back to the truck with little help. At one point, she drags back a very heavy tire tread which she cannot lift to the truck by herself. She asks Hoepf for help. He gets in the truck bed. She attempts to hand up the heavy tread; he cannot get a grip, the tread falls on her, knocking her to the ground, bending her glasses, and generally stunning her for a short period of time. Perhaps, Hoepf was nervous considering their antagonistic positions, perhaps he was not communicating as fully as he might have because he didn't like her. Whatever the reason, the tire tread slipped. He did not mean to hurt her ... it was he said an accident. However, the Grievant perceived the incident to be an intentional injury. She feared for her safety. Her superior arrives, discounts her injury, discounts her belief, and discounts her fear. He wants her to go back to work; she wants to be safe; she feels "safe" is away from Mr. Hoepf. Since the superior does not take her perception of the events seriously, he believes calling the Highway Patrol is unnecessary, as well as inappropriate, under ODOT procedures. When she does call, he charges her with a form of insubordination.

A close examination of the transcript of the conversation between Mr. Woken and the Grievant provided solely by Mr. Woken reveals that no direct order was ever clearly given the Grievant. Moreover, Mr. Woken keeps telling her "you are on your own." One reasonable interpretation is that "it is your choice." Rule 2(c) refers, to insubordination by failure to follow ODOT policies. The policies in question are reproduced on pages 5-6 of this Award. Mr. Walker interpreted this event as a non-injury and hence an "incident." "An incident" is to be reported to Safety, not to the Highway Patrol.- The Grievant interpreted the event as an "injury" and an intentional attempt by a fellow employee to criminally assault her. She believed reporting to the police was proper. She said she wanted to file charges. In his testimony, Mr. Woken said he believed that her intention was to file charges. In her call, she discovered to her surprise, that to press charges she had to contact the Prosecutor.

Assuming, arguendo, that the Grievant knowingly and purposively violated a written policy of ODOT, was she insubordinate? The clear rule in most cases is obey now, grieve later. One notable exception exists where a worker, in good faith, reasonably believes that the order will put his or her safety in jeopardy. The worker must have a good faith belief and the situation must be such that a reasonable person standing in the worker's shoes could hold such a belief.

In the context, the Arbitrator finds that the Grievant had a good faith belief that she was in danger. Another person in her situation could reasonably have so believed. The Arbitrator finds no just cause for discipline on insubordination (2c).

The Employer presented evidence from a fellow employee, Ms. Stewart, the dispatcher, to foreshadow the next event. Ms. Stewart said that she had over heard the Grievant make a threat about Mr. Hoepf after the tire incident. Ms. Stewart testified that the Grievant said "she would do anything to get even with him." However, Ms. Stewart gave a fuller statement to the Highway Patrol. In that statement, Ms. Stewart quoted the Grievant, as above, but also quoted the Grievant as then saying, "If the Highway Patrol won't take care of him the Sheriff will. We'll see who has a job after that." Taken as a whole, the conversation is not a threat of violence but a threat of the use of the authorities. During the week after the tire tread incident, the Grievant

and Mr. Hoepf were still assigned to work together. Mr. Hoepf testified that he tried to be pleasant butthat the Grievant refused to talk with him. This lack of communication and readily apparent tension was known to Mr. Woken who said he knew Mr. Hoepf radioed in for "time" because the Grievant, who wore a watch, would not talk to him.

On April 17, 1990, the Grievant and Mr. Hoepf, in a dump truck, pulled 'into a park site to pick up trash barrels. They went to the rear on their respective sides of the truck. Mr. Hoepf went to loosen the chain on his side while the Grievant pushed up on the right middle. The Grievant let go of the tailgate before Mr. Hoepf was ready and his thumb was caught in the chain, and he was seriously injured. Mr. Hoepf claims he did not give any verbal or facial signal to the Grievant to communicate that she should release the tailgate; she claims that he looked at her which she took to be a signal because with previous co-workers a “look" was the signal. The Employer attempted to establish that an exact and never varying procedure. existed for lowering tailgates which grievant violated. Moreover, the Employer sought to prove that Grievant had been trained to follow such a procedure. The evidence tended to show that no exact procedure nor specific training ever really existed. The evidence did show that tailgates were dangerous,, and everyone had notice that carelessness caused injuries. Most workers by modeling other workers developed a safe way to lower tailgates, depending on their individual strength and whether they had a co-worker to help. The Arbitrator finds that the Grievant knew or should have known that you do not release a tailgate unless you are sure that your co-worker is clear and ready.

As in the tire tread incident, we had two people -- at odds with one another -- placed in a position where to carry out their tasks they needed to depend on each other. Mr. Hoepf was careless, nervous, and dropped the tire tread. The Arbitrator believes that the Grievant was nervous, fearful, and wary. As a consequence, she failed to use proper care and released the tailgate without proper assurance from Mr. Hoepf that he was ready; consequently he was injured.

Given the situation between the two workers, Mr. Hoepf's belief that the Grievant had acted on purpose was understandable. He interpreted all her actions in that light. He said it seemed "forever" before she released him. It probably did; when one's thumb is trapped and one is in excruciating pain, 1 second equals a much longer time. The Grievant said she was stunned by his scream. The Arbitrator suspects that she was momentarily paralyzed by the situation. Who would not be? However, she did free him. Remember one person had to lift the tailgate which, in testimony, was described as a job few could do alone with ease. Mr. Hoepf said in his first statement that the Grievant was looking at him. In a later statement, her "look" (with hindsight) became a grin. Mr. Horne arrived and discounted her statement that an accident had happened. He said she was too calm, did not seem to care! Yet after Mr. Hoepf was safely in the ambulance she became distraught, too distraught to drive. People often remain calm during a crisis and fall apart afterwards. The Grievant said she was worried she'd be blamed. Given the described events, was that a statement of reality or of guilt?

The Arbitrator finds that the Grievant violated the work rule on Neglect of Duty. As understandable as her fear of and tension with Mr. Hoepf may have been, she had a duty to communicate with him sufficiently to operate vehicles and machines safely. She knew how dangerous tailgates were, and she allowed herself to be careless, and as a consequence Mr. Hoepf was injured. The Arbitrator finds just cause to discipline the Grievant for Neglect - Minor. Mitigating circumstances abound not only in Mr. Hoepf's prior behavior but in a failure of adequate supervisory guidance.

Award

Grievance denied in part, upheld in part. Ten day suspension reduced to a 1 day suspension.

Date: March 26, 1991
Rhonda R. Rivera
Arbitrator