ARBITRATION AWARD

In the Matter of the Arbitration
Between

Cleveland-Cliffs
Burns Harbor, Indiana

and

An individual Grievant represented by
United Steelworkers, Local Union 6787

Grievance # 25-3048

Case 162

June 24, 2026

David A. Dilts
Arbitrator

APPEARANCES:

For the Company:

Nathan Kilander, Section Manager Labor Relations
Josh Spanier, Labor Relations Representative

For the Union:

Michael P. Young, Staff Representative
Michael R. Millsap, District Director
Billy Lowe, Local 6787 Vice President

Hearings in the above cited matter were conducted on Thursday, May 21, 2026 at the Garden Inn by Hilton in Chesterton, Indiana. The parties stipulated that this matter is properly before this Arbitrator pursuant to Article Five, Section I of their 2022 Basic Labor Agreement. The parties also stipulated that the record made grievance 25-3041 is part of the factual record of this case. The record in this matter was closed upon receipt of the parties' post-hearing briefs on June 1, 2026.

ISSUE

Was Craig Menear (herein the Grievant) discharged for just cause? If not, what shall be the remedy?

INTRODUCTION

The Grievant in this matter was, at the time of his discharge, employed at the Cleveland Cliff's Burns Harbor facility (herein the Company. He was then a Labor Grade 5, Senior Operating Technician in the Crane Unit of the Steel Producing Division. He was first employed by the Company on June 25, 2007 and had nearly eighteen years seniority at the time of his discharge.

The bargaining unit is represented by the United Steelworkers and its Local Union 6787. The parties current collective bargaining agreement became effective on September 1, 2022 (herein the Basic Labor Agreement or BLA).

The matter before this Arbitrator concerns the discharge of the Grievant and whether it was pursuant to the requirements of the parties' Basic Labor Agreement (Joint exhibit 1) and for just cause. On May 23, 2025 the Company issued the Grievant a "Notice of Intent to Discharge" over the signature of Gregory Gabbert, Division Manager Steel Producing (Joint exhibit 2, p. 71) which states:

In accordance with the provisions of Article V Section 1.9 of the Agreement between Cleveland-Cliffs LLC and the United Steelworkers this is to notify you, Craig Menear (94769) of the Company's intent to discharge you for participating, Instigation, Aiding and/or Condoning a Work Stoppage (No Justice and Dignity).

The above offenses, either individually or collectively warrant suspension preliminary to discharge.

On May 23, 2025 the Union filed a grievance on behalf of the Grievant. The position of the Union recorded on the grievance form in this matter was "Remove intent to discharge and make employee whole in all respects." The grievance was denied by the Company on June 9, 2025. (Joint exhibit 2, p. 72). The Company's position was the denial of the grievance and conversion of the letter of intent to discharge to actual discharge.

The discharge arises out of actions which occurred on Friday May 2, 2025 and Saturday May 3, 2025. The facts upon which this discharge is based are at controversy between the parties. The Company alleges that the Grievant made statements concerning a work stoppage to other employees inciting them not to run steel. The Company alleges that these actions by the Grievant were the result of his having been removed as an assistant griever by the Union. Naturally, the Union's view of the facts differ significantly from the Company's view.

There is little doubt that there were numerous employees who called off work during the subject period. The result, according to the Company, was that it impeded steel production for that time costing the Company millions of dollars. The Union did not dispute the Company's claims concerning its lack of production on those dates, but the Union asserts that none of that lost production was due to a "work stoppage" and that the inability to produce steel had anything whatsoever to do with the Grievant..

There were a total six employees who were discharged for their alleged participation in a claimed work stoppage on May 2 and 3, 2025, this Grievant was allegedly the ring leader (according to the Company). All of the other five persons discharged have been reinstated, and one of those through winning reinstatement at arbitration. This Grievant is the only one of the six who remains discharged.

The record in the arbitration concerning the discharge of Mr. Moreno (grievance 25-3041) was entered into the record of this matter by the stipulation of the two parties. Much of the evidence proffered in that matter, according to the Company and Union, is relevant to this matter, therefore the transcript of that hearing is herein incorporated along with Arbitrator Talarico's award in that matter. In fact, the Company stated that the matter before Mr. Talarico fully developed the factual record for this matter.

The Union also raises three procedural issues in the manner in which the Company processed this discharge. The Union contends that the three issues concerned: (1) peremptory removal of the Grievant without proper notice, (2) that this was a group action, hence all six are guilty or none are guilty, and (3) the Company combined all three cases into a single set of minutes for the processing of this grievance. The Company contends that there are no procedural issues, and if there are, they are *de minimis*. Each of these matters will be examined, in turn, in the following paragraphs of this Arbitrator's opinion before proceeding to the merits of the case, if necessary.

Hearings in the above cited matter were conducted on Thursday, May 21, 2026 at the Garden Inn by Hilton in Chesterton, Indiana. The parties stipulated that this matter is properly before this Arbitrator pursuant to Article Five, Section I of their 2022 Basic Labor Agreement.

The parties also stipulated that the record made grievance 25-3041 is part of the factual record of this case. The record in this matter was closed upon receipt of the parties' post-hearing briefs on June 1, 2026.

COMPANY'S POSITION

The Union raised three procedural arguments and deemed them all to be fatal to the Company's case. None of these Union contentions have merit and should be dismissed. These contentions were (1) the discharge was peremptory, (2) combining Step Two Minutes of all six grievances, and (3) alleging that a Written Statement outlining the evidence relied upon in determining to suspend and subsequently discharge the employee. The burden of proof falls to the Union to prove these allegations and that they are fatal to the Company's case, and this burden they did not shoulder. These three issues will be examined, in turn, before proceeding to the merits of this case.

Peremptory Discharge

The Union argues that the Company peremptorily discharged the Grievant by not issuing a suspension notice. It is the Union's view, the BLA requires a separate "suspension" notice before a discharge notice. The Union relied upon several provisions of Article 5 of the BLA (paragraph 9(a) (1)-(3)). Lowe, Vice President of the Local, admitted on cross-examination that there are reasons the Company may exit an Employee, and those are contained in Article Five, Section I 9 (b) (2) of the BLA.

The record shows that the Company issued a notice of intent to discharge (Joint exhibit 2, p. 71). Further, the Step 2 answer to this grievance states; "Denied - Notice of intent converted to discharge." (Id. page 72) The simple fact of the matter is that the Company did not peremptorily discharge the Grievant, hence committed no procedural error; fatal to this case or otherwise.

Combination of Step Two Minutes

The record shows the Step 2 Minutes were combined for all six persons involved in this matter. The record also shows that the six grievants combined and conspired together to commit the egregious act for which this Grievant was discharged. In plain language, the facts upon which the aggrieved disciplinary actions were taken were the same in each of the six cases. Mr. Lowe admitted as much on cross-examination. Even more, the Union admits that it gave a copy of the Minutes to each of grievants with portions that did not concern them redacted. Simply put, there is no procedural error in combining the Step 2 Minutes and the Union's contention is a red herring.

Written Statement at Step Two Meeting

The Union's third procedural argument was that the Company "provided no evidence" during the Grievant's Step Two Meeting. The Company went over the written timeline with the

Grievant and discussed with him the reasons the actions were being taken against him. The record clearly shows that the practice had never been to provide a written statement of the facts at the Step 2, and in fact, the Union asked the Company, nearly six months after this case, to start providing a written statement at the Step 2 meeting (Tr. pp. 402-405).

A written statement is intended for the Union, as the Grievant's representative, to understand the case against him. As Mr. Lowe testified in cross-examination, he attended all of the interviews and Step Two meetings. He, being the Union representative, was fully aware of all of the information upon which the Company acted, or of which it knew.[1]

Therefore, there are no procedural issues in this matter that could result in the Arbitrator not deciding this case on its merits. The Union's contention with respect to these issues is simply without merit and should be denied in its entirety. This matter should be decided on the basis of the facts in this case.

Merits of the Case

There is no dispute that the Grievant is currently a Trustee of the Local Union. Further, at the time of the incident giving rise to his discharge the Grievant was also a Trustee of the Local Union. Also, it is without dispute, that immediately before this incident the Grievant was an Assistant Griever for the Union – a position from which he was removed immediately before this

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[1] The Union also contends that the Arbitrator Talarico wrote that "the Company acknowledged during its opening statement that its case its case was based on proving all six employees participated in a work stoppage." It is the Union's assertion that this was the Company position and that was not proven at arbitration. In fact, that's not what the Company asserted and the Transcript of that hearing shows what was said (Tr. pp. 7-15).

incident.

Further, there is no dispute that a work stoppage occurred as the Company claims and the record shows the stoppage cost the Burns Harbor Plant nearly 4.7 million dollars in lost revenue (Tr. pp.76-77). The stoppage also caused issues up ad downstream to operations (Tr. P pp. 77-78). Article Five, Section K, in clear language, proscribes any work stoppage and this constitutes egregious misconduct, clearly worthy of discharge for the first of offense.

The Company did not rush to judgment in this matter. A careful, full and fair investigation was conducted. There is no evidence in this record to suggest otherwise, it is only the Union's grasping for anything that will persuade the Arbitration to reinstate a Union official. The investigation discovered the factual basis for the discharge suffered by this Grievant.

The Grievant repeatedly referred to the Crane unit as "my guys." The fact is the Grievant had a stranglehold on that unit (Tr. pp. 295). These repeated assertions are telling and are throughout the record of the prior arbitration. The Grievant had established for himself a cult among the crane operators and the record clearly shows this. It is in this environment that the actions of May 2 and 3, 2025 occurred.

The Company offered testimony before Arbitrator Talarico concerning certain comments made by the Grievant. On page 40 at lines 8 and 9 and again at lines15 and 16 of the Transcript there is a transcription of the words the Grievant used at the Union hall that were recorded and entered into the record before Mr. Talarico. The Grievant was recorded saying "We're not going to run ducking steel." That occurred after the Union removed him as assistant griever, the day before the shut down.

The sequence of events giving rise to the Grievnat's "guys" calling off and not reporting to work were not contested by the Union. That sequence of events lead up to the shut down which was triggered by the Grievant's recorded statement.

In the present case, those words could not be more true. Some crane operators did not turn in any excuse; some gave excuses that they themselves later contradicted; some excuses were so riddled with inconsistencies that there is no way they could be true. Even the same crane operator who also called off in previous incident, returned to work a day earlier than his provider released him for. The others returned within a day or two of their absences. One crane operator had his personal plans suddenly end earlier than expected and he returned to work the evening of the work stoppage (Tr. pp. 265-69).

Every reasonable inference, every fact leaned only points to one thing – this was a work stoppage. The record show that they all participated in this event, but this Grievant was the ring leader. More importantly, the Grievant, as their leader and as a Union Official and Representative, did nothing. He didn't come in and he didn't take any action to get people into work. Instead, he sat silent, avoiding everyone. With his silence and inaction, he stamped his approval of the work stoppage. Their leader, a Union Official, condoned the same as that the BLA specifically prohibits.

In stark contrast, when he learned that his schedule had been changed, he was suddenly able to take action. He made calls, multiple calls. All of which he recorded, all of which he preserved. One could certainly hypothesize that he was recording to show that he didn't participate in what was occurring. But with that in mind, the spotlight on the all of the text messages that were deleted by those with whom he communicated becomes even more suspicious. If the audio recordings are to show his innocence, then what must those texts show to be so quickly and universally deleted.

Based on the foregoing, there are only two unavoidable conclusions that can ne reached: (1) there was a concerted work stoppage and (2) the Grievant condoned it. Both of which are in violation of the Article Five, Section K proscriptions of work stoppages (and in particularly officials of the Union participating, condoning, leading etc. such actions). Both of these offenses are extremely egregious and both require the most severe penalty which is discharge.

Perhaps some this evidence is circumstantial. However, the clear actions of the Grievant and his statement are proven. The circumstances in which the Grievant made his offending statement only make the case against him stronger. The Union's claims of procedural defects are simply to divert attention away from the fact the Grievant did violate Article Five, Section K of the BLA and those claims are utterly without merit.

For these reasons, the Company respectfully asks that the Arbitrator deny this grievance in its entirety as being without merit, and to uphold the Company's decision to discharge this Grievant.

UNION'S POSITION

The Union contends the Company made three procedural errors in discharging the Grievant and in processing the Union's grievance concerning that disciplinary action. Each of these Company actions are sufficiently egregious to sustain this grievance are issue the requested remedy. If, *arguendo,* this matter goes to the merits, the Company has failed to shoulder its burden to prove the Grievant engaged in any misconduct whatsoever. Without shouldering that burden of proof the grievance must be sustained. Each of these points will be examined in the paragraphs below.

Procedural Defects

There are three critical procedural errors the Company made in issuing this discharge and in processing the grievances concerning this wrongful discharge. First, the Company engaged in peremptory removal without the required Notice of Intent. (Article Five, Section I, paragraph 9 (a) of the BLA). Second, the Company's failure to supply a detailed written case at the Step 2 meeting (Article Five, Section I, 3 (b) (4). This step of the procedure is to make sure that the Company has gathered all of the facts before they discharge the Grievant. Here the Company discharged the Grievant then continued to attempt to discover the facts in an attempt to justify their disciplinary action against him. It is also to make sure the Grievant and the Union know all of the facts and exactly why the Company made the discharge decision. Third, improperly combining six separate discharge cases into one set of minutes that distort the official record in this case. These are not minor missteps, they go to the heart of the due-process protections that were negotiated by the parties into the BLA. The record shows that the Grievant was locked out immediately without notice and didn't speak to anyone at the Company until May 12. He was not given his notice of intent to discharge until May 23. This is clearly untimely and placed the Grievant and his Union at a distinct disadvantage in making an investigation and gathering the relevant facts necessary to defend against these merit less charges. These due process violations are outrageous.

These protections exist for a reason. They insure fairness when discipline is imposed. When the Company willfully bypasses those safeguards, just cause cannot be found. The Agreement gives the Arbitrator the authority to fashion a remedy when discipline is imposed without just cause. The Union still believes this case should be granted based on the procedural arguments alone to preserve the integrity of the Agreement and deter the Company from future violations of the grievance the procedure and due process. The grievance should be sustained on the basis of these procedural missteps, and the Grievant should be reinstated with a full make whole remedy.

Merits of the Case

There were six alleged participants in the Company's conspiracy theory of a work stoppage. Only one other made it to arbitration with Arbitrator Talarico in Grievance case #25-3041. The Union presented that arbitration award as evidence here because it is so glaringly obvious the Company knows their case is flawed beyond hope. They lost that case on the exact same lack of evidence they presented at this hearing. The Company's arguments were exactly the same, word for word, before Arbitrator Talarico. The transcript and Talarico's findings show the Company had no evidence upon which to discipline the aggrieved employee and the Arbitrator sustained the grievance. Since that award the Company has reinstated five of the six alleged participants because they knew they didn't prove their case of a work stoppage in that arbitration. Arbitrator Talarico, several times in the transcript, asked the Company about proving their case. On page 98 of the transcript the Arbitrator says "conspiracy theories are difficult, you know.

You're not going to find a smoking gun. At least I don't think there's a smoking gun in this thing". On page 206 of the transcript the Arbitrator says "are you going to eventually going to give me the connective tissue?" The "connective tissue" never came. The Company never proved there was a work stoppage. In fact, on page 22 of the Moreno Award, Arbitrator Talarico says about all the cases, "The cases make the point that timing of the call offs, standing alone, is not sufficient to establish that an employee knowingly or intentionally participated in a work stoppage." This begs the questions if the Company's case was predicated on proving cases against all six of the aggrieved employees and as it turns out five of the six are already back to work. An independent Arbitrator has already ruled a work stoppage didn't occur in these cases, then one must ask why is this Grievant still out? How did this Grievant participate or condone a work stoppage if by the Company's admission at the first arbitration that the qualifier they relied upon was proving all six cases? Effectively, the Company has changed their position that a work stoppage of six employees has now become a work stoppage of one.

The Grievant credibly testified that he was scheduled straight days for over four years leading up to the alleged incident without rebuttal. The record shows the Grievant was not notified by the Company of any schedule change, and that fact was unrebutted. He only found out because a co-worker called him and said a manager was looking for him several hours into the shift, which is also unrebutted. He made two calls to the call-in service trying to confirm his schedule and one to his manager, also unrebutted. The Call-in service had no schedule, and the manager did confirm that there was a late change in the schedule and that "someone dropped the ball" in notifying the Grievant, again unrebutted.

The Grievant's work record is unblemished and his attendance is impeccable in his nineteen years of service to this company. The Company's evidence in this case has included mostly evidence against other employees who have already been vindicated, which were mostly conspiracy theories, speculation, and hearsay. They same inadequate factual foundation exists as it relates to this Grievant. This throw it all at the wall and see what sticks approach to discipline cannot be allowed stand.

The Union believes that it has proven its procedural claims in this matter, but should it reach the merits, the Union must still prevail. Clearly the Company did not prove just cause exists for any discipline. In order to prove just cause the Company must provide at least some evidence to support their decision to discharge. The Company has to have more than assumptions and conspiracy theories in order for the Arbitrator to find just cause. There was no doubt in the first arbitration with Mr. Moreno's case and there is no doubt at present with this case that the Company did not prove just cause. They simply regurgitated the same case with the same conspiracy theories and assumptions trying to get an outcome different than what Arbitrator Talarico gave them in the prior matter.

The procedural deficiencies in this case are not small but so glaringly large that the Union has never seen this level of willful neglect and abuse of the procedure and an employee's due process by a company. This on its face, this cannot be allowed to stand. On the merits of the case, this employee has had no prior discipline. He has an exemplary work and attendance record. He has been truthful throughout this process and his testimony has not wavered on any issue. The Company has disparaged him in every way they could by twisting words and manipulating the record to present him in the worst light possible to cover their ineptness in the process. Surely this Grievant deserves better.

The Union respectfully asks the Arbitrator to sustain this grievance in its entirety. The Union requests the remedy for this grievance is a make whole remedy, returning this Grievant to his former position with the Company with full back, benefits and seniority he would have otherwise earned had it not been for the wrongful discharge.

The Union also requests that the Arbitrator retain jurisdiction over this matter for a period of sixty days to resolve any disputes that may arise over the implementation of the remedy he orders.

ARBITRATOR'S OPINION

This grievance has multiple disputed issues between the parties. The Union alleges that there are harmful procedural errors in this matter, and asks that the grievance be sustained on the basis of these. Naturally, the Company argues otherwise. Then there are the merits of the discharge action the Company has taken against this Grievant. The Company alleges the orchestrated and condoned a work stoppage, the Union argues that is not true. Each of these matters will be examined, in turn, as necessary in the following paragraphs of this Award.

Procedural Issues

The Union contends that there are three procedural violations the Company has committed in this case. The Union contends that the Grievant was: (1) peremptorily discharged, (2) the Company combined the cases of six employees in the Minutes at the Second Step grievance procedure was harmed the Union's ability to defend him, and (3) the discipline was untimely and not properly communicated. Each of these procedural issues will be examined, in turn, in the following paragraphs of this Arbitrator's opinion.

Applicable BLA language

The grant of authority to this Arbitrator is the interpretation and application of the party's BLA. Article Five, Section I paragraph 6 b describes the Arbitrator's grant of authority and confines arbitral authority to the provisions of the BLA, without alteration, addition or subtraction from the parties' written agreement. Within those confines this Arbitrator is to glean the parties' mutual intent and apply that to the factual record.

The Union cites for the Arbitrator's consideration with respect to these allegations *Article Five, Section I 9 a* of the BLA *(*Joint exhibit 1, p. 59*)* which states:

9. Suspension and Discharge Cases

   a. No Peremptory Discharge

      (1) Before imposing a discharge (which must be in accordance with Paragraph 9(b) below) the Company shall give written notice of its intent to the affected Employee and the Grievance Chair.

      (2) Where the Union files a grievance protesting such intended discharge within five (5) days of receipt of the notice, the Company may impose no more than a suspension (which must be in accordance with Paragraph 9(b) below) on such Employee prior to completing the procedure referred to in Paragraph 3 below.

      (3) The grievance protesting the intended discharge shall be filed at Step 2 of the grievance procedure and the Step 2 Answer shall

be given prior to the Company converting the suspension to a discharge. At the Step 2 meeting the Company shall provide a written statement fully detailing all of the facts and circumstances supporting its proposed disciplinary action.

(4) In the event the Company does convert the suspension to a discharge, the action shall be treated as a denial of the grievance at Step 2 and the Union may thereupon move the case through the balance of the grievance procedure.

The Company disputes the Union's claims of procedural error. Company responded to the Union's claims citing Article Five, Section I paragraph 9(2) of the BLA (Joint exhibit 1, p. 60), which states:

(2) This paragraph will not apply to cases involving offenses which endanger the safety of employees or the plant and its equipment, including use and/or distribution on Company property of drugs, narcotics and/or alcoholic beverages; possession of firearms or weapons on Company property; destruction of Company property; gross insubordination; acts of workplace harassment; threatening bodily harm to, and/or striking another employee; theft; or activities prohibited by Article Five, Section K (Prohibition on Strikes and Lockouts).

Strikes and Lockouts are the title of Section K, but Section K also proscribes work stoppages and impeding work. Article Five, Section K of the Basic Labor Agreement (Joint exhibit 1, pp. 62-62), which is cited above, states:

Section K. Prohibition on Strikes and Lockouts

1. There shall be no strikes or work stoppages or the interruption of impeding of work. No officer or representative of the Union shall authorize, instigate, aid or condone any such activities. No employee shall participate in any such activities.

2. The applicable procedures of this Agreement will be followed for the settlement of

all complaints or grievances.

3. There shall be no lockouts.

This Arbitrator is persuaded that this cited contract language of the Basic Labor Agreement is applicable to the procedural disputes concerning this grievance. Each of which will be examined in the following paragraphs of this opinion.

Peremptory Discharge

The record concerning the Grievant's notification of the disciplinary action taken against him is not in serious contention. The Union asserts that the Grievant was not informed that discipline was being considered against him for nearly three weeks after the alleged events of May 2 and 3, 2025. The first written record of the contemplation of discipline is found in Joint exhibit 2, p. 71 is a copy of the "Notice of Intent to Discharge" over the signature of Gregory Gabbert, signed May 23, 2025. This document states:

> In accordance with the provisions of the [sic] Article V Section 1.9 of the Agreement between Cleveland-Cliffs LLC and the United Steelworkers this is to notify you, Craig Menear (94769) of the Company's intent to discharge you for Participating, Instigating, Aiding and/or Condoning a Work Stoppage (No Justice and Dignity).
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> The above offenses, either individually or collectively, warrant suspension preliminary to discharge.

In this case, the act of disciplining this Grievant is alleged by the Union to have occurred before there was notice of the intent to do so. The Union claims the discipline actually occurred when the Grievant was denied access to the facility when his badge was deactivated.

This Arbitrator is persuaded that the clear language of Article Five, Section I, paragraph 9 a (1) is unambiguous: *Before imposing a discharge (which must be in accordance with Paragraph 9(b) below) the Company shall give written notice of its intent to the affected Employee and the Grievance Chair.* The Union claims that was not done here. The notice arrived nineteen days after the Grievant had his badge deactivated, essentially putting him out of his job – a *de facto* discharge. In this case, there was no accident, nor clear and agreed-upon incident serving to give knowledge of what misconduct might be alleged. With a crane wreck, it is obvious upon what the misconduct charges will be focused. Further, without a showing that the Grievant was a clear danger under Section K, the removal of him from the facility is more than just an act of protection as asserted by the Company, but it is also the penalty normally assessed in discipline. Management must have the ability to protect its plant and equipment as well as the employees. The tension arises because Management is also obliged to demonstrate that it was prudent to exclude the Grievant from the production facility under thee facts and circumstances. Mr. Franckiewicz was presented with facts and circumstances in which the Grievant wrecked Company property in plain sight. That incident had the potential of not only destroying expensive amounts of property, but could have injured or even killed someone. On its face, the Company had to act to prevent such harm, and deactivating Grievant Clemons' badge is a reasonable act, under those facts and circumstances. Management's interest take precedence because Article Five Section K authorizes it; an Management proved the incident fell under that jurisdiction. Not so here, there is no such factual record, and to get to something proscribed by

Section K requires more than is in this record.[2]

Joint exhibit page 72, is the Step 2 grievance form. The form contains a space for the Company's position, in that space and signed by Joshua Pelletier, dated June 9, 2025 is found the following: *Denied - Notice of intent converted to discharge.* Mr. Lowe moved this grievance to Step 3 on May 23, 2025, and no explanation was offered at hearing for the fact that this case was moved to Step 3 before a Step 2 denial occurred.[3] It appears the Union filed the grievance upon receipt of the notice, which is appropriate under this language. In following this paper trail, there appears to be a notice of intent to discharge followed nearly three weeks later by a conversion to discharge. Albeit, there is no suspension to be found anyplace in this paperwork. In a careful reading of Article Five, Section I 9 a there is no requirement for a suspension, all that is required is notification.[4]

This Arbitrator finds that the Company gave written notice of its intent to discharge the Grievant on May 23, 2025. However, the record shows that before this notice was transmitted to the Grievant he had already been locked out of the facility and was not permitted to work immediately following the incident that gave rise to his eventual discharge. The Company contends that this is in keeping with the requirements of the second paragraph of the Justice and Dignity language of the BLA. However, there was no contention about the Grievant remaining

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[2] Hence the Arbitrator is obliged to proceed to the merits of this case, if peremptory discharge is to be confirmed.

[3] In examining the Transcript of the hearing before Talarico from page 67 through to the end of Pelletier's testimony, there is nothing in that record to explain the discrepancy if moving the grievance to Step 3 before the Second Step answer, and conversion of the intent to discharge on June 9.

[4] See Article Five Section I, paragraph 9 a 1 of the parties' BLA at page 59.

on his job and the requirements of *Article Five, Section I, 9 a* are not diminished by the language of Article Five, Section I, 9 b (2); the subject of that latter paragraph are the Justice and Dignity provisions, rather than the no peremptory discharge language concerning Discharges and Suspension. These two provisions of the BLA involve two different things.

This Arbitrator is persuaded that not only is there a technical misinterpretation of the applicability of Article Five, Section I, paragraph 9 b (2); but there is actual harm resulting from this violation.[5] Neither the Grievant, nor the Union were aware of what the Company suspicions were and were not given an opportunity to have the requisite time for input before the discharge was in fact imposed; which for all practical purposes has the appearance of immediately discharging the Grievant after the alleged incidents.

This Arbitrator is persuaded that there is fault in this, as charged by the Union in the imposition of this discharge, which appears contrary to *Article Five, Section I, paragraph 9 a* requirements. This is a serious matter, not to be taken lightly. In fact, under these specific facts and circumstances, the record appears to support the Union's claim of peremptory discharge. . However, in this Arbitrator's considered opinion, the facts still matter. The conclusion of peremptory discharge depends on the facts, and that record must be examined before conclusively reaching that conclusion. It would be an inappropriate to rely solely on the timing of the event that gave rise to this matter, the notice of intent, and the conversion. The nature of the event, the alleged work stoppage, matters in Section K and must be examined.

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[5]In the Matter of grievance 24-4027 the Company entered an award by Arbitrator Franckiewicz in which found there was no peremptory discharge, and there was just cause for discharge of that Grievant. That case differed from the present matter because the Grievant knew precisely what he had done, and it was clear and obvious. Wrecking a crane in plain sight is not the issue here.

Combining Six Grievants in Step Two Minutes

In examining this complaint it is clear that Management did combine all six of the grievances filed over the discharges for participation in the alleged work stoppage. The Company did so based on the theory that this incident was a concerted action involving the Crane Department employees who were disciplined. No matter how you characterize it,[6] the Company claims, based on how it viewed the facts, that it was dealing with concerted actions and therefore should proceed as a group disciplinary matter.

On its face, the Company's theory of the case to that point is not unreasonable. However, the Step Two Minutes became rather lengthy, 96 pages, which made the work of the Arbitrator more time consuming and difficult after the hearing. This Arbitrator understands the Union's vexation with having to wade through such a lengthy file for individual grievance processing. However, there is nothing in the BLA that persuades this Arbitrator that the Company is barred from combining their Step Two answers to several grievances when, in good faith, they believe the offense was conspiratorial or concerted activity. Inconvenience to the Union is not necessarily a grieveable issue.

In this Arbitrator's considered opinion without specific contract language barring what the Company did with respect to combining their Step Two answers this Arbitrator is not inclined to find inconvenience violates the BLA.

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[6] All six equally guilty, one or more ring leaders, one or more intimidated, there was a single incident, and there were six individual identified by their absence during the events that gave rise to this issue.

Timing of Discharge and Propriety of Communication of the Discipline

The timeline in the discharging of this Grievant is subject to controversy. Reduced to the basics, the Company would have the Arbitrator look to only the written record while the Union believes the Grievant was peremptorily discharged. The record is clear with respect to the events that occurred after the alleged incident. The Grievant was locked out shortly after the alleged work stoppage on or before May 4, 2025. The Grievant received a Notice of Intent to discharge on May 23, 2025, nearly three weeks later. On June 9, 2025 after the Second Step meeting the notice of intent was converted to a discharge.

The Union asserts that the nineteen days that it could have been investigating and talking to witnesses were denied it due to lax adherence to the commonly accepted procedures and practices in such disciplinary matters. This Arbitrator is puzzled why there was not a greater sense of urgency once the Grievant was locked out by the Employer. It would seem to this Arbitrator, a prudent person who valued their employment would have left no stone unturned in finding out why they were locked out and getting the Union on the path to discovery. Had the record been persuasive that the Grievant did pursue this in a timely manner, then the Arbitrator may have been more receptive to finding this to be a technical fault worthy or arbitral intervention. As it is, the Arbitrator is persuaded that the Company acted without adhering to the rigors of Article Five, Section I 9 a. This is Union complaint is simply a different dimension of the peremptory discharge claim. In this Arbitrator's considered opinion, those same matters were resolved in the Arbitrator's determination of the language and facts concerning the allegations of a peremptory discharge and requires nothing further here.

Merits of the Case

There was a lot of smoke blown across the facts of this case. That is not being critical, in fact, I would expect a good advocate to judicially blow smoke in defense of their position and client, particularly if that is all that is left to them. Upon careful consideration and reading nearly four hundred pages of transcript, it became clear and obvious to this Arbitrator that there were six crane operators who did not report for work on May 3, 2025 and that the Company was upset because these six individuals did not provide text messages concerning this event as requested. In fact, those text messages, according to the Company would have shown the culpability of those six employees. That is an assumption, perhaps even an accurate assumption, but this Arbitrator will never know because that evidence was not proffered. What the Company has, and the Company readily admitted, is they have a recording of the Grievant making a statement at the Union hall and within forty-eight hours they experienced six employees calling off work and rather significant lost steel production as a result. The nexus between these events is utterly absent.

Arbitrators will often find merit in circumstantial evidence. As the Elkouris have observed:[7]

> . . . It is not sufficient that the circumstances give rise to mere suspicion or speculation; the circumstances must lead to inferences and factual conclusions based on a reasonable probability[8] "If evidence producing the chain of circumstances pointing to [guilt] is weak and inconclusive, no probability of fact

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[7] Elkouri and Elkouri, *How Arbitration Works, eighth edition* BNA Bloomberg, 2016 pp. -54 and 55.

[8] *Dietrich Indus.* 83 LA 287, 289 (Abrams, 1984)

> be inferred from the combined circumstances."[9] The facts offered as circumstantial evidence must afford a basis for a reasonable inference of he existence or nonexistence of the fact sought to be proved. The reasonable inference sought to be reach must be more probable and natural than any other explanation, although it is not necessary to be adequate that circumstantial evidence exclude every reasonable theory except guilt.[10] As a basic safeguard, one arbitrator has emphasized that arbitrator in using circumstantial evidence "must exercise extreme care so that by due deliberation and careful judgment, he may avoid making hasty or false deductions."[11]

Is the Company's theory of the case and the nexus proffered plausible? The answer is most certainly yes. However, it is not the only plausible scenario. The Grievant denies the assertion that his recorded comments about not making steel had triggered the alleged work stoppage. Without the context and the entirety of what the Grievant said on May 2, 2025 this Arbitrator cannot make the inference the Company urges, without serious speculation. Is it plausible that five of the no show employees on May 3 had no connection and offered their reasons for their absences independently? That answer was provided by the Company in reducing the discharges of four, and Arbitrator Talarico's award in the fifth case. Arbitrator Talarico was faced with essentially the same circumstantial evidence involving the case against Grievant Moreno. His findings in that matter are telling (p. 21):

> I note that Company introduced considerable evidence in the case attempting to prove that the explanations and supporting documentation provided by at least two other grievants were demonstrably false. The Company introduced evidence to suggest that each of employees were being less than truth in their

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[9] *South Penn Oil Co.*, 29 LA 718, 721 (Duff, 1957)

[10] *Frontier Airlines*, 82 LA 1282, 1288 (Watkins, 1984)

[11] *South Penn Oil Co.*, 29 LA 718, 721 (Duff, 1957)

> explanations, including through the recorded call-offs and follow-ups with the medical providers who were the sources of the medical documentation. Although this decision expresses no opinion or finding about the Company's evidence in regard to these other grievants, the evidence offered by the Company about these grievants stands in contrast to the absolute lack of any similar evidence in regard to Moreno. The recording of Moreno's call-off was entirely consistent with the explanation he provided on May 6th, and that explanation is corroborate by the unchallenged documentation that he provided when asked to do so by the Company.
>
> In addition, the Company accepted the explanation and documentation provided by two other crane operators who reported off the same day. In one instance, the Company accepted an employee's reliance on his certified FMLA, leave, backed up by documentation, to excuse his call-off without any suggestion that the call-off was part of the alleged work stoppage occurring the same day. In the other instance, the employee initially provided a less than accurate explanation of the reason for his call-off, but the Company accepted his subsequent explanation about the actual reason he reported off. These cases make the point that timing of the call-off standing alone is not sufficient that an employee knowingly and intentionally participated in a work stoppage. Moreno's case is no different – timing alone falls far short of the proof necessary to establish that employee engaged in such egregious misconduct.

Arbitrator Talarico found that Grievant Moréno (and at least two other of the five remaining "co-conspirators") had no such nexus between their absences and the alleged work stoppage. This analysis provided by Talarico is the alternative to the Company's presumptions concerning the events for which this Grievant was discharged. In examining the Talarico award and the testimony from those three aggrieved employees this Arbitrator is persuaded that Talarico's analysis was accurate and, just as importantly, fully applicable in this case before this Arbitrator.

Without belaboring the point, this Arbitrator is not persuaded what linkages may exist between this Grievant and the other "participants" in this alleged work stoppage. For the Company to prevail, there must be a showing of a conspiracy, or as they also claim a cultish adherence to this Grievant's announcement that no steel was going to be run, albeit, we have no context for the Grievant's statement, nor to whom the comment was directed. In short, the record of evidence in this matter falls far short of proving just cause against this Grievant for violation of Article Five, Section K..

CONCLUSION

There are procedural difficulties in this matter. Nothing in the record persuades this Arbitrator that anything in two of the Union's procedural allegations is of such weight as to set aside this aggrieved discipline. However, the third complaint has gravity. The third complaint, being that the discharge appears to have all the characteristics of a peremptory discharge. The Grievant was locked out the day after the incident and he was not informed of any forthcoming discipline for nearly three weeks. This is not protected, as the Company alleges, by Article Five, Section K, in fact, it appears contrary to Section I requirements. This procedural fault is significant.[12] However, it is not necessary to determine the magnitude of the harm nor the appropriate remedy here, because this grievance is sustained on its merits. To truncate the proper resolution of this grievance and rely solely on an error in administration, does not fully resolve this controversy and is not what the parties' expectations were when they negotiated Article Five, Section I. Therefore, this Arbitrator was obliged to resolve the totality of this controversy – which was done on the basis of the merits.

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[12] In this specific case, the penalty may well have been mitigated. The tension between Article Five, Section K and Article Five, Section I 9 a means these matters must be resolved on a case by case basis due to the competing interest

The record of evidence fails to make the nexus between this Grievant and the remaining alleged participants in the events of May 3. For reliance on circumstantial evidence, the Company must still proffer persuasive evidence that allows this Arbitrator to fill-in the blanks in the factual record. Inference in this matter is not limited to the Company's theory of the case, there are several plausible theories, and Arbitrator Talarico's analysis provides a clear and convincing alternative to the Company's theory. The facts in this matter are persuasive, and leave this Arbitrator no realistic alternative save to sustain this grievance in its entirety and grant the remedy requested by the Union.

AWARD

The grievance is sustained. The Grievant is ordered reinstated to his former position immediately upon receipt of this award, and he is to be made whole for the wrongful discharge with full back pay, benefits and seniority.

The Arbitrator retains jurisdiction over this matter for a period of sixty days to resolve any disputes concerning the remedy herein ordered.

At Fort Wayne, Indiana
June 24, 2026:

David A. Dilts
Arbitrator