

IN THE MATTER OF THE ARBITRATION)
)
 Between)
)
 CLEVELAND-CLIFFS, INC.)
)
 and)
)
 UNITED STEEL, PAPER AND FORESTRY,)
 RUBBER, MANUFACTURING, ENERGY,)
 ALLIED INDUSTRIAL AND SERVICE)
 WORKERS INTERNATIONAL UNION,)
 on behalf of LOCAL UNION 6787)

OPINION AND AWARD

RONALD F. TALARICO, ESQ.
ARBITRATOR

Grievance No.: 25-3-041

Case 158

GRIEVANT

Ricardo Moreno

ISSUE

Discharge

HEARINGS

January 7, 2026
January 8, 2026
Burns Harbor, Indiana

APPEARANCES

For the Employer
Nathan Kilander
Section Manager, Labor Relations
CLEVELAND-CLIFFS, INC.

For the Union
Jacob Cole
Michael Milsap
UNITED STEELWORKERS

ADMINISTRATIVE

The undersigned Arbitrator, Ronald F. Talarico, Esq., was mutually selected by the parties to hear and determine the issues herein. Evidentiary hearing were held on January 7, 2026 and January 8, 2026 in Burns Harbor, Indiana at which time the parties were afforded a full and complete opportunity to introduce any evidence they deemed appropriate in support of their respective positions and in rebuttal to the position of the other, to examine and cross-examine witnesses and to make such arguments that they so desired. The record was closed at the conclusion of the hearing. No jurisdictional issues were raised.

PERTINENT CONTRACT PROVISIONS

Section 1. Adjustment of Grievances

...

3. Grievance Procedure

...

b. Step 2 - Written

...

- (2) **Such grievance shall be discussed within five (5) days at a meeting with the grievant, the involved Grievance Committeeman, the Grievance Chair, the grievant's supervisor and the involved department head. Management may call any non-represented employee as a witness to provide testimony and/or evidence to the meeting. The Union may call any USW represented Employee as a witness to provide testimony and/or evidence to the meeting.**

...

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.

...

b. Justice and Dignity

- (1) In the event the Company imposes a suspension or discharge, and the Union files a grievance within five (5) days after notice of the discharge or suspension, the affected Employee shall remain on the job to which his/her seniority entitles him/her until there is a final determination on the merits of the case.
- (2) The 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).

Section J. Management Rights

The management of the plants and the direction of the working forces, including the right to hire, transfer and suspend or discharge for proper cause, and the right to relieve employees from duty, is vested exclusively in the Company.

In the exercise of its prerogatives as set forth above, the Company shall not deprive an Employee of any rights under any agreement with the Union.

Section K. Prohibition on Strikes and Lockouts

- 1. There shall be no strikes or work stoppages or the interruption or impeding of work. No officer or representative of the Union shall authorize, instigate, aid or condone any such activities. No employees shall participate in any such activities.**
- 2. The applicable procedures of this Agreement will be followed for the settlement of all complaints or grievances.**

There shall be no lockouts.

BACKGROUND

The Employer, Cleveland-Cliffs, Inc. is a fully-integrated steel making facility with a plant located in Burns Harbor, Indiana, which employs approximately 3500 employees in a production and maintenance unit. The Union, United Steelworkers, Local 1010, is the exclusive collective bargaining representative for all production and maintenance employees at the Burns Harbor plant. The Employer and Union have been parties to a series of collective bargaining agreements over the years the most recent of which is effective September 1, 2022.

The Burns Harbor plant is one of a number of steel-making facilities operated by the Company and covered by the basic labor agreement. The plant provides steel for the automotive, energy and construction sectors of the economy.

The instant Grievance, 25-3041, was filed on May 20, 2025, in response to the Company's issuance of a Notice of Intent to Discharge to its employee, Ricardo Moreno, on that same date. The Notice stated that the discharge was for Moreno's "Participation in a Work Stoppage (No Justice and Dignity)." The Grievance was heard at Step 2 on June 9, 2025 and was denied by the Company. The Union processed the Grievance to arbitration.

The Company's discharge of Moreno was part of a broader response to an alleged work stoppage that, according to the Company, commenced on May 2, 2025 and involved a number of crane operators in the Crane Unit for the Steel Producing Department. The Company experienced approximately fourteen call-offs by crane operators, including Moreno, on May 2nd and the next several days. The Company considered that at least some of the call-offs were a concerted response to an internal Union matter centering around Craig Menear, another crane operator employed in the Crane Unit.

Menear, a twenty-year employee at the plant, also served as Assistant Griever for Steel Production (referred to as "AG"). Menear had been appointed to that Union position on June 4, 2024, and around that same time he was elected to the position of Union Trustee for Local 6787.

On May 2, 2025, Chris Beach, Griever for Steel Production, submitted a letter on Local 6787 letterhead to Nathan Kilander, Section Manager, notifying the Company that Menear was no longer an Assistant Griever for Steel Production, effective immediately. Beach had been elected to the position of Griever for Steel Production in May 2024. The record in this case

revealed that the decision to remove Menear from the AG position was not well received among some of the other crane operators.

The Company maintained that the Union put out a flyer in the Steel shop on May 2, 2025 shortly after Menear was informed by Beach that he was being removed as AG. The flyer informed Union members of who to contact so they could be properly represented. Various employees, including Moreno and the other crane operators who were later discharged, acknowledged that they had seen the flyer when it was posted and circulated through the Steel shop that day.

Later in the evening of May 2nd, several crane operators, including Jason Polovina, Brian Chelich, and Moreno, called off for their scheduled shifts on May 3rd. In addition, Justin Tuerff, along with fellow crane operators Joseph Ruminski, Philip Velasco, and Patrick Kolisz, all called off for their scheduled shifts for May 3rd. Moreno, Chelich, Polovina, Ruminski and Tuerff were all members of B Crew in the Crane Unit. The call-offs caused a staffing issue in the Crane Unit that began on Saturday and carried into Sunday.

The Company's witness testified without contradiction that the "crane staffing" issue that occurred on May 3, 2025 affected iron and coke production, which in turned affected overall steel production. The witness indicated that the Company was forced to place both of the blast furnaces offline for a portion of the day, which meant that steel production was short by twenty heats (of a targeted forty-nine heats that were supposed to be produced that day). The witness indicated that the plant sustained 6,000 tons of lost steel production on May 3rd, with an estimated \$4.7 million loss of revenue. The Union did not contradict this testimony in any way.

The Company also introduced evidence that some Union members/officers approached management with "concerns regarding the context of Menear's comments at the time of his

removal.” The Company witnesses’ testimony in this regard suggested that the Union members/officers who came forward did so very reluctantly, but nevertheless these Union members/officers conveyed a strong inference that at least some of the call-offs among the crane operators had been orchestrated as a protest to Beach’s decision to remove Menear as AG. The Company indicated that these witnesses informed management that Menear had said that with his removal as AG, “we will lose cranemen either through not working, bidding out or calling off and, as a result, no steel will be made (a shutdown).” The Company also offered evidence about a supposed text sent by Menear to other members of the Crane Unit on the evening of May 2nd prior to his leaving the plant at the end of his shift. The Company never secured a copy of this text message, and no copy of the message was introduced into the record.

The situation that arose on May 2, 2025 immediately generated urgent attention from upper management of the Employer and Union officials from the Local Union level up to the USW International President. The Company suspected that the call-offs were a concerted response to the Union’s decision to remove Menear from his AG position. The Company quickly initiated an investigation to determine if the call-offs constituted a work stoppage in violation of the basic labor agreement. This included a review of the recorded conversations made when each of the crane operators reported off. Union officials, including Local 6787 President Pete Trinidad, Sr., attempted to contact various crane operators to urge them to accept calls to report to fill some of the vacancies created by the call-offs.

On May 6, 2025, the Company questioned Moreno about his call-off on May 3 and 4, 2025. Moreno’s next scheduled shift was on May 8th. Moreno provided medical documentation of two separate visits to medical providers, one dated May 3, 2025 from Health Partners, and a second one dated May 5, 2025 from Powers Health (Joint Exhibit 4A, pp. 18 and 19,

respectively). He also provided the After Visit Summary issued for each of those medical evaluations.

The Health Partners letter states that Moreno was seen in urgent care that day, May 3rd, and was unable to work that day and the next as well. The letter stated that he could return to work by May 5th if he was fever-free without medication and his symptoms were improving. The After Visit Summary for this visit to urgent care, which was timestamped at 9:00 a.m. on May 3, 2025, indicated that Moreno was seen for an unspecified type of cough. He was provided a prescription for Flonase.

Moreno indicated to the Company in his interview that he felt the evaluation at Health Partners had been rushed, and his symptoms worsened the next day, so he decided to seek a second opinion. He went to the urgent care facility at Powers Health. The Powers Health letter confirmed that he was seen and treated at Powers Health on May 5th. The After Visit Summary, timestamped for 7:25 p.m. on May 5, 2025, stated that Moreno was seen for “Moderate persistent extrinsic asthma without complication and Other non-recurrent acute nonsuppurative otitis media of both ears.” Moreno received a prescription for albuterol and amoxicillin. The medical instructions stated:

Patient seen for about a week of worsening cough. Was tested for Flu and COVID at Franciscan a few days ago and was negative. No otalgia but bilateral otitis media on exam, Augmentin sent. Wheezing and rhonchi heard in bilateral lung fields. Will send albuterol inhaler and prednisone taper. Please take daily Zyrtec. Return to clinic if fever, chills, sweats occur.

Moreno provided all of the above-described documentation to the Company, and he provided the prescription bottles so that the Company could photograph the information on those prescription bottles.

The Company’s notes of Moreno’s May 6th interview indicated the following

- Moreno acknowledged that he called off Saturday and Sunday
- He stated that he was sick
- He stated that no one instructed him to call off; he added that he would not allow anyone to interfere with his money
- He told us about receiving a call from Beach on Saturday and that's how he found out others called off
- He said he wasn't aware Menear was removed as AG until Sunday at the earliest when he spoke to Beach again
- He said he hasn't had recent communication (from Thursday to 5/6) from Menear and said he doesn't communicate with him all that much
- He said that he wasn't aware there had actually been a production shutdown; that usually there are call offs and they get filled
- He admitted to recalling when Menear was removed as AG back in 2024
- When asked about calling off around that event also, he questioned whether it was an OT shift or not and if an excuse was provided or not; he reiterated that he never calls off and wouldn't call off unless he was truly sick and wouldn't let anyone mess with his money for his family

The interview concluded without any indication that Moreno's employment status had been altered in any way.

Moreno continued to work. His next scheduled work shift was on May 8, 2025. He continued working until May 20, 2025, when he was notified by Greg Gabbert, Division Manager, that his badge was disabled and he was locked out of the plant. At that point, the Company issued Moreno a Notice of Intent to Discharge (Joint Exhibit 4A). The Notice stated that Moreno was being informed of the Company's intent to discharge him for "Participation in a Work Stoppage (No Justice and Dignity).

The Company interviewed a number of other Union members and officers, beginning on May 6th and continuing through May 21st. In addition, as mentioned above, at least two different Union officials discreetly approached management between May 2nd and May 6th with information regarding this situation, including their interactions with Menear. The Company eventually discharged Menear and four other crane operators. The Company charged all six employees with "Participation in a Work Stoppage (No Justice and Dignity). Menear was also

charged with “Participating, Instigating, Aiding and/or condoning a Work Stoppage (No Justice and Dignity).

The Union grieved each Notice. The parties held Step 2 meetings on May 29th (Justin Tuerff), June 2nd (Moreno and Broden), June 3rd (Chelich and Berg), and June 6th (Menear). The Company issued a document (Joint Exhibit 4) titled “Minutes of the Second Step Meeting Between Cleveland-Cliffs Burns Harbor and United Steel Workers of America, Local 6787.” This document consolidated all of the Company’s notes regarding each of the meetings conducted at Step 2 for the six grievances.

The May 2025 incident was not the first time that Beach removed Menear as AG. The Company introduced evidence that Beach removed Menear from the AG position on May 3, 2024. The Company presented a record of crane operator call-offs that coincided with Menear being removed from the AG position in May 2024. According to the Company’s evidence, Moreno reported off on May 3, 2024 for his scheduled shift the following day, which was his first call-off in six months. Another crane operator, Justin Tuerff, called off for his reported shift on May 4, 2024, due to “lack of Union representation.” The Union offered testimony that the Company never investigated the May 2024 situation and never identified any impropriety on the part of Moreno in connection with that call-off, and the Company did not contradict the Union’s testimony on this point.

The Union, in addition to challenging Moreno’s discharge on the merits, objected on procedural grounds to the manner in which the Company imposed the discipline on Moreno. The Union’s procedural challenges focused primarily on the alleged violation of due process in the Company’s investigation, imposition of discipline, and processing of the Grievance. The Union contends that these due process violations were sufficiently egregious to require that the

Grievance be sustained without reaching the merits. The Union further contends that the Grievance must also be sustained on the merits. The Company responds that the Union's procedural arguments are not valid or meritorious. The Company further contends that the evidence was sufficient to support the Company's decision on the merits to impose discharge.

ISSUE

Whether the Company had just cause to discharge the Grievant, Ricardo Moreno? If not, what should be the appropriate remedy?

POSITION OF THE COMPANY

Beginning in the early morning of May 3, 2025, and continuing into the late evening, the Burns Harbor plant steel shop shut down for a combined 1,200 minutes, which is twenty combined hours. The discharge case you will hear involves that shutdown. The shutdown was an orchestrated event, a work stoppage, in which the grievant participated. The consequences for a work stoppage must be addressed in the most severe way: discharge.

Not just the Company, but the Union as well, views a work stoppage as a cardinal sin. The basic labor agreement codifies this position in Section K, Paragraph 1. What differentiates this case from others you may have heard is that this shutdown was not the result of something the Company did. The igniting event was not a discharge or a change in some long-standing practice. However, the Company paid the price to an estimated \$4.5 million to \$5 million in lost revenue. The catalyst for this shutdown was the removal of Craig Menear as assistant griever by the elected zone griever in steel production.

To really understand this case, it is necessary to look back one year earlier. The testimony will show that almost one year to the day earlier, Menear was also removed as an assistant griever. On that occasion, Moreno called off. By what the Union wants to call as pure coincidence, Moreno and five of his co-workers did exactly the same thing when Menear was again removed as assistant griever in May 2025. Because of these call-offs, the crane unit could not be properly staffed. The crane unit is a vital part of the steel producing department. Any disruption of the crane unit does not just affect the steel producing department; there is both a downstream and upstream effect. And if not for the efforts of a few bargaining unit team members, the negative effects would have continued.

The Company's witnesses will testify to a conversation they had with the grievance chair for Local 6787. The Grievance Chair approached the Company on May 5, 2025, and he shared the details of a conversation he had with Menear shortly after Menear had been removed as assistant griever. Menear told the Grievance Chair, "We're not going to run fucking steel." Less than twelve hours later, the call-offs started.

Even though the Company cannot call bargaining unit employees as witnesses, the entirety of the event involving all six grievants will be tried here. Although you are only tasked with deciding one grievant's culpability, the other five hang in the balance. A ruling in the Union's favor allows the same events to continue in an unending cycle. This work stoppage was not in response to anything the Company did, and the impact of the Union's removal of Menear from the assistant griever position had little actual consequences. He was not discharged from his job, he was not demoted, nobody was prevented from going to him for advice, and he continued as a trustee for the Local Union. However, because of the removal of a title, employees took it into their own hands to shut down production.

The Company cannot tolerate its own employees stopping work as a sign of solidarity or protest. The issue is: did the grievant participate in a work stoppage? If he did, discharge is the appropriate level of discipline. The Company will ask you to find the answer to both questions in the affirmative and uphold the discharge.

POSITION OF THE UNION

As a threshold matter, the Union objects to the manner in which this case was handled and processed. This case can and should be decided solely on procedural grounds.

The Company committed egregious procedural violations of the basic labor agreement. The basic labor agreement expressly prohibits peremptory discharge. The basic labor agreement requires a suspension before a discharge. On May 6, 2025, Moreno was questioned by management regarding his call-off on May 3rd. On May 20, 2025, Moreno was locked out of the plant. To this day, he has never received notice of a suspension and remains locked out. No intent to suspend was issued, and therefore no intent to discharge exists. The Union filed a grievance, and the parties met at Step 2 on June 2, 2025. The Company did not present a written statement of the facts to the Union, and the Company simultaneously denied the Grievance and discharged Moreno. That process violated the basic labor agreement in multiple ways.

Locking an employee out of the plant without a suspension is not discipline. It is a de facto discharge. Moreno was allowed to work for several days after he was questioned on May 6th, but he was locked out on May 14. The failure to provide the written Step 2 statement is another procedural violation. The Company did not comply at all. Article 5, Section 9 governs suspensions and discharges, and that section provides that the Company “shall” provide the

written statement detailing all facts and circumstances supporting the proposed discipline. By failing to comply, the Company is barred from introducing evidence at the arbitration hearing.

The improper consolidation of the Step 2 Minutes of all of the discharge cases is another serious abuse of the grievance procedure. The Company investigated and disciplined each employee individually, and the Union grieved each discharge separately. By issuing one consolidated set of minutes for all six cases, the Company violated Article 5, Section (i), Paragraph 3(e)(2). In addition, the minutes are vague and ambiguous. They fail to identify individual witnesses as well as Company and Union officials. In addition, the minutes misstate the charge against Moreno, who was not charged with aiding or condoning a work stoppage.

These are not technical errors, and the consolidation of the minutes was not harmless error. The record will show that the Company terminated Moreno not for what he did but for what the Company assumed.

Ricardo Moreno has been employed with the Company since 2008. He is a senior crane operator in a safety-critical position, responsible for equipment where alertness, judgment and physical condition matter. He rarely calls off; he values his job and income; he values providing for his family; and he does not jeopardize his livelihood lightly – or for anyone.

The Company's case requires you to find that Moreno suddenly abandoned that judgment and reliability to participate in a work stoppage – with no evidence, without coordination, and without instruction. The evidence will not support that conclusion.

Moreno was genuinely ill and acted responsibly. His symptoms began days before the call-offs started. He had congestion, a migraine, a cough, worsening respiratory symptoms, and lack of sleep. He initially tried to work through his condition, believing it could be seasonal allergies. When his condition worsened, he called off and sought medical treatment.

On May 3rd, he was evaluated at urgent care, was prescribed medication, and was told not to report to work until his symptoms improved. When his condition worsened, he sought additional medical attention on May 5th, when he was diagnosed with more serious issues including respiratory complications and ear infections in both ears.

His job is dangerous if performed while sick, fatigued or impaired. His belief was that it would not be safe or responsible to operate a crane while experiencing these symptoms. The Company cannot demand safety on the one hand and on the other punish Moreno for staying home when he was not fit to operate a crane.

The heart of the Company's case is that Moreno participated in a work stoppage. That participation requires knowledge and consent. No one instructed him to call off; no one encouraged him to call off; he did not coordinate his absence with anyone; and he was unaware that there would be a shutdown. That is not concerted activity or participation, and it is not just cause.

The Company's case relies heavily on coincidence: timing, prior unrelated events, assumptions about motivation. However, Moreno's conduct was inconsistent with the Company's theory. The Company has no proof of any text directing Moreno to stay home, no proof that he encouraged anyone else to call off, and not a single statement showing any intent on his part to disrupt operations. Just cause requires proof, not assumptions. If the Arbitrator reaches the merits, the Grievance must be sustained, the discipline rescinded, and the grievant made whole in all respects.

The Company has failed to prove any participation in a work stoppage by any of the individuals listed in the combined Step 2 Minutes, and specifically not by Moreno. What has been presented in arbitration is much more serious. At arbitration, the Company has abandoned

the charges that were actually issued and is now advancing new and expanded allegations – contemplating every grievant’s circumstances surrounding their individual call-offs. The new allegations were never investigated, never disclosed to the Union prior to the hearing, and none of the grievants were ever charged with these new allegations.

The Company:

- Never modified the grievants’ discipline to reflect the new allegations,
- Never re-interviewed any grievant regarding the new allegations,
- Never provided notice that the theory of misconduct had changed, and
- Never introduced this information at Step Two or anywhere prior to yesterday, so the Union could meaningfully respond.

The Union heard Company witness Pelletier’s testimony for the first time at the arbitration hearing.

This is not a clarification of the original charge. This is a substitution of theories. Arbitration is not the place for the Company to try a new case after the grievance procedure has closed. Due process requires that the employees be informed of what they are accused of, when, and on what evidence, before discipline is imposed, especially with a discharge. Inasmuch as the new allegations were never part of the disciplinary decision, they cannot be used to justify the discipline now. The Arbitrator should disregard the new allegations entirely or give them no weight. The case must be judged on the charge that was actually issued, and on that charge, the Company has failed to meet its burden.

FINDINGS AND DISCUSSION

Discharge is recognized to be the extreme industrial penalty since the employee's job, seniority, other contractual benefits and reputation are at stake. Because of the seriousness of this penalty, the burden is on the Employer to prove guilt of wrongdoing. Quantum of proof is

essentially the quantity of proof required to convince a trier of fact to resolve or adopt a specific fact or issue in favor of one of the advocates. Arbitrators have, over the years, developed tendencies to apply varying standards of proof according to the particular issue disputed. In the words of Arbitrator Benjamin Aaron, on some occasion in the faraway past, an arbitrator referred to the discharge of an employee as "economic capital punishment". Unfortunately, that phrase stuck and is now one of the most time honored entries in the "Arbitrator's Handy Compendium of Cliches". However, the criminal law analogy is of dubious applicability, and those who are prone to indiscriminately apply it in the arbitration of discharge cases overlook the fact that the employer and employee do not stand in the relationship of prosecutor and defendant. The basic dispute is still between the two principals to the collective bargaining agreement.

In general, arbitrators probably have used the "preponderance of the evidence" rule or some similar standard in deciding fact issues before them, including issues presented by ordinary discipline and discharge cases. However, where the alleged cause for disciplinary action or discharge is misconduct of a kind recognized and punished by the criminal law, or is of a kind which carries the stigma of general societal disapproval, as well as disapproval under accepted cannons of plant discipline, the Employer must meet a higher standard of proof. Arbitrator Russell A. Smith is much quoted for enunciating what I believe is the more appropriate standard under such circumstances, i.e. "clear and convincing evidence". It therefore seems reasonable and proper that misconduct of the kind alleged within should be "clearly and convincingly" established by the evidence.

In the instant case, the Company imposed the most severe penalty – discharge – relying on the provisions of Paragraph 9.b.(2) of the basic labor agreement. Paragraph 9.a. generally prohibits peremptory discharge, except in cases involving certain enumerated offenses listed

therein. One of the exceptions is for “activities prohibited by Article Five, Section K (Prohibition on Strikes and Lockouts).” The Company seeks to terminate Moreno’s employment under this exception. Moreno is a long-term employee with no relevant prior discipline, and consequently, the Company has a heavy burden to prove that he engaged in the alleged offense of Participation in a Work Stoppage. In the opinion of this Arbitrator, the record does not support the Company’s effort to meet this burden.

This case arises against the backdrop of the Company’s effort to prove that Moreno acted in concert with five other crane operators to engage in a work stoppage. The Company acknowledged during its opening statement that its case was based on proving that all six employees participated in a work stoppage. The Company’s proof in this case involving Moreno thus attempts to prove: (1) that a work stoppage occurred, and (2) that Moreno knowingly participated in the work stoppage. There is no question that the Company has the burden to prove both. For this reason, a considerable portion of the record created by the Company in this case was directed to proving, by isolating on the evidence pertinent to each of the other five grievants, that a work stoppage occurred. The Union objected to being forced to potentially litigate the evidence pertinent to each of the other five grievants even before each of those grievants has his day in arbitration. However, it seems fairly obvious that the Company can only present its case in regard to each grievant, including Moreno, by presenting its evidence that goes to the issue of whether multiple employees engaged in an orchestrated activity.

The foregoing is not intended to serve as a ruling on the merits of the Union’s procedural arguments in the instant case. To the contrary, the Union has raised a number of due process arguments that present serious issues between the parties about the investigation of suspected misconduct, the proper imposition and sequence of disciplinary actions, and the appropriate

manner of processing grievances. I note the seriousness of these issues, but in the present case, it is very clear on this record that the Company failed to meet its burden to prove the second component of its case on the merits -- that Moreno participated in a work stoppage. Rather than rule on the procedural arguments in this case, this Arbitrator is constrained to rule solely on the merits and leave the procedural arguments for another case and another day. One reason for this constraint is that I am very reluctant to conclude that some or all of the facts and contractual provisions pertinent to the Union's procedural arguments, and the Company's responses thereto, are exactly the same across the six pending discharges. In this case, regardless of any ruling I would make on any procedural argument, my conclusion is that the Company failed to prove just cause to discharge Moreno. For this reason, and as explained more fully below, this decision recognizes the Union's procedural arguments and the Company's responses, but I am expressly declining to make any ruling on said procedural issues.

On the merits and accepting solely for the sake of further analysis that the Company has offered sufficient evidence to demonstrate that a work stoppage occurred, the Company has the initial burden to show that Moreno participated in said alleged work stoppage. The Company did not point to any direct evidence that Moreno engaged in a work stoppage. The Company's case against Moreno is based on circumstantial evidence giving rise to a rebuttable presumption. Should the Company establish a sufficient basis to give rise to this rebuttable presumption, the burden would then shift to the Union to rebut the Company's case.

The Company relies heavily on the circumstantial evidence that relates to the conduct of the other five grievants. The evidence that focuses on Moreno can be distilled to the following: (1) Moreno seldom calls off, but he called off immediately following the announcement that Menear had been removed as AG, and (2) the last time that Moreno called off was one year

previous and immediately following the earlier occasion when Menear was removed as AG. The Company argues that the timing and similarity of these two occasions when Moreno called off, coupled with his otherwise solid record of never calling off, give rise to a presumption that his call-off in May 2025 was intentional and undertaken in support of a broader concerted effort to protest Menear's removal as AG for the crane operators.

Assuming solely for the sake of further analysis that the Company offered sufficient evidence to establish that a work stoppage involving multiple crane operators took place, the Company's evidence specific to Moreno is sufficiently compelling in my view to give rise to a rebuttable presumption that Moreno was an active and knowing participant. Accordingly, the burden shifted to the Union to rebut the Company's case.

First, as to the prior occasion in 2024 when Menear was removed as AG and Moreno called off, it is undisputed that the Company did not challenge or investigate Moreno's conduct on that occasion. It is therefore difficult to place any significant weight to that evidence. There is no denying that the two occasions superficially appear to be very similar, but I am reluctant to place any weight on this prior occasion where the Company accepted Moreno's medical documentation without question. The Company's reason for referring back to the 2024 situation is to suggest that on that prior occasion Moreno engaged in deliberate and deceptive conduct to call off in violation of the no-strike/no-lockout language of the basic labor agreement in support of Menear and then disguised that conduct by falsely obtaining medical documentation and submitting that false documentation to the Company. However, that is an assumption of some very serious misconduct, without any corresponding evidence or due process. The mere fact that these two occasions appear superficially similar is simply inadequate to rise to that level of proof. This conclusion is reinforced by the overriding emphasis in the basic labor agreement on

due process and fairness in the administration of employee discipline, which is completely absent in regard to the 2024 situation. Timing and superficial similarity of the two instances is simply not enough evidence in the opinion of this Arbitrator to conclude that this employee is guilty of serial occasions of the most egregious misconduct, especially where the Company took no action whatsoever in response to the earlier occasion. Accordingly, the 2024 incident cannot be relied upon as support for the Company's case in 2025.

The focus of the Union's response on behalf of Moreno is that he presented an appropriate explanation, backed up by valid documentation, of a medical condition that justified the call-off. Moreno sought medical treatment on May 3rd, and again on May 5th, and again on May 12th, for a condition that started several days prior to the events surrounding the alleged work stoppage, a condition that he described as getting progressively worse. He informed the Company of these circumstances (except, obviously, the final trip to urgent care on May 12th) when he was interviewed for the first and only time on May 6th. The information he provided in the interview was entirely consistent with the information he provided in the call-off, as confirmed by the transcript of that phone call. Equally important, Moreno's explanation in the May 6th interview was completely corroborated by the documentation that the medical providers issued following the first two urgent care visits on May 3 and 5, 2025.

Moreover, the medical documentation, and particularly the May 5th note and After Visit Summary, reflect the conclusion of the medical providers that Moreno had a medical condition that (1) included an identifiable respiratory issue as well as ear infections in both ears, (2) warranted Moreno remaining off work, and (3) required treatment in the form of multiple medications being prescribed. The documentation also noted that he should remain off work until the symptoms improved. It is entirely plausible to conclude that Moreno began to experience

these medical problems several days earlier and that the problems worsened, thereby causing him to seek the medical treatment when he did.

On the instant record, the Company did not in any way directly challenge any of this evidence. The testimony established without any contradiction that in the absence of a claim that Moreno's call-off constituted participation in an improper work stoppage, Moreno's explanation backed up by the valid documentation he provided would have been readily accepted as a valid call-off.

I note that the Company introduced considerable evidence in this 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 these employees were being less than truthful in their 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 corroborated by the unchallenged documentation that he provided when asked to do so by the Company.

In addition, the Company accepted the explanations 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 to establish 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 an employee engaged in such egregious misconduct.

Rather than directly rebutting or even challenging the Union's evidence that Moreno had a valid basis for calling off, the Company sought to prove Moreno's guilt by almost exclusively focusing on the conduct of the other employees allegedly involved in the work stoppage. The Company essentially asks me to rely on the evidence pertaining to the other employees, combined with the timing of Moreno's call-off, to overcome or discredit the Union's evidence that Moreno appropriately called off. In my opinion, there is no valid basis to do so. The Union offered more than enough evidence that, if unchallenged and credited, would excuse Moreno's call-offs without question. The Company cannot sidestep that evidence by pointing more energetically at the alleged misconduct of other employees.

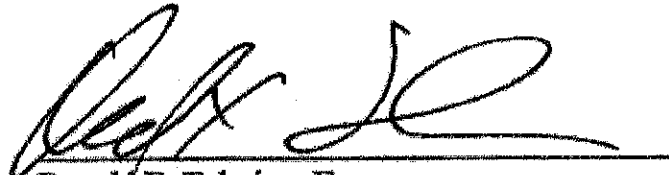
The Company offered enough evidence to place the burden on the Union to prove a valid basis for Moreno's call-off. The Union plainly and clearly met its burden to do so. At that point, the burden shifted back to the Company to effectively challenge the Union's evidence. The Company failed to rebut the evidence offered by the Union, and therefore the Union's valid explanation for Moreno's call-off must stand. In view of that finding, the Company failed to prove the existence of just cause to support the discharge, and the Grievance must therefore be sustained.

AWARD

The grievance is sustained. The discharge shall be rescinded and the Grievant shall immediately be reinstated to his former position and made whole for all lost wages and benefits, including seniority. The Employer is entitled to an offset for any interim earnings and/or unemployment compensation benefits received.

Jurisdiction shall be retained in order to ensure compliance with this Award.

Date: Feb. 12, 2026
Pittsburgh, PA


Ronald F. Talarico, Esq.
Arbitrator