FMCS Case No. _____

In the Matter of Arbitration between:

Company

and

Union

Arbitrator: Richard Bales
Grievant: WL
Grievance: August 25, 2020

Hearing: November 4, 2020
Brief Exchange: December 22, 2020
Award Date: December 28, 2020

Award

I. Facts

The Company is a large tank cleaning and maintenance service provider. It cleans, inspects, tests, and repairs a variety of bulk containers, including tank trailers, IBC/ tote containers, ISO containers, railcars, roll-off containers, and FRAC tanks. Its Megopolis facility primarily cleans tractor- trailer tanks. Approximately ten workers there are members of the Union Local No. ___. The relationship between the Company and the Union is governed by a collective bargaining agreement effective August 1, 2019 through July 31, 2022 (CBA).

Grievant WL is a tank cleaner and a member of the bargaining unit covered by the CBA. He started with the Company in 2007. He served as Union Steward from 2010 until his discharge in 2020, and in that capacity was involved in negotiating three CBAs. He appears to have been a model employee, save for an incident in approximately 2018 when he walked off the job after becoming angry over his perception of the Company's failure to address a safety issue. This resulted in a one-day suspension and, a year later, the addition of a clause into the CBA permitting the Company to discharge an employee for a first-time offense of "walking off the job without proper approval".

The process of cleaning liquid tankers follows a pattern much like the cycle on a washing machine. The tank cleaner starts the process by moving the tanker into a bay. The cycle, which has three main phases, begins with the insertion of a scrubber, or spinner, through an opening in the top of the tanker. The scrubber cleans the inside of the tank. Once the scrubber is finished and pulled back out of the tanker, the tank cleaner initiates the second phase during which the tanker is rinsed and drained. The third phase requires the tank cleaner to insert a blower that dries and ventilates the inside of the tanker. The tank cleaner performs these cleaning steps while remaining outside the tanker. Sometimes, however, it is necessary for the tank cleaner to enter the tanker to clean up any residue left from the cleaning process.

The tankers cleaned at the Company's Megopolis facility are used to haul various types of chemicals. Many of them are dangerous if inhaled or touched, and the confined space inside a tank is particularly dangerous.

The type of chemical dictates the type of cleaning (and the degree of difficulty) involved in the tank-washing process. The Company has eight bays at Megopolis. A tank cleaner normally will be responsible for simultaneously cleaning two tankers in adjacent bays. The most basic cleaning processes typically are done in Bays 1 and 2, and the degree of difficulty goes up from there. The tank cleaners assigned to Bays 7 and 8 are expected to clean the most difficult tankers, and this is where Grievant WL routinely worked. He explained that the cleaning process for a tanker could average around one and one-half hours, although the actual time varied based on factors such as how much residue was in the tanker.

Strict regulations – imposed both by law and by the Company's own rules – govern the work of the tank cleaners. Safety requirements can be grouped into three categories: personal protective equipment (PPE), safety lines, and safety measures while working inside the tanks.

Employees must wear extensive PPE while working. This PPE includes outer clothing, a helmet with face shield, eye protection, a mask or respirator, gloves, a harness, and boots. The outer clothing and other protective gear are designed primarily to protect against the caustic fluids that are present during the cleaning process. Caustic chemicals can splash onto an employee, and caustic chemicals or gasses can be discharged through the hoses and other equipment used in the cleaning process.

A cleaner must always be connected to one of two safety lines. The first is a fall-restraint line, which is used while the employee is working outside (on top of) the tank. The employee connects the fall-restraint line to the employee's safety harness so the employee will not be hurt by falling off top of the tanker. If it becomes necessary to enter the tanker, the employee must disconnect the fall-restraint line and connect the retrieval line. This line can be used to extricate an incapacitated employee from inside a tank.

An employee's entry into a tanker is a Confined Space Entry (CSE). CSEs are heavily regulated both by OSHA and by the Company's safety policies and procedures. See, e.g., 29 CFR 1910.146(c)(5)(ii)(E)(1), 1910.146(e)(3). Before an employee can even put his head into a tanker, he must fill out a CSE Permit form and place it near the trailer entrance. The CSE Permit performs a critical safety function. Among other things, it contains a checklist of safety-related steps an employee must complete before entering a trailer. These include: (1) continuous ventilation of the trailer; (2) continuous monitoring of the trailer atmosphere; (3) proper PPE, including either a supplied air respirator or canister respirator; (4) a harness properly hooked up to a retrieval line; and (5) a T-Pass/Pass/Motion Device. Just as pilots must complete a checklist before they can fly and surgeons must complete a checklist before they can operate, a cleaner must complete and post a CSE Permit to ensure no safety-related step has been overlooked. The Company's CSE Permit states: "**FAILURE TO FOLLOW CONFINED SPACE ENTRY POLICIES AND PROCEDURES CAN/WILL RESULT IN TERMINATION.**"

The Company trains its employees often on CSE procedures. Grievant WL was trained on the Company's CSE procedures ten times in the two years preceding his August 2020 discharge, including four times in 2020. Joint Ex. 5; Company Ex. 2.

During the week of August 10, 2020, the Megopolis Facility Manager, AM, was on vacation. JMK, Environmental Health and Safety ("EHS") Specialist for the Northeast Region, was at the Megopolis Facility to conduct an unannounced safety audit.

On Tuesday, August 11, 2020, Grievant WL was working his assigned daylight shift (5:30 am to 2:00 pm) in Bays 7-8. MS, Operations Manager, was in charge because of Mr. AM's absence. Mr. JMK started that morning in Bays 1-2 with the intention of working his way through all eight bays over the course of the shift.

At around mid-morning, Grievant WL was in the process of cleaning two trailers in Bays 7-8. He already had washed and rinsed both trailers, and he ran the blowers to dry them on the inside. Standing on top of one of the tankers and looking through the open hatch, he could see residue accumulated at the lowest point in the bottom of the tank, directly below the hatch. Grievant WL recognized he would have to enter the trailer to wipe up the residue by hand. Because this would slow his production, he needed to inform one of the shift leaders of the expected delay in finishing up the trailer. He left the bay and started walking to the ticket room to inform someone.

Mr. JMK was in Bays 5-6 as Grievant WL passed by on his way to the ticket room. JMK observed that Grievant WL was wearing dark glasses, and was concerned the glasses may not have been consistent with protocol. He told Grievant WL he should get new safety glasses. Grievant WL replied that he needed shaded ones because his eyes were sensitive to light. Mr. JMK said the Company had a new safety glass program and would buy prescription safety glasses for employees. Grievant WL said he would not need prescription glasses because he wore contacts.

Mr. JMK then asked Grievant WL whether he wore contacts when he was wearing a respirator. When Grievant WL said yes, Mr. JMK said that could be an OSHA violation. Mr. JMK described an OSHA regulation that prohibited wearing contacts under a respirator because if the contacts became irritated, the wearer might lift the respirator to adjust the contacts. [According to Mr. JMK's testimony at the arbitration hearing, this regulation had been rescinded before the date of this incident, but Mr. JMK did not know this at the time.] At the arbitration hearing, Grievant WL testified that Mr. JMK specifically instructed him not to wear contacts with his respirator. Mr. JMK testified he never told Grievant WL this.

When Grievant WL arrived at the ticket room, he spoke with Assistant Union Steward M. Steward about the contact lens issue. Mssrs. WL and Steward together explained the situation to Mr. MS. Mr. MS agreed with Mssrs. WL and Steward that he had never heard of a rule prohibiting contacts, and mentioned that the Company has always permitted the use of contact

lenses while wearing a respirator and that several the Company employees regularly did so. Mr. MS then went to his office and attempted to call Mr. Regional VP, Regional Vice President, and Phil PP, Director of Health & Safety, for further guidance. MS reported back to Mssrs. Grievant WL and Steward that he could not reach either Mr. PP or Mr. Regional VP.

Grievant WL then apparently asked Mr. MS what he should do. According to both Mssrs. Grievant WL and Steward, Mr. MS replied something to the effect that Grievant WL needed to go wipe down that trailer. At the arbitration hearing, Mr. MS did not deny saying this. All witnesses agree Mr. MS never specifically instructed Grievant WL to violate safety rules in wiping down the trailer. Mr. MS testified he knew Mr. JMK was doing a safety inspection, and that instructing an employee to violate a safety rule likely would get Mr. MS fired.

Mssrs. WL and Steward took something very different from the conversation with Mr. MS. When Mr. MS said Grievant WL needed to go wipe down the trailer, they took this to mean Grievant WL needed to get it done before Mr. JMK arrived at Bays 7-8 and noticed that Grievant WL was doing the work while wearing contacts. Since Mr. JMK was already at Bays 5-6, that gave Grievant WL very little time.

Grievant WL testified he ran back to Bays 7-8, attached a fall-restraint (but not a retrieval) line, checked the oxygen level inside the tanker, entered the tanker, wiped up the residue, and exited about a minute later. He acknowledges he failed to attach the retrieval line or fill out a CSE Permit. He credibly testified he was attempting to comply with what he understood as Mr. MS's implicit instructions to wipe the tanker before Mr. JMK arrived – which, because of severe time constraints, Grievant WL could do only by cutting corners. Grievant WL testified he felt caught between the rock of violating safety rules and the hard place of insubordination for refusing to wipe the trailer. Given his previous suspension for walking off the job to protest a perceived safety violation, Grievant WL chose the safety violation as the lesser of two evils.

When Grievant WL came out of the tanker, Mr. JMK was there waiting for him. Mr. JMK asked to see Grievant WL's CSE Permit. At first, Grievant WL prevaricated and claimed he had filled one out, but quickly admitted he had not. By all accounts, Mr. JMK chewed him out for about five long minutes, telling him emphatically that violating such safety measures could get him killed. Grievant WL became apologetic and repeatedly assured Mr. JMK he understood and would never do this again.

The next day (Wednesday, August 12, 2020), Mr. JMK wrote up the incident and discussed it with Mr. MS. Mr. MS decided any further action should await the return of Mr. AM from vacation. When Mr. AM returned the following Monday, he held a conference call with Mssrs. MS, PP and Regional VP. They brought VPHR, Vice President of Human Resources, into the decisionmaking process the next day. On Tuesday, August 18, 2020, Mr. VPHR sent Grievant WL and the Union a written notice of suspension pending discharge.

From Grievant WL's perspective, this seemed to come out of the blue. The day after the incident occurred, he worked about two hours as usual, then helped to train two new hires. He worked full shifts through the end of the week, plus an overtime shift on Saturday. He worked full shifts the following Monday and Tuesday, all apparently without knowing his job was in jeopardy. He learned of this only when he received the notice of suspension at the end of his shift on Tuesday.

The Union requested a hearing pursuant to the CBA Article 7(b). That hearing was held by telephone conference on August 25, 2020. At this meeting, Grievant WL was represented by Mr. Steward and by Mr. Union Business Rep, Business Representative. Before the hearing, Mr. Union Business Rep discussed the incident with Grievant WL; according to Mr. Union Business Rep's notes of that conversation, Grievant WL told Mr. Union Business Rep that on August 11, Mr. MS had told Grievant WL "to wait until the inspector left and go wipe it [the trailer] out." Union Ex. 1 at 1.

At the hearing, Mr. Union Business Rep took notes for the Union. the Union raised three issues to the discharge: (1) the Company allowed Grievant WL to continue working for an entire week, including a Saturday overtime shift, before taking any action; (2) Mr. JMK did not act immediately to send Grievant WL home and actually continued to work with him; and (3) the Company failed to discipline Mr. MS, notwithstanding his contribution to the incident, while imposing the harshest penalty on Grievant WL. At the end of the hearing, the Company effectuated the discharge. That same date, the Union both grieved and gave the Company written notice of its intent to proceed directly to arbitration. Joint Ex. 2.

At the arbitration hearing, Grievant WL candidly acknowledged that he had committed serious safety violations: "It was my fault. I did it. It was my fault for listening to someone tell me to do something I knew I shouldn't have done."

II. Issue

Did the Company have just cause pursuant to the CBA Article 7.C to discharge Grievant WL for the incident of August 11, 2020? If not, what should the remedy be?

III. Relevant CBA Provisions

ARTICLE 2. RECOGNITION AND UNION SECURITY:

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f.) The Union agrees to make every effort to see that its members who are in the Employer's employ obey all reasonable rules and regulations laid down by the Employer.

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ARTICLE 6. GRIEVANCE PROCEDURE:

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5.) The power and authority of the Arbitrator shall be strictly limited to determine the meaning and interpretation of the Agreement. The arbitrator shall not have authority to add to, subtract from, alter or modify any of said terms or limit or change any right that Article Nine (9) reserves to the Company.

ARTICLE 7. DISCHARGE:

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a.) The following violations will subject employees to discharge without a prior written warning:

1.) Violation of confined space procedures.

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6.) Willful disobedience or intentional failure to carry out reasonable order or instruction, and/or walking off the job without proper approval. Refusing or failing to carry out a job assignment in the manner directed and follow instructions. If refusal to carry out an assignment is based on fear of bodily harm resulting from unsafe conditions, this refusal should be referred immediately to the Facility Manager.

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b.) An employee shall not be peremptorily discharged. In all cases in which the Company concludes an employee's conduct justified discharge, the employee shall be suspended initially for five (5) calendar days. During this suspension, the employee, if he believes he has been dealt without just cause, shall request a hearing on the question of whether he shall be discharged. The hearing shall be held within the five (5) day suspension period unless the period is extended by mutual agreement.

c.) If the employee fails to request such a hearing, his suspension shall automatically be converted into a discharge at the end of the five (5) days suspension; and the discharge shall not be subject to the grievance and arbitration procedure here under. If the employee requested the hearing and the Employer determines to convert the suspension to a discharge notwithstanding, the Union shall have the right to submit the

case directly to Step Three of the grievance and arbitration procedure aforesaid. An employee may be disciplined and discharged for just cause.

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ARTICLE 9. MANAGEMENT RIGHTS:

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b.) The management of the business and the direction of the working force is vested exclusively with the Company . . . . the Company shall also have the right to . . . relieve employees from duty because of lack of work or for other legitimate reasons . . . .

IV. Analysis

A. Disputed Facts

This is a hard case, made harder yet because two critical facts are disputed:

The first critical disputed fact is whether Mr. JMK instructed Grievant WL not to use a respirator while wearing contacts. This is important because if he did, this was tantamount to telling Grievant WL he could not complete his cleanup of the tanker he was working on by entering it to wipe up the residue. At the arbitration hearing, Grievant WL testified that Mr. JMK specifically instructed him not to wear contacts with his respirator. Mr. JMK testified he never told Grievant WL this. Both witnesses testified credibly on this issue, and there are no other facts – such as inconsistent statements or conduct, or evidence the witnesses had a reasonable and good-faith but mistaken belief about what happened – that would lead me to believe one witness over the other.

However, I find I do not need to resolve this issue conclusively. Regardless of what Mr. JMK actually said to Grievant WL, Grievant WL's subsequent conduct demonstrates that he believed Mr. JMK had told him it would violate safety rules for a cleaner to wear a respirator while also wearing contacts. Both Mr. Steward and Mr. MS testified that this is what Grievant WL told them. Mr. MS then attempted to call both Mssrs. Regional VP and PP, demonstrating that he believed Mr. JMK had told Grievant WL it would violate safety rules for a cleaner to wear a respirator while also wearing contacts. For purposes of this Grievance, the key fact is not whether JMK explicitly said this to Grievant WL. Instead, the critical fact is that both Grievant WL and Mr. MS believed Mr. JMK had done so.

The second critical disputed fact is what, exactly, Mr. MS told Grievant WL to do after Grievant WL told Mr. MS about the conversation with Mr. JMK. Mr. MS did not testify to what he told Grievant WL after Mr. MS had tried unsuccessfully to call Mssrs. Regional VP and PP. All Mr. MS testified to was that he did *not* tell Grievant WL to break any safety rules – but that doesn't help much because no one said he did.

Mssrs. Grievant WL and Steward both testified that Mr. MS told Grievant WL something to the effect of that Grievant WL needed to go wipe down that trailer. Mr. MS did not deny this, and only the three of them were in the room. Mssrs. Grievant WL and Steward further testified that both of them inferred from Mr. MS's statement that Mr. MS was instructing Grievant WL to clean the trailer quickly, before Mr. JMK arrived there, even if it meant violating safety rules.

I do not need to resolve whether Mr. MS intended to convey this meaning. Nor do I need to resolve whether Grievant WL reasonably inferred this meaning from Mr. MS's statement. Instead, I find it is enough that Mr. MS, believing Mr. JMK had told Grievant WL that wearing both contact lenses and a respirator would violate safety rules, never told Grievant WL *not* to clean the tank. Mr. MS knew Grievant WL was wearing contacts. He knew Grievant WL had been assigned to clean the tank, and that doing so would require Grievant WL to enter the tank with a respirator. It was therefore his duty to tell Grievant WL not to clean the tank, or to get a clarification from Mr. JMK, or to wait until he could reach Mssrs. Regional VP and PP, or to call Mr. AM who was on vacation but reachable by mobile phone. Mr. MS's failure to do any of these demonstrates an intentional violation of what he believed was Mr. JMK's safety pronouncement – and this should have carried a lot of weight since Mr. JMK was the Company's Environmental Health and Safety Specialist for the Northeast Region. Mr. MS was not at liberty to disregard Mr. JMK's safety pronouncements even if Mr. MS believed they were wrong, and it makes no difference in this case that the pronouncement actually was wrong. And not only did Mr. MS fail to implement Mr. JMK's safety pronouncement. All competent testimony indicates Mr. MS affirmatively told Grievant WL to clean the tank, notwithstanding Mr. MS's belief that Mr. JMK had said that would violate safety rules.

B. Arguments

The Company argues Article 7(a) of the Parties' CBA establishes just cause "per se" for Grievant WL's discharge. Article 7(a) provides:

> a.) The following violations will subject employees to discharge without a prior written warning:
>
> 1.) Violation of confined space procedures.

the Union makes two counter-arguments. First, the Union argues the "… will subject …" language does not make discharge automatic or make discharge the only penalty available. Instead, this language merely removes the conduct specified in Article 7(a)(1)-(12) from what otherwise would be progressive discipline – it gives the Company the ability to discharge employees for a first offense "without a prior written warning" that presumably would be given as a matter of course for the first offense of a lesser type of misconduct. Second, the Union argues that Article 7(a) is tempered by the Article 7(c) provision that "[a]n employee may be disciplined or discharged for just cause." Article 7(a), the Union argues, permits discharge on a first offense so long as there is just cause. Article 7(a) is, therefore, a carve-out from progressive discipline, not a carve-out from just cause.

I agree with both of the Union's counter-arguments. I find that Article 7(a) is a carve-out from progressive discipline, not a carve-out from just cause. Grievant WL's admitted violation of CSE procedures therefore is not just cause per se. Instead, it raises but does not resolve the issue of whether the Company had just cause to discipline Grievant WL for a first-offense safety violation.

The Union argues the Company did not have just cause, for three reasons. First, the Union argues the Company failed to discipline Grievant WL promptly. The Union further makes two sub-arguments: (1) delayed discipline violated Grievant WL's industrial due process, and (2) letting Grievant WL continue to clean trailers for a week after the August 11 incident undercuts the Company's argument that the August 11 incident constituted an extremely serious safety violation.

The Company counter-argues that the CBA does not have a deadline for disciplinary investigations, that it was reasonable for the Company to spend a week investigating the incident, that the Union 's argument for rapid discipline should be tempered by a time for reflective deliberation, and that it was reasonable for the Company to wait a few days until the Facility Manager returned from vacation, and then another day to get the input of the Vice President of H.R.

I agree with all of the Company counter-arguments. I understand that when the Company returned Grievant WL to his regular work responsibilities the day after the incident, he thought he had learned a hard lesson and put a mistake behind him. The Company should have notified him that an investigation was ongoing and that resolution would await Mr. AM's return from vacation. The Company could and perhaps should have suspended Grievant WL until that happened. However, I find it was not unreasonable for the Company to take a week to investigate what had happened and to wait to make a final decision until all relevant senior management and corporate H.R. had been consulted. In the long run, it benefits the Union that the Company management acts deliberately and reflectively before making discharge decisions rather than making such decisions hastily.

The Union 's second major argument is that Mr. MS's complicity in Grievant WL's safety violation mitigates Grievant WL's culpability. (I group with this argument the Union 's third and related argument that it was discriminatory for the Company to have disciplined Grievant WL but not Mr. MS). The Union argues Mr. MS forced Grievant WL to choose between insubordination for refusing to obey a direct order to clean his trailer, and a safety violation for doing as Mr. MS ordered. The Union further argues that Grievant WL appropriately showed contrition and remorse and that this should mitigate the discipline.

The Company makes four counter-arguments. First, it argues that Grievant WL's written grievance does not explicitly raise the argument that Mr. MS was at least partly at fault. That's true – the Grievance describes Grievant WL's surprise at being discharged after having worked his regular job duties for a week after the August 11 incident – but the Grievance nonetheless

gives the Company clear and fair notice that Grievant WL is grieving his discharge for lack of just cause. Mr. Union Business Rep, who testified that he drafted the Grievance, also testified that the Grievance did not mention Mr. MS because that issue was raised at the disciplinary hearing, which was held the same day the Grievance was filed.

Second, the Company argues Grievant WL's story is inconsistent. Before the hearing, Mr. Union Business Rep discussed the incident with Grievant WL; according to Mr. Union Business Rep's notes of that conversation, Grievant WL told Mr. Union Business Rep that on August 11, Mr. MS had told Grievant WL "to wait until the inspector left and go wipe it [the trailer] out." Union Ex. 1 at 1. At the arbitration hearing, Mssrs. Grievant WL and Steward testified that they took from their conversation with Mr. MS that Mr. MS was instructing Grievant WL to wipe the trailer *before* Mr. JMK arrived there.

I am not persuaded by the Company's argument that Grievant WL's story is inconsistent, for three reasons. First, this is not Grievant WL's inconsistency – it is an inconsistency between Grievant WL's version of events and Mr. Union Business Rep's transcription of a conversation he had with Grievant WL. Second, though Mr. Union Business Rep testified at the arbitration hearing, he was not asked about this specific statement in either direct or cross examination, so I have no idea how much weight to give it. Third, it doesn't matter. Whether Mr. MS told Grievant WL to wipe the trailer before or after Mr. JMK arrived, the bottom line is that Mr. MS was still telling Grievant WL to do something that Mr. MS believed Mr. JMK had said violated safety rules, and to do so in a way that Mr. JMK would not find out about it.

The Company's third counter-argument is that Mr. MS never told Grievant WL to violate a safety rule. Again, however, that is irrelevant. Mr. MS believed Mr. JMK had told Grievant WL that it would violate safety rules for a cleaner to wear a respirator while wearing contacts. Mr. MS knew Grievant WL had been assigned to wipe the inside of a trailer, that Grievant WL was required to wear a respirator while doing so, and that Grievant WL was wearing contacts. Mr. MS therefore knowingly violated what he believed to be Mr. JMK's safety pronouncement by failing to tell Grievant WL not to wipe the trailer, and by all competent testimony affirmatively telling Grievant WL to wipe the trailer.

The Company's fourth counter-argument is that even if Mr. MS was partly culpable, Grievant WL's discipline is still appropriate because he committed significant safety violations. I agree. Mr. JMK correctly admonished Grievant WL that CSE safety violations are life-and-death. I have been in the unfortunate situation of arbitrating a grievance in which a grievant's safety violation killed his co-worker. Here, Grievant WL's safety violation could have resulted in his own death. Grievant WL, as the Union acknowledges, had alternatives – he could have called the Company Safety Hotline or, perhaps even more easily, sought out Mr. JMK's guidance on how to handle the current situation.

Perhaps more importantly, Mr. MS's safety lapse might have excused Grievant WL's wiping the trailer while wearing contacts notwithstanding his understanding from Mr. JMK that violated a safety rule. It did not excuse him from failing to use a retrieval line or filling out a CSE

Permit. Both of these fall squarely within Article 7(a)(1), which gives the Company the authority to discharge for a first offense if there is just cause to do so.

Grievant WL's admitted safety violations give the Company just cause to impose significant discipline. Weighed against that are three mitigating factors. First, Grievant WL candidly admitted his mistakes – both contemporaneously and at the arbitration hearing – which makes it far less likely he will repeat them. Second, this incident arose at least partly because Mr. MS required Grievant WL to do something which Mr. MS believed violated a safety pronouncement of the Company Environmental Health and Safety Specialist for the Northeast Region. That did not excuse Grievant WL's violation of other CSE rules, but it does make it much more reasonable for Grievant WL to have interpreted Mr. MS's statement as an order to violate safety rules. Third, whether you call it industrial due process or discrimination or just plain fairness, I agree with the Union that it was inappropriate to fire Grievant WL for a safety violation when his immediate supervisor suffered no discipline at all for knowingly violating what he believed to be a safety rule involving the same incident.

VII. Disposition

For the reasons described above, the Grievance is sustained in part and denied in part. I find the Company had just cause to impose significant discipline on Grievant WL for violating critical CSE safety rules. However, I find no just cause for discharge because of the mitigating factors described above. I therefore order the Company to reinstate Grievant WL with the seniority he had on his discharge date, but no back pay. Though this is somewhat superfluous given my interpretation of Article 7(a)(1) above, I remind Grievant WL that any additional violation of CSE safety rules will almost certainly result in his immediate discharge, and that mitigating circumstances will be difficult to show given the safety violations described in this Award. I retain jurisdiction for the limited purpose of resolving any disputes the parties may have about applying or interpreting this Award.

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December 28, 2020