RICHARD BALES

Federal Mediation & Conciliation Service
FMCS No. 241214-01985
Arbitrator Richard Bales

In the Matter of Arbitration between:

Republic Services	**Grievance #:**	**2023-12-1**
[Newton County Landfill]	**Grievant:**	**Dale Claussen**
and	**Grievance:**	**December 8, 2023**
	Hearing:	**Aug. 23 & Dec. 12-13, 2024**
International Union of Operating Engineers,	**Briefs:**	**March 19, 2025**
AFL-CIO Local #150	**Decision:**	**April 2, 2025**

For Republic Services:	**Richard Millisor**
For IUOE Local 150:	**Emil P. Totonchi**

Award

I. Facts

A. The Parties and the Governing CBA

Republic Services (Republic) is a national waste management and environmental services company that operates landfills, recycling centers, and transfer stations across the United States. It operates multiple waste disposal sites throughout Indiana, including the Newton County Landfill (NCLF), the largest landfill in the state. Until late December 2023 or early 2024, Republic also operated the smaller Lake County Construction & Demolition Landfill (LCLF). The International Union of Operating Engineers, AFL-CIO Local 150 (IUOE) represents a bargaining unit of Equipment Operators at NCLF, and until LCLF's closure, represented those Operators also.

Dalen "Dale" Claussen, Grievant, was a long-serving Equipment Operator represented by IUOE. Mr. Claussen has been a member of Local 150 since 1996 and worked for Republic from 2005 (when Republic took over NCLF operations from Allied Waste) until his termination

in December 2023. He spent the vast majority of his tenure at NCLF, though he worked occasional temporary assignments at LCLF before transferring there full-time in or around February 2023. At the time of his transfer, LCLF was preparing to close by the end of the calendar year. After his transfer, Mr. Claussen was the senior Operator at LCLF.

In addition to Mr. Claussen, the LCLF Equipment Operator team during 2023 included Shaun Motyka and Allen Thomas, both of whom, like Mr. Claussen, had transferred from NCLF during the lead-up to LCLF's closure. When these three Operators were working at NCLF, they reported to an Operations Supervisor. However, because LCLF was much smaller and in the process of closing, there was no Operations Supervisor on-site. Their direct report for purposes of site operations therefore was Operations Manager Anthony Schroeder. Mr. Schroeder, in addition to overseeing LCLF, also managed four major "Illiana" transfer stations, where collection trucks from local routes would unload municipal solid waste, which was then transferred onto larger vehicles for transport to a landfill.

Though the Operators reported to Mr. Schroeder for purposes of site operations, for employment-related purposes (such as discipline and time-clock issues) they reported to Craig Drinski. Mr. Drinski, a former IUOE Bargaining Unit Member, at times relevant to this Grievance was the Operations Manager for NCLF.

Mr. Schroeder reported to Doug Rosenbaum with respect to the transfer stations. With respect to LCLF, however, he reported to Josh McGarry, General Manager of the Chicago-area Post Collection Business Unit. See Transcript at 138-39 (Schroeder). This Unit included both NCLF and LCLF. Mr. Drinski likewise reported to Mr. McGarry. Mr. McGarry, in turn, reported to Timothy Atwater, Midwest Area Post Collection Manager. Id.

Anthony (Tony) Deliberto is the IUOE Local 150 Business Representative, a position he has held since 2015.

The parties have introduced two CBAs as exhibits in this Arbitration. The *Newton CBA*, effective January 1, 2021, through December 31, 2023, is the primary collective bargaining agreement between the parties, covering bargaining unit employees at the NCLF. Joint Exhibit 1A. It contains the relevant contractual provisions governing grievance procedures, discipline and discharge, work rules, and other conditions of employment for employees based at NCLF. Because Mr. Claussen was based at NCLF for nearly all his 18-year tenure – and because IUOE represents the bargaining unit at NCLF – this is the governing CBA for purposes of this arbitration, including Article 4 (Grievance Procedure) and Article 2 (Discipline and Discharge).

The *Lake County CBA*, effective August 1, 2020, through July 30, 2023, governs the now-closed LCLF. Joint Exhibit 1B. However, LCLF was not separately organized; bargaining unit representation at LCLF flowed from the Newton unit, and LCLF employees were represented by IUOE Local 150 under the terms of the Newton CBA. While the Lake County CBA may contain similar or overlapping provisions, it is now largely moot due to the closure of LCLF, and the

parties rely on the Newton CBA for interpreting the parties' and Mr. Claussen's rights and obligations during Mr. Claussen's assignment at LCLF in 2023. Thus, the Newton CBA (Joint Exhibit 1A) is the operative agreement for this case, and the Lake County CBA (Joint Exhibit 1B) is relevant only to the extent it may provide context or history about the LCLF operation.

B. The Work Environment at LCLF

NCLF is a large-scale landfill handling approximately 10,000 tons of waste daily from 400 to 500 trucks. It is staffed by 31 equipment operators and several full-time managers. Republic's equipment at NCLF includes haul trucks, bulldozers, tippers, and excavators, and the landfill requires daily cover of waste due to methane gas production.

By contrast, LCLF was a smaller, less regulated construction and demolition (C&D) landfill that processed between 15 and 45 trucks per day and accepted only non-household debris, such as siding, wood, and brick. LCLF generally operated with two or three Equipment Operators, and due to its size and workload, workdays there were often several hours shorter than those at NCLF.

Supervision at LCLF was limited. Mr. Anthony Schroeder, Operations Manager, was responsible for LCLF along with other sites including the Schererville, Crown Point, and East Chicago transfer stations. Mr. Schroeder was not based at LCLF and visited the site intermittently, often only a few times per week for short periods of time, and even then he often would communicate with the Equipment Operators only by phone. Transcript at 141 (Schroeder) (2-3 times per week); Transcript at 713 (Motyka) (2-3 times per month). Mr. Claussen and the other two Operators at LCLF generally relied on their extensive experience and on communications with one another to determine how to carry out their duties, rather than receiving detailed daily instructions from Republic management. Transcript at 558-59 (Claussen).

C. Events Leading to Mr. Claussen's Termination

On October 18, 2023, Mr. Timothy Atwater, Republic's Midwest Area Post-Collection Manager, and Mr. Schroeder visited LCLF to assess the site in preparation for closure. During that visit, Mr. Atwater held a brief informal meeting in the LCLF shop with Mssrs. Claussen, Motyka, and Thomas. The parties dispute what was said during this meeting regarding the removal of property from the site.

Mr. Atwater testified that he gave clear instructions that no equipment, tools, or other items – whether usable or scrap – were to be removed from the site without prior approval from him. Transcript at 76 (Atwater). However, both his testimony at the Arbitration hearing, and a description of the October 18 meeting that Mr. Atwater wrote several months later

(Republic Exhibit 3), indicate his instructions may not have been so clear. His written description states that one of the Operators (Mr. Motyka) asked whether he could take a "swamp cooler AC" unit. Transcript at 730 (Motyka). Mr. Atwater explained that when the site closed, "if no other site needed that item and we got to the point that we would end up throwing it away, we would discuss if he could have it." Republic Exhibit 3. It is very possible that Mr. Atwater believed – both at the time and also at the Arbitration hearing – that he had made it clear that his description of what would happen to the AC unit applied to all Republic property at LCLF, and that he therefore had made it clear to the Equipment Operators that nothing should be taken from the site without his permission. However, it does not appear from either his testimony or his written account of the conversation that he ever said this explicitly, and he definitely did not put it in writing. See id. at 120-22; Republic Exhibit 3.

Mr. Schroeder testified that he was present for this meeting, but he apparently did not remember much of anything about what was said. Transcript at 154 (Schroeder).

In contrast to Mr. Atwater's testimony, Mr. Claussen and Mr. Motyka offered a different account of the meeting (Mr. Thomas did not testify at the Arbitration hearing). Both testified that Mr. Atwater gave what they understood to be broad permission to begin cleaning and clearing the site, including removing what they perceived as junk and otherwise unusable equipment. Mr. Claussen testified that Mr. Atwater said something to the effect of, "any items in the shop that's not being used, are not usable, we could take." Transcript at 588 (Claussen). Mr. Motyka similarly recalled Mr. Atwater giving the Operators permission to take broken and unused items. Transcript at 730-32 (Motyka). Neither Mr. Claussen nor Mr. Motyka recalled any mention of needing management approval before removing unused/unusable/broken items.

Independent of this conversation, the Operators had asked about taking or buying from Republic other working items from the LCLF site, such as a large grass mower. Everyone had a clear understanding that the answer regarding any usable equipment was: once LCLF closes, some of this equipment would be moved to other sites, some might be put up for auction, and Mr. Schroeder would discuss with the Operators at that time anything else that remained.

In the days following the October 18 meeting, each of the three Operators removed from the site items they believed were broken or unusable. Mr. Claussen took a safe that had not been used in years and was not working, which he thought he might be able to fix by replacing the batteries or a relay. Transcript at 592 (Claussen). Mr. Motyka removed the AC unit and a broken shop vac. Transcript at 738 (Motyka). Mr. Thomas did not testify at the Arbitration hearing, but he apparently took an air hose he believed was broken, and later returned it. Transcript at 771 (Deliberto). Unrelated to the Operators taking items for their personal use but directly related to a search for other missing items that will be described below, notes from a subsequent interview indicate Mr. Thomas put a ladder and creeper into his truck intending to take it from the shop to the garage, then forgot and accidentally took them home, but returned them the next day. Republic Exhibit 4. Both Mr. Claussen and Mr. Motyka testified that they believed the taken items were scrap and had been effectively abandoned, and that they acted

in good faith based on their understanding of the instructions provided during the October 18 meeting.

In early November 2023, Mr. Schroeder, on a routine visit to LCLF, noticed that several pieces of equipment seemed to be missing. Transcript at 154-55 (Schroeder). None of the items that he originally identified as missing were the ones described above as having been taken by the Operators based on their understanding that the items were unusable. Mr. Schroeder called Mr. Atwater to ask whether he had given permission for the missing items to be removed, and Mr. Atwater said he had not. Id. at 155; Transcript at 77 (Atwater). Mr. Atwater called Mr. Claussen to ask if he knew where the missing items were. Mr. Claussen said he did not know where the items described by Mr. Atwater were, but volunteered that he had taken the nonworking safe. Id. at 78-80. Mr. Atwater testified at the Arbitration hearing that he did not even know of the safe's existence until Mr. Claussen told him he had taken it. Id. Mr. Claussen testified that he returned the safe shortly after learning that Mr. Atwater had not intended to give permission to take it. Transcript at 611 (Claussen). Mr. Motyka testified likewise about the shop vac and AC unit. Transcript at 738 (Motyka).

Mr. Atwater, in addition to calling Mr. Claussen, also called NCLF Operations Manager Craig Drinski, to whom the three LCLF Equipment Operators reported for employment matters. Mr. Atwater told Mr. Drinski that items were missing at LCLF and apparently assigned him to review video from LCLF to ascertain how the missing items had left LCLF. Transcript at 223-24 (Drinski).

Within a few days of Mr. Schroeder noticing that some LCLF items seemed to be missing, Human Resources Manager Krista Owens was dispatched to LCLF to interview the Equipment Operators, and also LCLF Scale House Clerk Noelle Farley, about the missing items. Transcript at 360 (Owens). She interviewed each of them separately on November 20, 2023; her notes are Republic Exhibit 4. Mr. Schroeder and IUOE Business Agent Tony Deliberto were present for each of these interviews. See id. at 370. Mr. Deliberto's notes are IUOE Exhibit 13, pages 1-4. There was no discussion in this round of interviews of alleged time discrepancies or time theft. Republic Exhibit 4; IUOE Exhibit 13.

Immediately after the interviews, Mssrs. Schroeder and Deliberto decided to walk the LCLF grounds to try to find some of the missing items. Transcript at 768 (Deliberto). They found that most of the items initially thought to be missing had not actually been removed, but instead had been relocated to the LCLF garage or to other locations at LCLF. See Transcript at 156, 162 (Schroeder); Transcript at 768-69 (Deliberto); Republic Exhibit 4 at page 3.

At about this same time, Mr. Drinski pulled video from the LCLF shop entrance and yard area. These video cameras are easily observable on the side of the shop building. The Equipment Operators knew of these cameras because the video could be observed in real time from inside the shop, and the Operators often used this video while they were in the shop to

alert them that trucks were approaching and that the Operators needed to leave the shop to meet the trucks at the dump site.

While reviewing the LCLF video, Mr. Drinski noticed that in the early morning of November 10, 2023, Mr. Thomas appeared to be throwing something in the back of his truck while Mssrs. Claussen and Thomas were nearby. Id. at 226, 232-34. Mr. Drinski also noticed what he believed to be a discrepancy between the times the Equipment Operators were clocking in and the times they were leaving the shop to go up the hill to the work area. Transcript at 234 (Drinski). Mr. Drinski took still shots of the video involving Mr. Thomas and gave those to Mr. McGarry. He also reported the apparent time discrepancies to Mr. McGarry, who instructed him to investigate further. Id. at 235.

A second round of interviews occurred on November 30, 2023. Mr. McGarry asked the questions, and Ms. Owens and Mr. Deliberto both took notes. IUOE Exhibit 13 at pages 5-7; Transcript at 370-72 (Owens). These interviews focused on the item Mr. Thomas apparently had thrown into the back of his truck. Id. at 373. Mr. Deliberto testified there was no discussion in Mr. Claussen's interview of alleged time discrepancies or time theft. Transcript at 780 (Deliberto); Mr. McGarry did not testify at the Arbitration hearing. However, according to Mr. Deliberto, Mr. McGarry asked both Mssrs. Motyka and Thomas about their times clocking in and out. See Transcript at 780 (Deliberto); IUOE Exhibit 13 (notes appear to reflect Mr. Thomas being asked about time, but notes on Mr. Motyka are less clear).

At about the same time, Mr. Drinski spent three days comparing four weeks of the LCLF video to the Operators' time reports on Kronos, the time-clock system Republic uses. He recorded the difference between each Operator's clock-in (in the morning and after lunch) and clock-out (at lunch and in the afternoon after the facility had closed) times and the times that the video showed them arriving at and leaving LCLF. He then adjusted the times to assume the Operators spent 15 minutes at both the start and end of their workdays filling out paperwork and doing other work inside the LCLF shop. Using a spreadsheet, he then added the remaining time differences. Republic Exhibit 9. In preparation for the Arbitration hearing, he took his analysis a step further and multiplied the time differences by the Operators' hourly pay plus benefits, and ultimately concluded that the three Operators had collectively defrauded Republic by a total of $2539 over the four weeks. Republic Exhibit 10; see generally Transcript at 249-62 (Drinski).

Mr. Drinski reported his findings to Mr. McGarry. The two of them consulted with Ms. Owens, and the three of them collectively decided to discharge the three Operators for stealing Republic property and time theft. Transcript at 270-71 (Drinski). Mr. Drinski, with assistance from Ms. Owens, then drafted a discharge notice. Republic Exhibit 5. Id. at 269.

Republic never gave Mr. Claussen a pre-discharge opportunity to explain his side of the time-theft issue. At the Arbitration hearing, IUOE witnesses responded to Republic's time-theft allegations by asserting that the Operating Engineers were engaged in duties consistent with

long-established work routines, including monitoring site conditions, observing scale activity, performing safety checks, and remaining available to respond to operational needs. A central point involved the Operators' practice of staying in the shop area in the mornings and after lunch until the first truckload of garbage arrived, rather than proceeding to the fill site at a preset time. Transcript at 444, 455 (Barkey), 562-63 (Claussen), 715 & 722 (Motyka). IUOE witnesses explained that going to the top of the hill prematurely would require idling heavy equipment unnecessarily – wasting fuel, increasing wear, and serving no productive purpose. See, e.g., Transcript at 444, 455 (Barkey). Ryan Barkey, a 25-year Equipment Operator at both NCLF and LCLF, testified that he was specifically instructed by Mr. Schroeder not to allow the heavy equipment to idle. Id. at 442-43. He, Mr. Claussen, and Mr. Motyka all testified that supervisors at Republic, including Mr. Schroeder, could monitor the equipment online in real time and would reprimand Operators who allowed their equipment to be on but stationary. Id. (Barkey); Transcript at 561-63 (Claussen); Transcript at 714 (Motyka). From IUOE's perspective, what Republic now calls "unauthorized inactivity" was in fact a reasonable and efficient operational practice grounded in logistical common sense and managerial directives.

D. The December 4, 2023, Phone Call: Conflicting Accounts

The parties dispute whether IUOE timely requested a Step 2 hearing following Mr. Claussen's discharge, and this dispute centers largely on the content of a phone call that occurred on Monday, December 4, 2023 – one day before Republic issued a written discharge notice.

1. IUOE's Account

IUOE Business Agent Anthony Deliberto testified that he received a phone call from Mr. McGarry at 2:49 p.m. on December 4, 2023. Transcript at 787-88 (Deliberto). According to Mr. Deliberto, Mr. McGarry informed him that Republic intended to terminate Mssrs. Claussen, Motyka, and Thomas. Mr. Deliberto testified that he was upset by the news – particularly given the proximity to the holiday season – and that he told Mr. McGarry that IUOE would be grieving the terminations. He further testified that he requested a meeting to discuss each employee's case. IUOE Post-Hearing Brief at 8–9; IUOE Exhibit 17.

IUOE introduced a phone log showing that Mr. McGarry's number placed a seven-minute call to Mr. Deliberto's phone at 2:49 p.m. on December 4, 2023. IUOE Exhibit 17 at 4. IUOE contends that this phone call constituted both Republic's notice to IUOE of the discharges and IUOE's timely Step 2 grievance and hearing request under Article 4.3 of the CBA.

2. Republic's Account

Republic does not dispute that the phone call occurred but disputes IUOE's characterization of its content. According to Republic's Post-Hearing Brief, the call was a courtesy notification by Mr. McGarry that Republic was planning to discharge the three Operators, not a formal notice of discharge. However, Mr. McGarry did not testify at the Arbitration hearing, so Mr. Deliberto's description of the contents of the phone call are unrebutted. Republic maintains that the discharges did not occur until the following day – December 5, 2023 – when the termination forms were completed, signed, and delivered. Republic also emphasizes that no written grievance or Step 2 hearing request was submitted until Friday, December 8, 2023, at 4:13 p.m., more than 76 hours after Ms. Oxley emailed the written termination notice to Mr. Deliberto. Republic Exhibit 1 at 4.

E. The Discharge and Grievance Process

On Tuesday, December 5, 2023, Mr. Claussen was called into a meeting at the LCLF site, where he was issued a written discharge notice. The notice was signed by Mssrs. Drinski and McGarry, and their signatures were dated December 5. Republic Exhibit 5. The termination meeting was attended by Mr. Drinski, Mr. Schroeder (Operations Manager for LCLF), and IUOE Steward Chrissie Strong. Nothing in the record indicates that Mr. McGarry was present at the meeting, although he co-signed the discharge notice.

On that same day at 11:17 a.m., Human Resources Generalist Starr Oxley sent Mr. Deliberto an email attaching written termination notices for Mssrs. Claussen, Motyka, and Thomas. Republic Exhibit 1 at 4. The subject line of the email was "2023-12-1 Thomas, Motyka, & Claussen Misconduct" and the email stated: "Please see attached disciplinary actions for Allen Thomas, Shaun Motyka, and Dalen Claussen."

On December 8, 2023, at 4:13 p.m., Mr. Deliberto sent an email to Mr. Drinski stating:

> Craig,
> Please see the attached grievances for Dale Claussen, Allen Thomas, and Shaun Motyka. We will need to set up a step 2 meeting at our Merrillville office.
> Tony

Id. The Grievance for Mr. Claussen, Joint Exhibit 2, lists the "Date Filed" as December 8, 2023. It grieves Mr. Claussen's discharge as being without just cause. IUOE filed separate grievances for Mssrs. Motyka and Thomas; these grievances are otherwise identical except for the name of the grievant. IUOE Exhibit 3. The parties agreed that each of these grievances would proceed separately. Each grievance either has proceeded or will proceed to a separate arbitration hearing in front of a separate arbitrator. At the Arbitration hearing for this (Mr. Claussen's)

Grievance, the parties advised the Arbitrator that they understand and accept the possibility that the outcome of the three grievances may be inconsistent with each other.

On December 12, 2023, Mr. Drinski initially responded to Mr. Deliberto's December 8 email by asking Mr. Deliberto if he was available to meet on Thursday or Friday. Mr. Deliberto replied he was not and suggested the following week. Three hours later, however, Mr. Drinski replied:

> Tony,
> Please disregard the request for availability for the Step 2 meeting after reviewing of the CBA, per section 4.3, the union did not meet the time requirements. Regardless, the Company does not intend to change its stance on the three terminations in question. …
> Thanks,

Id. at 2. Mr. Deliberto responded the following day:

> Craig,
> If the company refuses to engage in a meeting then the Union hereby demands arbitration over the discharge of Dale Claussen, Allen Thomas, and Shaun Motyka.

Id. at 1-2. On December 19, 2023, Mr. Drinski replied:

> Tony,
> As I indicated, the Union was untimely in requesting the Step 2 meeting by its email on Friday, December 8, 2023, under the plain and mandatory language of Article 4.3 of the CBA. As such, in the event you desire to arbitrate this matter, the Company will be submitting the issue of arbitrability to the Arbitrator. …

Id. at 1.

Mr. Deliberto's December 13 email responding to Mr. Drinski's claim that the Step 2 referral was untimely did not assert that Mr. Deliberto's December 4 phone call with Mr. McGarry satisfied the Article 4.3 requirement that discharge-related grievances / requests for Step 2 meetings must be made within 24 hours of IUOE receiving notice of a discharge. Nor did Mr. Deliberto raise this argument in response to Mr. Drinski's second assertion (in Mr. Drinski's December 19 email) that the Grievance / Step 2 request was untimely.

Mr. Deliberto acknowledged at the Arbitration hearing that he had not previously informed Republic that he considered the December 4 call to constitute a timely Grievance / referral to Step 2. Transcript at 806-09 (Deliberto). Nothing in the record indicates that Mr. Deliberto or any IUOE representative responded to the December 19 email or otherwise raised the December 4 phone call as a defense to Republic's procedural objection before the Arbitration hearing. Id.

IUOE thereafter moved the Grievance to arbitration.

II. Issues

1. Did IUOE timely file the Grievance at Step 2 pursuant to Article 4.3? If so, then

2. Did Republic have just cause to discharge Mr. Claussen for stealing Republic property and/or time theft? If not, what is the remedy?

III. Relevant CBA Provisions

ARTICLE 2
MANAGEMENT RIGHTS AND PREROGATIVES

2.2 Company Work Rules and Policies. The Company shall have the right to make or change after proper publication thereof and to enforce any reasonable work rules. The question of reasonableness may be challenged by the Union under the grievance and arbitration procedures described in Article 4 hereof. Proper publication will be defined as follows: The Company will provide the Union a set of work rules fourteen (14) days prior to instituting said rules.

2.3 Discipline and Discharge. The Company shall have the right to discipline, suspend or discharge any member of the bargaining unit but only for just cause. When feasible, particularly preceding a holiday or weekend, the Company shall notify the Union of its decision to suspend or discharge an employee no later than the close of business on the day the action is taken but in no case later than the close of business the workday following the day the action is taken. * * *

ARTICLE 4
GRIEVANCE AND ARBITRATION

4.1 Grievances. The term "grievance" means a difference or dispute during the term of this Agreement between an employee and a representative of the Company as to the interpretation and/or application of the express terms of this Agreement. During the term of this Agreement, whenever a grievance shall arise, such dispute or difference shall be resolved in the following manner (J. 1A at 4).

STEP 1 - An effort shall be made to adjust the grievance by and between the steward, the employee having the grievance and the Company. All grievances shall be reduced to writing[1] and presented to the employee's immediate supervisor within seven (7) calendar days of its occurrence. All *written* grievances shall bear the name and signature of the aggrieved employee, list the specific nature of the grievance and state the alleged violation of the Agreement. * * *

STEP 2 – A meeting shall be held between the Company and the Union, within seven (7) calendar days. * * * The Company shall give its answer in writing to the Union within then (10) calendar days after the date of the Step 2 meeting.

4.2 Union General Grievances. Union general grievances involving the overall application or interpretation of the Agreement as it applies to the bargaining unit shall be reduced to writing and proceed directly to Step 2.

4.3 Discharge Related Grievances. Grievances incidental to termination or discharge shall proceed directly to Step 2. A request for a Step 2 hearing incidental to discharge or termination must be presented within twenty-four (24) hours after the time the Union is notified of the Company's action and the Step 2 hearing shall be held not later than seven (7) calendar days following such notice (J. 1A at 5).

* * *

4.7 Time Limits. Any time limit set forth above may be extended only by the mutual agreement of the parties.

REPUBLIC SERVICES EMPLOYEE HANDBOOK (effective January 2014)

III. Employee Conduct

B. Employee Standards of Conduct…

The following is a partial list of actions that may result in disciplinary action and, depending on the severity, may be grounds for immediate termination.

[1] Red font here and below has been added by the Arbitrator to emphasize contract language critical to the arbitrability issue.

- [] Insubordination, such as failure or refusal to do assigned work or carry out a reasonable direction of a supervisor (C. 11 at 20)…

- Defrauding the Company in any manner, including the misuse, abuse or unauthorized use of Company property (*id.* at 22)…

- Improper accounting or representation of hours worked (*id.*)…

- Misuse, sabotage, destruction, tampering, salvaging or unauthorized removal of Company, customer or another person's property (*id.*)…

- Dishonesty regarding any aspect of your employment or Company business, including falsifying any Company record or document or making misrepresentations to the Company (including the omission of relevant, critical information) (*id.* at 23).

R. Disciplinary Procedures

It is always the Company's goal to address problems when they occur and to maintain good working relationships with all of our employees. When a performance or conduct problem is observed, disciplinary action may be taken.

Discipline may include formal, verbal discussions or reprimands, which may be confirmed in writing, written warnings, suspensions without pay, or termination of employment. Any time discipline is given, the employee should be told what is wrong with his or her conduct, what must be done to correct it, and what will happen if the correction is not made (*id.* at 39-40).

IV. Analysis

This section analyzes the parties' positions on the two issues presented: first, whether the grievance was timely filed under Article 4.3 of the collective bargaining agreement and is therefore arbitrable; and second, if the grievance is deemed arbitrable, whether Republic had just cause to discharge Mr. Claussen. The analysis begins with the threshold issue of procedural arbitrability.

A. Procedural Arbitrability

The parties dispute whether IUOE complied with the strict 24-hour deadline set forth in Article 4.3 for requesting a Step 2 hearing following notice of discharge. Republic argues that the Union's request was untimely and that the grievance must be dismissed on procedural grounds. IUOE contends that its actions satisfied the requirements of the CBA or, in the

alternative, that Republic waived its right to raise the issue. The parties' respective positions are summarized below.

1. Republic's Position

Republic contends that the grievance is not arbitrable because IUOE failed to request a Step 2 hearing within the mandatory 24-hour period required by Article 4.3 of the collective bargaining agreement. Republic emphasizes that there is no dispute as to the relevant timeline: Republic issued Mr. Claussen a written discharge on Tuesday, December 5, 2023, during a meeting attended by Craig Drinski, Tony Schroeder, and IUOE Steward Chrissie Strong. That same morning, at 11:17 a.m., Human Resources Generalist Starr Oxley emailed copies of the written discharge notices to IUOE Business Agent Tony Deliberto. However, IUOE did not submit a written Grievance or request a Step 2 hearing until Friday, December 8, 2023, at 4:13 p.m. – more than 76 hours after IUOE received notice of the discharge. Republic maintains that the Grievance was not "presented" within 24 hours as required and is therefore procedurally barred.

Republic further argues that it raised and preserved the arbitrability objection in a timely and appropriate manner. In emails dated December 12 and 19, 2023, Mr. Drinski explicitly informed IUOE that Republic considered the Step 2 request untimely and would be raising the issue before the arbitrator.

Anticipating IUOE's defenses, Republic identifies two arguments advanced by IUOE at the hearing: (1) that Republic had previously waived the Article 4.3 deadline in earlier cases, and (2) that Mr. Deliberto made a timely oral request for a Step 2 hearing during a December 4, 2023, phone call with General Manager Josh McGarry. Republic asserts that neither argument is sufficient to overcome the plain and mandatory language of Article 4.3, and that the CBA provides no basis for exceptions or implied waivers unless mutually agreed, as required by Article 4.7.

On the first point, Republic contends that IUOE's evidence of prior practice – limited to the April 2020 grievances of Adam Green and Nathan Orlando – only confirms strict enforcement of the 24-hour rule. In that case, IUOE submitted its Step 2 request just five hours beyond the 24-hour window, and Republic chose not to object, likely because the delay was minimal. By contrast, IUOE's request in the present case came nearly three full days after Republic's notice of discharge. Republic insists that this difference is material and that its response in the current case is fully consistent with the prior course of dealing.

On the second point, Republic questions the credibility and legal sufficiency of Mr. Deliberto's testimony about the December 4 call. According to Mr. Deliberto, he was informed by Mr. McGarry during that call that Republic intended to discharge the three Operators, and in response, stated that IUOE would grieve the discharges and that the parties

would need to meet. Republic notes that Mr. McGarry did not testify at the hearing, but emphasizes that Mr. Deliberto never raised this conversation at the time or in any of his written responses to Republic's emails raising the timeliness issue. Republic contends that this failure to disclose what IUOE now claims was a dispositive fact until the Arbitration hearing – over a year after the alleged conversation – undermines the credibility of the claim.

In any event, Republic argues that a pre-discharge phone call cannot satisfy the Article 4.3 requirement to request a Step 2 hearing "after the time the Union is notified of the Company's action", because no "action" had occurred until the written discharge was issued and transmitted on December 5. Accordingly, even accepting Mr. Deliberto's version of the call, Republic maintains that IUOE failed to comply with Article 4.3, and the Grievance must be dismissed as untimely.

2. IUOE's Position

IUOE maintains that the Grievance is arbitrable because it satisfied the requirements of Article 4.3 by timely notifying Republic that it intended to grieve and by requesting a Step 2 hearing following notice of Republic's discharge action. IUOE first argues that Republic has waived its right to challenge arbitrability, pointing to past practice under similar circumstances. IUOE cites the April 2020 discharge of two employees, Adam Green and Nathan Orlando, where Republic transmitted the discharge notices at 6:29 a.m. on April 14, and the Union requested Step 2 hearings the following day at 11:33 a.m. – outside the 24-hour window. Despite this timing, Republic did not raise an objection and proceeded with the grievance process. IUOE contends that this past conduct demonstrates a mutual understanding that strict enforcement of the 24-hour deadline was not required, and that Republic's decision to object for the first time in this case constitutes an inconsistent application of Article 4.3.

In the alternative, IUOE argues that even if Republic did not waive the procedural objection, IUOE fully complied with Article 4.3. IUOE Business Agent Tony Deliberto testified – without rebuttal – that on Monday, December 4, 2023, at 2:49 p.m., he received a phone call from General Manager Josh McGarry informing him that Republic intended to discharge Mssrs. Claussen, Motyka, and Thomas. According to Mr. Deliberto, he immediately expressed IUOE's objection and stated that the parties would need to meet regarding each employee. Phone records show a seven-minute call from Mr. McGarry's number at the time Mr. Deliberto described. IUOE characterizes this conversation as both Republic's notice of discharge and IUOE's timely presentation of a Step 2 hearing request, thus satisfying the requirements of Article 4.3.

IUOE further argues that Article 4.3 contains no requirement that a Step 2 request be made in writing. In contrast to other grievance provisions in the CBA, which require that grievances "shall be reduced to writing", Article 4.3 states only that a Step 2 request "must be presented…". Citing Elkouri & Elkouri's discussion of contract interpretation, IUOE argues that

the absence of language requiring a written submission is significant and reflects the parties' intent to permit oral presentation of Step 2 requests in discharge cases. From this perspective, Mr. Deliberto's verbal protest during the December 4 phone call fully satisfied the procedural requirement.

IUOE also contends that the 24-hour window began at the time of that phone call, which it describes as the moment the Union was first "notified of the Company's action." The written discharge notice delivered on December 5 was merely a formal confirmation of that earlier action. Finally, IUOE asserts that the Company presented no testimony or documentary evidence to rebut Mr. Deliberto's account of the December 4 conversation, and that the Arbitrator should draw an adverse inference from Republic's decision not to call Mr. McGarry as a witness. For all these reasons, IUOE argues that the Grievance is arbitrable and should proceed to the merits.

3. Arbitrator's Analysis and Conclusion

The issue presented is whether IUOP's Grievance and referral to Step 2 concerning Mr. Claussen's discharge was timely under Article 4.3 of the CBA. After careful consideration of the language of the agreement, the conduct of the parties, and the evidence presented at the hearing, I conclude that the Grievance was untimely and is therefore not procedurally arbitrable.

a. The Written Grievance Was Untimely

Article 4.3 of the CBA is unequivocal: "Grievances relating to discharges must be presented at Step 2 within twenty-four (24) hours after the time the Union is notified of the Company's action." There is no dispute that Republic issued Mr. Claussen a written discharge on the morning of Tuesday, December 5, 2023, and that Republic communicated this action both (1) in-person by delivering a written discharge letter at a meeting attended by IUOE Steward Chrissie Strong, and (2) subsequently by email to IUOE Business Agent Tony Deliberto at 11:17 a.m. that same day. IUOE did not submit its written Grievance or request a Step 2 hearing until Friday, December 8, at 4:13 p.m. – more than 76 hours later. On its face, then, the written Grievance was more than two full days late.

b. The Pre-Discharge Phone Call Does Not Satisfy Article 4.3

IUOE relies heavily on a December 4, 2023, phone call between Mr. Deliberto and General Manager Josh McGarry, in which Mr. McGarry allegedly informed Mr. Deliberto of Republic's intent to discharge three employees, including Mr. Claussen. Mr. Deliberto testified that he objected during the call and stated that IUOE would grieve the discharges and would

need to meet with Republic about them. Republic did not call Mr. McGarry as a witness at the Arbitration hearing to rebut this account, and I therefore credit Mr. Deliberto's testimony as accurate.

Even accepting Mr. Deliberto's account as true, IUOE's argument fails for two reasons.

First, Article 4.3 requires that a grievance be presented "after the time the Union is notified of the Company's action." As of December 4, the Company had not yet taken any discharge action; it had merely indicated its intent to do so. The written discharges were not issued until the following day. Mr. McGarry's phone call, although a helpful courtesy, did not constitute notification of a completed "action" within the meaning of Article 4.3. To hold otherwise would create substantial uncertainty in future cases, as it would be unclear when an oral discussion of a potential future discharge becomes sufficient to trigger the Union's 24-hour deadline to grieve. As this case illustrates, oral pre-discharge conversations can create confusion and disagreement over both (1) whether the communication actually occurred, and (2) what was said in that communication. The better interpretation – consistent with the plain language of Article 4.3 – is that the 24-hour clock begins only when a discharge has been formally executed and communicated to IUOE, not when Republic notifies IUOE of its intent to act.

Second, even if the December 4 call somehow qualified as notice of Republic's "action", I find that an oral statement during a phone call does not satisfy Article 4.3's requirement that the grievance be "presented". IUOE is correct that Article 4.3 – discharge-related grievances – does not contain a writing requirement. This contrasts with Article 4.1, Step 1, which does create a writing requirement, and also Article 4.1, Step 2, which creates a writing requirement for Republic's Step 2 answer. Ordinarily, when a requirement appears explicitly in several provisions of a CBA but is omitted from another, that omission reflects the parties' intent that the requirement not apply to the omitted provision. Nonetheless, three factors persuade me that the parties in this CBA intended discharge grievances to be presented in written form.

First, Article 4.1 provides that "*All* grievances shall be reduced to writing and submitted to the General Manager." [Emphasis added.] Though this language appears in the provision governing Step 1 of ordinary grievances, the phrase "all grievances" is not expressly limited to grievances initiated under Article 4.1. It is reasonable to conclude that this broad requirement was intended to apply throughout the grievance procedure – including the Step 2 presentation of discharge-related grievances under Article 4.3. Viewed this way, omitting an explicit writing requirement from 4.3 was not intended to signify that the parties found oral grievances acceptable; it indicates instead that the parties saw no need to include a writing requirement in Article 4.3 because Article 4.1 already imposed a writing requirement on "all" grievances.

Second, the overall structure of Article 4 reflects a heightened degree of formality and urgency for discharge grievances. Discharge-related grievances bypass Step 1 entirely and must be initiated within a compressed 24-hour window, compared to seven days for ordinary

grievances. This heightened urgency and importance reinforces the conclusion that the parties intended a clear, formal, and unambiguous method of presentation – namely, written documentation. Allowing oral grievance presentation in the most sensitive and time-limited cases is inconsistent with the overall structure of Article 4, and would invite precisely the sort of factual disputes and uncertainties present in this Arbitration. Indeed, IUOE's reliance on an oral conversation – unmemorialized at the time and not disclosed in any contemporaneous or subsequent communication – is what has led to much of the procedural confusion in this case. IUOE has presented no rationale for why the drafters of Article 4.3 would have intended this counter-intuitive result. IUOE has not presented, and I cannot surmise, any good reason why the parties would have required written presentation of less-important grievances but permitted oral presentation of their most important ones.

Third, IUOE's own conduct undermines its position. IUOE ultimately submitted a written Grievance concerning Mr. Claussen's discharge. If IUOE genuinely believed that an oral request sufficed under Article 4.3, the written Grievance would have been unnecessary. That IUOE filed a written Grievance – albeit untimely – demonstrates its recognition that formal documentation is necessary to properly "present" a grievance under Article 4.3. Likewise, IUOE's filing of a written grievance in the Green and Orlando matter (discussed below) likewise demonstrates that the parties have interpreted Article 4.3 as requiring discharge grievances to be in writing. See IUOE Exhibit 20 (written grievances of Green and Orlando).

c. The Past Practice Argument Fails

IUOE also argues that Republic waived its right to object to timeliness by failing to enforce the 24-hour rule in the 2020 discharges of Adam Green and Nathan Orlando. This argument is not persuasive. Richard Mittenthal's authoritative framework for identifying binding past practices notes that it is at best an open question as to whether a past practice can ever override unambiguous language in a CBA. But even if it can, Arbitrator Mittenthal's framework requires that a past practice be (1) clear and consistent, (2) long-standing and repeated, and (3) mutually accepted by both parties as a customary way of handling a matter. See Richard Mittenthal, *Past Practice and the Administration of Collective Bargaining Agreements*, 1961 PROCEEDINGS OF THE NATIONAL ACADEMY OF ARBITRATORS 30, 59 MICH. L. REV. 1017 (1961).

IUOE's evidence fails on all three fronts. The Green/Orlando incident was a single occurrence, involving only a minimal delay of five hours, and there is no evidence that Republic's decision not to object in that case reflected a change in policy or a mutual understanding that the 24-hour deadline could be disregarded in future cases. That isolated act of leniency cannot reasonably be construed as establishing a binding waiver or modification of the clear contractual deadline. And IUOE's contrary argument here discourages Republic's future leniency on this and other issues.

d. Republic Preserved Its Objection

Finally, I find that Republic preserved its procedural arbitrability objection in a timely and appropriate manner. In emails dated December 12 and December 19, 2023, Republic informed IUOE that it considered the Grievance untimely and would raise that objection before the Arbitrator. There is no indication that Republic waived its right to do so, and no conduct suggesting it acted inconsistently with the position it now asserts.

e. Conclusion

For these reasons, I conclude that IUOE did not present Mr. Claussen's Grievance in accordance with Article 4.3. The written Grievance was filed more than three days after IUOE received formal notice of Mr. Claussen's discharge – far beyond the 24-hour window required by the CBA. IUOE's reliance on an oral conversation before the discharge is insufficient to satisfy the contractual requirements. Nor has IUOE demonstrated a binding past practice of waiving the deadline, or any waiver of the objection in this case. Accordingly, the Grievance is procedurally barred and must be dismissed as untimely.

B. Merits

Having found the Grievance is not arbitrable because it was not timely raised, the parties' arguments on the merits of the Grievance are moot.

V. Award

The Grievance is denied.

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Richard A. Bales, Arbitrator