

Cohen #1

IN THE MATTER OF ARBITRATION BETWEEN:

Employer

AND

Union

The hearing was held on September 10, 1993 before HYIAN COHEN, Esq., the Neutral Referee selected by the parties.

The hearing began at 10:00 a.m. and was concluded at 6:10 p.m.

On November 8, 1992, a grievance was filed by the Union on behalf of the Employee, with the Employer. In its grievance, the Union claimed that the Employer had no evidence that on October 19, 1992 the Employee threatened the life of Utility Foreman Person 1. Thus, according to the Union, the Employer 'unjustly' terminated the Employee.

The Employer denied the grievance after which it was appealed to the various steps of the grievance procedure contained in the Agreement between the parties. Inasmuch as the parties were not able to resolve their dispute, the matter was submitted to the System Board of Adjustment. After the Board was unable to reach a decision, the dispute was carried to this Arbitration System Board of Adjustment.

FACTUAL DISCUSSION

The Employee was employed by the Employer as a Utility employee in the Line Maintenance Department. The duties of a Utility employee include the "cleaning, washing and polishing the interior and exterior of airplane hangars, shops, locker rooms and latoratories.

Turning to the events of October 19, 1992, Person 1 received a telephone call from Maintenance Foreman Person 2 at the Airport 1 in State 1, that the latoratory in an aircraft that had arrived from City 1 had not been serviced. Person 2 told Person 1 that as a result of the failure to service the latoratory, there was a foul odor in the airplane. Pursuant to Person 1's request, Person 2 faxed a handwritten note confirming the details of his discussion with Person 1, including the flight number of the airplane.

Upon receiving Person 2's handwritten note, Person 1 was able to ascertain the gate number from which the airplane departed, the number of passengers on the airplane and that the Employee was responsible for the latoratory service.

Person 1 then spoke to his supervisor, Manager of Line Maintenance Person 3 about Person 2's telephone call, the faxed note and that the Employee had failed to service the latoratory. As Person 1 explained, he "wanted to run it by" Person 3 "to get counsel".

Person 3 told Person 1 to meet with the Employee and the Shop Steward. He instructed him to "counsel" the Employee and tell him that the problem has to be corrected. Person 1 "understood" that he was not to issue any discipline against the Employee.

Before considering the meeting between Person 1, the Employee and the Shop Steward, it should be noted that on August 13, 1992, Supervisor Person 4 had issued a final warning to the Employee which was set forth on an "Unsatisfactory Performance Report", also known as a "PE-1".

The PE- 1 stated:

"You are charged with violation of Rules of Conduct Item 7, which reads in part...Follow all orders and assignments, and Item 9 which reads in part..Any intentional restriction or output. You were observed not fulfilling your assignment of Lav service on 6.09.92. You did not service 9 of 16 aircraft on (3) separate pushes. Five (5) of the lavs you did service were a result of calls requesting service from the crews. You previously had a verbal warning on 12.28.91, a written warning on 3.16.92 and several discussions since, on job performance".

Person 4 then concluded the PE-1 by stating:

"For the above reasons this is to serve as a final warning. If your job performance is not immediately corrected, you will be subject to more severe disciplinary action up to and including dismissal".

Since the testimony of Person 1 is at variance with the testimony of the Employee and Shop Steward Person 5 as to what occurred at the meeting, I believe it is useful to set forth their respective versions of the meeting.

PERSON 1'S VERSION:

Person 1's described his office as "small" measuring approximately 12 by 18 feet. During the meeting with the Employee and Person 5, the door of Person 1's office was closed. Person 1 indicated that there is a desk at one end of the office. He sat beside the desk at one end. The Employee and Person 5 stood in front of him "about eight (8) feet away." Person 1 said that at the outset of the meeting, he handed Person 2's faxed note to the Employee. The Employee read the note after which he gave it to Person 5. Person 1 asked the Employee if he could provide him with information as to what happened to the aircraft that was not serviced.

According to Person 1 the Employee said that he did not have the "cheat sheet" which sets forth aircraft flight numbers that depart from City 1 on any given day. The Employee went on to state that he usually writes down the flight numbers of the planes that he services. He does the "long range" flights first. According to Person 1, the Employee did not know whether he serviced the particular flight referred to, in Person 2's note.

"At that point" Person 1 said Person 5 spoke up and said, "Wait a minute". Referring to Person 2's note, he indicated that he [Person 1] did not look at the airplane before it left City 1. Person 5 went on to state that he [Person 1] "did not have photos." He said that this is hearsay "it is merely one foreman talking to another foreman about a utility person".

Since he "understood" Person 5's comments, Person 1 stated that he "wanted to take the opportunity to remind [the Employee] that he was on a final warning". Person 1 went on to indicate that "from the chart" there "were only 24 passengers outbound", but he wanted to remind the Employee that "he was on a final warning".

At this point, Person 1 said that the Employee "interrupted him loudly and turned" to Person 5. While pointing his finger in Person 5's direction or "to the wall or me" the Employee said that he did not like the way this thing is going". Person 1 testified that the Employee told him that "you have been dogging me for one and one-half (1 1/2) years. This twelve dollar an hour job does not mean anything to me. If I have to, I will kill someone".

Person 1 continued with his testimony and said that the Employee turned directly towards him [Person 1] and said that he "was not on a final warning--that Person 4 pulled the final warning". Person 1 testified at the hearing that the final warning was not pulled and that there was no reason to believe that it was pulled.

Person 1 continued with his testimony by indicating that the Employee said that "I've been trying to set him up for one and a half years—all I have is a phony verbal warning with Person 6's signature on it". Person 1 went on to state that the Employee pointed his finger at me and said that this twelve dollar an hour job does not mean anything to me. "He looked me square in the eye and said if you take my job I will kill you. He said 'do you understand? Let me make myself clear—if you take my job, I will kill you'".

Person 1 "looked at" Person 5. According to Person 1, "his mouth was agape". Person 1 said that he "gathered up [his] papers" and told Person 5 that he "would be in touch". He then left and went to Person 3's office.

THE EMPLOYEE'S VERSION:

The Employee said that Person 1 met him "outside" and indicated that he wanted to discuss an incident with him. Person 1 wanted him to have the Shop Steward at the meeting.

The Employee indicated that Person 1 was sitting near one of the - desks in the office. Person 5 was standing across to his "left", and he [the Employee] was sitting on a long counter.

At the beginning of the meeting, Person 1 told him that he had missed servicing a flight.

According to the Employee, he replied that he may have missed the flight.

The Employee indicated that he did not have the "cheat sheet" with him. He testified that he was the only person doing laboratories and he "was on a double", which meant that he "worked sixteen (16) hour days".

The Employee went on to testify that Person 1 pulled out a copy of Person 2's note. He said that Person 1 told him that Person 2 related to him that the passengers complained about the "crappy" condition of the airplane which smelled of "garbage".

The Employee testified that Person 5 intervened and said he wanted to take a look at Person 2's note. According to the Employee, Person 5 said that "this is bull shit" and that "we have to put up with this." Moreover, Person 5 said that Person 1 has "a personal desire to get him."

Continuing with his testimony, the Employee said that Person 1 told him that he "could terminate [him] on this one". The Employee asked how he "could do this on a disciplinary action" and Person 1 replied that "he has enough evidence on me because I have a final warning".

By the Employee's account, he said that he looked at Person 1 and said "I do not have a final warning". The Employee continued, by indicating "hold on --- that was pulled". However, the Employee acknowledged that he had nothing in writing which provides that the final warning "was pulled".

The Employee said that Person 1 "was boisterous and said I could fire you--[Person 1] "got irate". The Employee went on to state that he told Person 1 "you have to quit badgering me". He "then" said: "It is a damn good job--this job is not worth twelve dollars an hour--I said get off my back". But, the Employee added, Person 1 "misconstrued that".

The Employee testified that Person 1 then "got himself up" and left the room. Concluding direct examination, the Employee denied that he threatened Person 1 by stating that "I will kill you". On cross-examination, the Employee referred to his handwritten report of the episode, on October 19. In his report, the Employee in pertinent part, set forth that "it got heated" between Person 5 and Person 1, when Person 1 raised his "past history" and "being on final warning." The Employee confirmed that it got heated" between Person 5 and Person 1. He added that Person 5 said "stick to the issue at hand" which was a reference to the failure to clean the lavatory on the flight to Airport 1.

At some point during the October 19 hearing, the Employee thought that Person 5 looked like he was sleeping—"his head was leaning down with his hand on his head".

The Employee said that when Person 1 said that he "could terminate me", he [the Employee] got right up to him and said "This is not worth the badgering day after day". He was not sure whether he "used [his] hand".

The Employee confirmed on cross-examination that he said that the job "is a good job but it is not worth the twelve dollars an hour to be badgered". He said that after he made this statement, Person 1 "got up". The Employee indicated that the tone of the meeting changed when Person 1 "said that he could fire me".

PERSON 5'S VERSION:

Person 5 said that he was present at the meeting on October 19, 1992. He also indicated that the meeting was "business-like and civil" at first and then "gradually became loud". Person 5 said that he "did not hear" the Employee "make the statement that he would kill" Person 1.

Person 5 indicated that he stepped in when there was "harassment towards" the Employee. He said that the "past job performance was not at issue". According to Person 5, Person 1 said "he will do it his way".

Person 5 testified that the Employee said to Person 1 that he "might have" or "might not have" serviced the aircraft—"these things happen". Person 5 continued with his testimony, by indicating that he "backed off" and "walked to the other side of the room". He "leaned against the file cabinet and placed his fingers on his head and thought" about preparing "defenses" for the Employee. He did not recall "any statement that was said at the time". Furthermore, he acknowledged on cross-examination that he did not know how the meeting ended.

* * *

Person 1 left the meeting and went to Person 3's office to relate what had happened. Person 3 was on the telephone when he entered his office.

While he was engaged in a telephone conversation, Person 3 said that the Employee seemed "distraught and upset". He appeared "visibly shaken" and "was walking back and forth". When he concluded his telephone call, Person 1 told him that "I have a serious problem". Person 1 proceeded to tell him that his life had been threatened by the Employee. The Employee then explained to Person 3 the events leading up to the Employee's threat to kill him.

Pursuant to Person 3's request, Person 1 drafted a written report of the episode which he submitted to him. The written report essentially confirms to the Employee's testimony of the October 19 meeting.

As a result of an investigation by Person 3, and with the concurrence of Director, Arbitration and Administration, the Employee was terminated "effectively immediately" (October 19, 1992) for violating Rule 21 of the Posted Rules of Conduct.

Rule 21 provides as follows:

PERSONAL CONDUCT

21. Threatening, intimidating or otherwise interfering with other employees at any time is prohibited

DISCUSSION

In light of the testimony of the Employee, Person 5 and Person 1, the resolution of the dispute between the parties must depend upon credibility findings. After carefully examining the evidentiary record, I am persuaded by Person 1's account of the October 19, 1992 meeting which concluded immediately after the Employee threatened to kill him, if Person 1 "took his job."

Thus, I am convinced of the following version of the events of October 19, 1992: Person 2's telephone call to Person 1, Person 2's faxed note, the meeting at which Person 1 gave the faxed note to the Employee, after reading the note the Employee handed it to Person 5, Employee's reference to the "cheat sheet", Person 5's intervention, whereby he indicated that the faxed note is "hearsay" and that it was merely the word of one (1) foreman to another, which led to Person 1 reminding the Employee that he was subject to a final warning; the Employee pointing to Person 5, Person 1 "or the wall" and referring to the \$12 an hour job not meaning anything to him and that if he had to, he would kill someone, the reference by the Employee to the final warning being pulled by Person 4 and that Person 1 had been trying to set him up for one and one-half (1 1/2) years, and all that he [Person 1] has is a phony verbal warning with Person 6's signature on it, and finally, referring to the job not meaning anything to him and looking square in Person 1's eyes while pointing at him stating that he would kill Person 1 and then repeating: "Do you understand? Let me make myself clear; if you take my job, I will kill you."

Person 1's testimony was forthright and highly detailed. The progression and manner in which the discussion at the meeting evolved, given the purpose for which Person 1 convened the meeting along with its abrupt and inconclusive ending leads me to believe that Person 1's version has the ring of truth. The inherent probabilities weigh heavily in favor of Person 1's account of the meeting. Accordingly, the Employee threatened to kill Person 1 if he took his job. Person 1's account is reinforced by his actions subsequent to the meeting. He left the meeting and went to Person 3's office. While Person 3 was on the telephone, he [Person 3] observed that Person 1 was "distraught- and visibly shaken". The Employee was "walking back and forth".

After Person 3 finished his call, Person 1 told him that he had a serious problem and related that his life had just been threatened by the Employee.

Person 1 then took steps to protect himself. He filed an incident report with the City 1 Airport police and the City 1 Police Department. Person 1 was mistaken in believing that the incident report which he filed with the City 1 police was not a warrant of arrest. In my judgment, such reports are not filed with the proper authorities unless there is a reasonable basis for doing so. In comparing the conflicting accounts of the meeting given by Person 1 and the Employee, Person 1's account is more plausible and convincing. According to the Employee, when Person 1 said that he could terminate him "on this one" [the failure to clean the lavatory on the flight to - Airport 1] the Employee said "get off my back". According to the Employee, Person 1 "misconstrued that".

The evidentiary record warrants the conclusion that Person 1 did not 'misconstrue' the phrase "get off my back". It is unreasonable to believe that the phrases "get off my back" and "if you take my job, I will kill you" could be mistaken by Person 1. Indeed, I have carefully examined the Employee's testimony on his account of the meeting, and there is no phrase that he used at the meeting which could be mistaken for a threat against Person 1's life.

Were I to believe the Employee's version of the events, I would have to conclude that Person 1 fabricated his account of the meeting. There is no support in the record for such a conclusion. It would be unwise for Person 1 to fabricate what transpired at the meeting, especially since he asked Person 5 to be present. Moreover, even Person 5 did not substantiate the Employee's version of the meeting.

There was no "set up" by Person 1 and Person 3 "to get" the Employee. From Person 2's complaint to the conclusion of the meeting, as related by Person 1, his version is supported by

the inherent probabilities of the situation. Person 1's detailed testimony, the order in which the discussion proceeded as related by Person 1 and the statements by Person 5 and the Employee at the meeting, lead me to conclude that Person 1 provided a highly credible account of what transpired.

The Employee indicated that after he said to Person 1, "get off my back", Person 1 "got himself up and left the room. He failed to disclose why Person 1 would abruptly leave the meeting at that point in the discussion.

The Employee said that Person 1 said that he could terminate him "on this one" (the laboratory incident) because he [the Employee] was on a final warning. He went on to state that "the tone of the meeting changed when Person 1 said that he could fire me".

Assuming that Person 1 has the authority to fire the Employee, the Employee as a Union-Steward understands that he may resort to the grievance procedure which the Employer and the Union agreed to in their contract, to protest Person 1's action. However, he may not threaten to take Person 1's life without suffering serious consequences for making such a deadly threat. It must be underscored that there is nothing in the testimony of the Employee and Person 5 to indicate that Person 1 said that the Employee would be fired over his failure to clean the laboratory. The Employee said that Person 1 told him that he "could fire" him over the incident because he was subject to a final warning. There is nothing in the evidentiary record to indicate that before the meeting concluded, Person 1's purpose and the discussion which took place at the meeting was anything but to "counsel" the Employee.

Before concluding my evaluation of the Employee's testimony it was suggested at the hearing that the Employee's hostile remarks about the job meaning nothing to him which were made before he threatened to kill Person 1 if he took his job, are contradictory statements. I do not

believe that the Employee's statements are necessarily contradictory. The job and/or its hourly rate may not mean anything to the Employee, but it is nevertheless a job and a livelihood. Thus, if the job is "taken from him" by Person 1, the Employee would be deprived of a livelihood.

Thus, the Employee said that he would kill Person 1 if he took the job from him.

Moreover the threat by the Employee, while pointing his finger at Person 1 and looking him square in the eyes was repeated. The hostile threat was clearly understood by Person 1. I do not believe it is reasonable to expect Person 1 to reconcile the Employee's angry remarks pursuant to a standard of consistency or logic when confronted by the Employee's threat to kill him if he took his job.

I found Person 5's testimony, vague, uncertain and lacking for the most part, any substance on what was said during the meeting. He indicated that he "did not hear much of anything". Yet, as Shop Steward, he was called upon to represent the Employee and thus he should have heard "much of everything". Moreover, it is undisputed that the room, in which the meeting was held, was 18 feet by 12 feet. The room was "small". I find it highly unlikely that Person 5, who was at the meeting in his role as Shop Steward, "did not hear much of anything".

It is important to underscore that Person 5 did not deny that the Employee threatened to kill Person 1, if he took his job. He merely stated that he "did not hear much of anything". Person 5 referred to only two (2) matters of substance that were stated at the October 19 meeting. On redirect examination, he said that he "stepped in" because Person 1 referred to the "past job performance" of the Employee. Person 1, according to Person 5, then stated "he will do it his way". Moreover, Person 5 indicated that the Employee said he "might have" or "might not have" serviced the flight in question.

Except for these references by Person 5, his testimony consisted of the following: the "discussion" became loud, there was "harassment towards" the Employee, that Person 1 was "beating around the bush", "this day [the Employee] was got" and that Person 1 said "he would do it his way". These references by Person 5 are meaningless inasmuch as he failed to disclose how these references were connected or were part of the discussion.

This leads me to consider Person 5's testimony that during the meeting he walked to the other side of the room, in order to lean against the file cabinet. In doing so, Person 5 said that he placed his fingers on his head to think about preparing defenses for the Employee.

Person 5 did not refer to Person 1 mentioning discipline of the Employee. After reading Person 2's faxed notes at the outset of the meeting, Person 5 became aware that he and the Employee were called to the office because a lavatory on a flight had not been serviced. It is difficult to comprehend why Person 5 would "step back" and be in such deep thought to the extent that he "did not hear much of anything" said by Person 1 and/or the Employee over the lavatory incident. It is reasonable to conclude that as Person 1 said, Person 5 raised a defense, in that he characterized Person 2's complaint as "hearsay". It should be noted that Person 5 failed to disclose any defenses that his "deep thought" generated.

Since Person 1 did not refer to disciplining the Employee over the lavatory incident during the meeting, I do not find it credible that Person 5 stepped back and was engaged in "deep thought to prepare defenses" for the Employee. Nor can I draw the inference that due to Person 5's deep thought, he did not "hear much of anything".

Person 5's testimony was also at variance with the Employee's written report of the episode and his testimony. The Employee indicated that when Person 1 referred to his past work history and

final warning, Person 5 "cut in" and engaged in a heated exchange of words with Person 1 because his past work history was not an issue. When Person 5 was asked on cross-examination whether "it got heated" between Person 1 and himself, Person 5 replied, "It may have seemed heated" to the Employee. In his written report of the episode in question, Person 5 did not refer to any heated discussion with Person 1.

Finally, when Person 5 was asked on cross-examination, how the October 19 meeting ended, he said, "I cannot tell you". Person 5's response is astonishing in light of the fact that his presence at the meeting was requested by Person 1 so that he could be of assistance to the Employee.

I have concluded that Person 5's testimony is not credible. Furthermore, the inference that I have drawn is that Person 5 heard the threat by the Employee. But due to his position as a Union Steward, it was a difficult to disentangle himself from feeling that he was caught between "the devil and the deep blue" due to the Employee's threat and maintaining credibility as a Union Steward. Thus, I have inferred that Person 5 felt it was best to indicate that he was in "deep thought" and he "did not hear much of anything".

To sum up this aspect of the dispute, in light of the evidentiary record, Person 1's account of the October 19 meeting is more plausible than the Employee's account. Moreover, Person 1's testimony most closely conforms to the events that occurred on October 19, 1992.

REASONABLE BELIEF BY PERSON 1 CONCERNING THREAT

I have concluded that Person 1 was reasonable in believing that the Employee's threat was serious. Person 1's reasonable belief is supported by various factors.

As I have previously established, Person 1 reported the threat to the Airport and City 1 police. I do not believe that he would have done so, had he not taken the Employee's threat seriously.

Person 1 said that he was concerned about the Employee's "potential criminal activities". The Employee and several other employees were transferred from the Airport 2 to City 1 a few years ago. Person 1 "heard" that the Employee and another employee "solicited" other employees in City 2 for money because they could obtain a "truckload of goods which they said they would purchase and sell to the employees at a discount". Person 1 went on to indicate that they "collected a large amount of money" from the employees. Person 1 went on to indicate that he "heard" that the Employee and the other employee did not sell any of the discounted goods to the employees. Nor did they return the money to them, because they said that "they were robbed" when they went to pick up the goods.

Person 7, a Utility person, who came from City 2 to City 1, confirmed what Person 1 had "heard" about the episode in City 2. Person 7 said that when he was in City 2, a friend told him that he could obtain VCRs and that it would be a "good deal". Person 7 and the Employee then solicited money for the VCRs from other employees. Person 7 indicated, however, that the money was stolen and he and the Employee were unable to sell the VCRs to the employees.

Person 7 indicated that the police were involved in the investigation. Person 7, who described himself as a "personal friend" of the Employee said that the Employer issued PE-Is to them for trying to sell property on Employer time.

Another episode referred to by Person 1 occurred on October 17, 1991. Person 1 met with the Employee and a shop steward on October 18. Person 1 heard from witnesses that on October 17, the Employee took issue with an assignment from lead man Person 8. As a result, the Employee pushed Person 8 and "drew his fist up at him". The employees who observed the incident

intervened and broke it up. At the October 18, 1991 meeting, Person 1 said that the Employee "denied everything".

Another incident occurred with lead person Person 9. Person 1 said that the Employee "did not like" an assignment from Person 9 and became "loud and argumentative". Person 1 again spoke to the Employee about the incident.

Person 1 also said that he had heard that the Employee was a "guru aficionado" or a gun collector. Moreover, Person 1 referred to the Employee's tough "demeanor and swagger". In this connection, the Employee admitted that at times he is loud and boisterous" to other employees. With some pride, he said that he is "a big boy".

It should be underscored that in addition to Person 1's conduct in Person 3's office immediately after the October 19 meeting and in filing reports of the episode with the Airport and City 1 Police, these incidents involving the Employee are set forth to serve a limited purpose. In part, they form the basis for Person 1's belief that the Employee would be serious about carrying out his threat to kill him, if he "took his job". Accordingly, they constitute the basis for Person 1's reasonable belief. Since there is some factual support for these incidents, Person 1 established that the Employee was serious about his threat to kill him, if he was fired.

It was implied by a question the Union asked at the hearing, that the Employee's threat is similar to the phrase "kill the umpire" or "kill that player". These phrases which many fans shout at sporting events are part of the lexicon of spectator sports to express disagreement with the call of an umpire or an athlete. These phrases which some or many fans shout at a stadium filled with thousands of fans is poles apart from the serious intent of the Employee in threatening Person 1's life on October 19 and Person 1's reasonable belief concerning the intent behind the threat.

PERSON 1, AS A SUPERVISOR

The Employee indicated that with Person 3's support, Person 1 was "going to nail" him. He went on to state that the reason for doing so was because he was a Union Steward.

The Employee went on to indicate that Person 1 has a "large ego" and he thought that he [the Employee] was "stepping on his toes". He said that he "repeatedly badgered" him.

A Union witness indicated that Person 1 was out to get the "City 2 connection". However, among the City 2 employees who transferred to the City 1 Airport, only the Employee was terminated for his threat to kill Person 1 on October 19, 1992.

Various bargaining unit witnesses testified on Person 1's conduct as a supervisor. Testimony indicated that he frequently used profanity and that he was loud, abusive and intimidating. Such evidence, although admissible, is of no weight in this dispute. This arbitration was not about the behavior of Person 1 as a Supervisor. This dispute concerned the issue of whether the Employer proved that the Employee threatened Person 1's life on October 19, 1992.

If so, the next issue that had to be resolved is whether the Employer by clear and convincing evidence proved that the Employee was discharged for just cause. These issues alone establish reasonable limitations on what evidence is to be given weight. Accordingly, I cannot attribute much if any weight to the testimony of the Union's witnesses on Person 1's conduct as a Supervisor.

CONCLUSION

As I have previously established, on October 19, 1992, the Employee threatened to kill Person 1 "if he took his job". The evidentiary record warrants the conclusion that Person 1 had a reasonable basis upon which to believe that the Employee was serious in making the threat. The Employee's threat is an extremely grave offense. When it is directed at Person 1, who is a Supervisor, it irrevocably ends the employment relationship. Clearly, after such a threat is directed at a Supervisor, effective supervision is no longer possible.

In threatening to kill Person 1 if he took his job, during the meeting on October 19, 1992, the Employee violated Rule 21 of the Posted Rules of Conduct which, in relevant part, provides: "21. Threatening, intimidating or otherwise interfering with other employees at any time is prohibited."

The introduction to the Rules in relevant part, provide that "in cases of serious violations, dismissal without further warning may result where the facts warrant". In this case, the Employee's past record, and the merit or lack of merit of the "final warning", or other warnings issued previous to October 19, 1992 are not relevant. The Employee's offense of October 19, 1992, in and of itself, is sufficiently serious, to result in termination.

Accordingly, the Employer proved by clear and convincing evidence, that the Employee was discharged for just cause.

AWARD

In light of the aforementioned considerations, the grievance is denied.