Heekin #1

IN THE MATTER OF ARBITRATION BETWEEN

Employer

AND

Union

GRIEVANCE: The instant grievances protest various disciplinary actions taken against the Employee, the last being a discharge action, as not having been for just cause.

AWARD: The grievances are denied.

HEARING: March 12 and 13, 1996

ADMINISTRATION

By way of a telephone call from Person 1 and Person 2, the undersigned was informed of his designation to serve as impartial referee on a system board of adjustment (the Board) established in accordance with the Parties' Agreement (Joint Exhibit - 1) to resolve three grievance disputes. On March 12 and 13, 1996, a transcribed arbitration hearing went forward at which time the Parties presented testimony and document evidence supportive of positions taken, where the Employee appeared and testified in his own behalf. Upon receipt of post-hearing briefs, the record was closed and the matter is now ready for final resolution.

FACTUAL BACKGROUND

The Employer is an airline carrier headquartered in City 1, State 1. The Unionn represents the instant bargaining unit in collective bargaining, one which encompasses the Employer's mechanics.

The Employee, a bargaining unit Mechanic assigned to the Employer's City 2 operations was first employed in 1985. Previously, a grievance procedure challenge to an earlier disciplinary action taken against him involving employee insubordination was appealed to arbitration. This eventuated in the issuance of an Award by Neutral Chairperson, Margery F. Gootnick, and dated July 26, 1994, wherein she denied the grievance (Employer Exhibit - 3D):

* * *

In this case, the Union is grieving the issuance of a written warning to the Employee. The notification of violation given to the Employee by his Foreman Person 3 states as follows:

> On April 8, 1993 at 0640 and again at 0650, you were directed by me to have someone clean-up an oil drip pan. Though you said you tried, when-given specific directions from me to find someone to clean-up an oil drip pan, you told me to write you up. When asked if you were refusing to obey my directions, you again told me to write you up.
>
> Article 4(E) of the agreement provides: (E) Lead Mechanic
>
> The work of a Lead Mechanic shall be the same as that of a Mechanic and, in addition, he shall be the employee who assigns, directs and approves the work of Mechanics.

Under the above language, Person 3 gives orders to the Lead, to assign the Employee to have an oil drip pan cleaned. The oil drip pan cleaning was not completed. As a result of the incident, the Employee was given a written warning for insubordination.

It is well settled and undisputed that an employee who fails to obey a supervisor's order, even if the employee believes that the order violates the collective bargaining agreement, is guilty of insubordination and is subject to discipline. With very few exceptions, an employee is required to obey a supervisory order and then use the negotiated grievance procedure for relief. None of the exceptions, which are principally for safety and health reasons, are applicable in this case. Even assuming, for the purpose of argument, that during the previous negotiations the Employer unsuccessfully attempted to negotiate a provision to make a Lead responsible for the "quality and

quantity" of the work of the Mechanics in his crew and under his jurisdiction, that fact does not excuse Employee's actions in this disciplinary case.

This case is not a negotiation issue or a Union grievance claiming violation of the collective bargaining agreement. This is a disciplinary grievance brought by the Union to contest the issuance of a written warning to the Employee for insubordination.

In the negotiations, described by the Union, there is insufficient evidence to support the Union claim that the Employer unsuccessfully attempted to negotiate a requirement that employees must "obey now and grieve later." I am unpersuaded by the Union claim that, based on previous negotiations described by the Union, denying this grievance would be "a text book application of obey now, grieve later," and would give the Employer a contractual right it does not have and which it previously sought in negotiations. Nor am I persuaded that denial of this grievance would be a "mechanical adoption of the ‘obey now, grieve later’ principle”. The basis for the “obey now grieve later” rule is well grounded in the basic and often expressed statement that "an industrial plant is not a debating society." Although the Employer is not an industrial plant, the concept that when a supervisor gives an order he must have the expectation that it will be followed, has never been stated in a clearer manner.

The Employee understood the order given to him by Person 3 in the clean-up room. Person 3 specifically told the Employee for the second time to "get someone to clean up that mess." When Person 3 asked the Employee if he was refusing to clean up the oil drip pan, the Employee said "write me up." This indicated that he was aware that the consequences of failing to follow Person 3's order could be disciplinary action.

* * *

By making a finding that the Employee was obligated to obey the order and then file a grievance, I am not making a finding that Person 3's order conformed to all of the provisions of the negotiated agreement.

Even assuming, without finding, that there may be merit in the Union's claim that the order violated certain sections of the agreement, the Employee was under the obligation to obey the order and then file a grievance to claim that the order violated one or more of the following provisions of the collective bargaining agreement.

* * *

While these questions raised by the Union may be intriguing questions, none of them are properly before me. I have no authority to reach the question of whether Person 3's order and actions complied with the agreement since the Employee did not fulfill his obligation to obey Person 3's order, and then subsequently used the proper mechanism of invoking his rights under the agreement by filing a grievance protesting the propriety of the order.

Put another way, the Employee was given an order which he and the Union believed violated the agreement. He was obligated to obey the order and then use the mechanism of the grievance procedure to assert his negotiated rights under the Agreement. He failed to do so. The grievance before me is a disciplinary grievance. My authority does not extend to answering the questions which may have been raised in a grievance which could have been filed if the Employee had first obeyed the order.

* * *

The Employee received a three (3) day disciplinary suspension for certain conduct occurring on August 23, 1993, during the third shift when he was acting in the capacity of a Lead Mechanic as set out in the following

(Employer Exhibit - 4A):

* * *

> On August 23, 1993 you on your own accord without permission from a member of Employer management cut a conveyor belt on the new outbound baggage system under construction in City 2.
> For these actions, which are in violation of the Employer Posted Rules of Conduct, Rule #8 which states; "Perform no acts of willful negligence or deliberate destruction to Employer property or property under control the Employer." You are suspended without pay for three (3) working days effective August 24, 1993 thru August 26, 1993. You should return to your regular shift August 26, 1993 at 2300 hours. Any future violations of this nature will result in further disciplinary action up to and including termination.

* * *

The Employee cut this conveyor belt, one which was owned by a subcontractor and without consulting a foreman, at the end of the shift. In addition, he left a note at the site stating "Try again."

Not long after this incident, on September 10, 1993, the Employee was given a ten (10) days disciplinary suspension by supervisor Person 3 in response to an incident which took place during the third shift when he was acting as a Lead Mechanic and Union shop steward

(Employer Exhibit - 6A):

* * *

> On Friday, September 10, 1993 you were in my office to discuss disciplinary action that was issued to two fellow employees. During this discussion you became irate and called me "a spineless bastard" and walked out of my office. At that time you turned and said "Kiss my balls." I ordered you twice to come back in my office and you refused to comply with either request. You then exited the area. On April 8, 1993 you were issued a written warning for insubordination, and warned that any future acts of this nature would result in your termination.
> For these actions, which are in violation of the Employer Posted Rules of Conduct, Rule #7 which states: "Follow all orders and assignments. Insubordination will not be

tolerated," you are hereby suspended without pay for ten (10) working days effective September 13, 1993 thru September 24, 1993. You should return to work September 26, 1993 at 2300 hours for your regular shift. This is your final warning regarding this type of behavior and any future occurrence will result in your termination.

* * *

The basis for this disciplinary action is reflected in the following testimony rendered by Person 3 at the arbitration hearing (TR.Vol.1, P.64-67):

* * *

Q: What happened when the Employee came back to your office around lunchtime?

A: I told him that the line maintenance foreman couldn't come down, because he had too many broken aircraft; and he said, well, let's go down there; and I said, well, like I told you, he is too busy, he doesn't have time right now to get into a discussion over this; and then he says, well, why can't we talk about it; I says I -- I don't want to discuss this without another member of management present; and he said something to the effect, why, you going to tell more lies about me; I said I just want to make sure that what I say is what I say, and he got up and called me a spineless, bastard, and walked out the door, and when he got out the door, he turned his head back to me and said "kiss my balls," and kept walking; at which time, I yelled to him, come back in the office, and I went to the doorway, and I yelled to him again to get back into the office, and he kept walking through the shop and outside.

Q: What did you do at that point? Now the Employee has exited the area and he is outside, you are standing at the doorway of your office, what did you do next?

A: I went down, and there was an individual, Person 4, and I asked him if he was -- if he was a senior man, and he said no, Person 5 was, so I went over to Person 5, I said Person 5, will you come with me.
So, Person 5 and I went outside, and the Employee was with another mechanic out there, and they were off-loading some stuff into the dumpster; and I told the Employee, I would like you to come back into the office; and he said, I'd like to be represented by the line maintenance steward, shop steward; I said okay, I went in and called the line maintenance office and told them that we need to have a shop steward in the office, the Employee needs to see a shop steward, and I need to come down there, and, at which time, I went outside and told the Employee that the shop steward would be in the -- in the foreman's office, and the Employee laughed, and then I proceeded down there myself.

* * *

Person 3, who originally wanted to terminate the Employee, made a written statement (Employer Exhibit - 7) that same day which mainly comports with the above hearing testimony. Also, two witnesses to this incident, Person 6 and Person 7, are both bargaining unit Mechanics who had received disciplinary letters shortly before from Person 3; i.e., the intended subject of the labor/management meeting which the Employee was then trying to arrange. In sharp contrast to the above, the Employee and Messieurs Person 6/Person 7 denied in their hearing testimony the "spineless bastard"/ "kiss my balls" portion having occurred. Instead, they asserted that the Employee voiced his disagreement with the decision of Person 3 to not hold a meeting just then by merely stating "forget it, forget it."

This is also set forth in the following, undated written statements made, respectively, by Messieurs Person 6 and Person 7 (Employer Exhibits - 8 and 9):

* * *

> On Thursday Sept. 10, 1993 I entered the foreman's office with the Employee & Person 7. We attempted to ask Person 3 why myself & Person 7 received PE-1's. We were told at 1:00 break that a foreman from the line would be present. The foreman from the line was too busy & was not there. We attempted to ask Person 3, if we could discuss this amongst ourselves. He refused saying that he won't discuss anything without another foreman present. At that point the Employee said "Forget it, Forget it" & walked out of the room. And that was it.

* * *

> On Thursday Sept 10, 1993 I entered the foreman’s office with Person 6 & the Employee to question the basis for receiving a PE-1. The Foreman said he would talk with us after lunch when he could have a foreman with him. We went into his office and waited for Person 3 to come in. When he came in we asked to discuss the problem and he said not without a foreman. The Employee said aren't you a foreman, and Person 3 said he wanted someone else with him. The Employee just got up from his seat and walked out saying just "forget it, forget it" and that was it.

* * *

Subsequently, the Employee was terminated following an incident which took place between the Employee and a supervisor, Person 8, on April 6, 1994 (Employer Exhibit - 11):

* * *

> On April 6, 1994, after receiving a verbal warning for work performance, you told the Foreman to "get lost" twice. You were then issued a verbal warning for disrespecting a Foreman and advised that if this type of behavior continued, more severe disciplinary action would occur. Upon being issued the verbal warning, you exited the office and stated "what an asshole" then repeated that statement by yelling it on the open floor. You were suspended pending disciplinary action, when, being escorted to your locker, you made the statement "I don't know what the assholes are doing."
> On two previous occasions, April 8, 1993 (warning) and September 10, 1993 (10 day suspension), you were issued discipline for insubordinate behavior as well as the verbal warning issued on April 6. Also, on August 23, 1993 you were issued a 3 day suspension for cutting a conveyor belt without authorization and a verbal warning for poor work performance issued on April 6.
> Based on the above and your continuing unacceptable and insubordinate behavior, your employment with Employer is terminated effective April 8, 1994...

* * *

The arbitration hearing account of Person 8 as to what happened is set forth in the following.

Q: And in introducing yourself, you had given him your name?

A: "Person 8."

Q: Had you explained to Employee your position?

A: Yes.

Q: So he was aware you were the foreman on assignment?

A: Well aware.

Q: Now the Employee asked you your name. What happened next?

A: He asked me my name. I gave it to him. He asked me my employee number, and I told him that there is no need for him to know my employee number. I am not getting a disciplinary action, he is.

Q: And what happened at that point?

A: And then I gave them the verbal warning for poor job performance, and I told them that is all. At that time, the Employee said to me "get lost," and then turned and went to the door and said it again, "get lost."

Q: Did you react to that at all?

A: Yes, I did.

Q: What did you do?

A: I then got up, asked the Employee back -- to come back into the office, he asked Person 9 to come back with him.

I then gave the Employee a verbal warning for disrespect to his foreman, and if this -- if this -- it's been a long time.

I gave the Employee a verbal warning for disrespect to a foreman, and "if this conduct is not corrected in a timely manner, more severe disciplinary action will be taken against you. Do you understand me?"

Q: Did he respond to you?

A: Yes, he laughed.

Q: What can you do at that point?

A: And I said that is all. He then turned, took two steps to the door, and said "what an asshole," he then opened the door, went out in the shop, and yelled "what an asshole."

Q: What did you do at that point?

A: At that point in time, I felt that more severe disciplinary action should be taken against him, and I would consult with my manager at that time.

Q: But you had issued that night a verbal warning to the Employee regarding disrespect to a supervisor; is that correct?

A: Yes.

* * *

The Employee in his hearing testimony denied the "get lost"/"what an asshole" aspect of this account as did Person 9, who was present and who also had just before received the same discipline in connection with the same job assignment matter. It is undisputed that Person 8, who had never met the Employee, then issued a verbal warning to him regarding being disrespectful to a foreman. The next day Person 8 made a written statement regarding the incident (Employer Exhibit - 12).

In answer to each of these disciplinary actions, none of which were decided upon immediately, a grievance was filed. Upon properly completing the steps of the grievance procedure, these grievances were appealed to arbitration hereunder.

DISCUSSION AND FINDINGS

In approaching this matter concerning three separate incidents, involving three separate Employer disciplinary actions taken in response (two occurring in 1993 and one in 1994), each shall be individually addressed by the undersigned. However, this is not to say there are not certain commonalities involved. Indeed the second and third incidents both mainly concern the offense of employee insubordination, and a factual question of credibility as between accounts regarding exactly what happened, where in both cases the Employee denies the key facts against him. Accordingly, several initial observations of a general nature are felt to be in order.

First, in assessing credibility, and while not singularly determinative, any interest a witness might have in the outcome of the arbitration is widely recognized as one factor to consider. While the interest of the Employee is obvious, that of individual management and bargaining unit witnesses to the events in question is normally evaluated on a case by case basis. Second, substantial consistency or inconsistency of accounts, both internally and as between accounts, is often important. At the same time and closely related, the plausibility of an account - in comparison with facts otherwise established in the record or common experience - can be decisive. Accordingly, the determination of credibility is not a mere "numbers game" regarding how many witnesses to a disputed event can be assembled by one side versus the other. Also, that an employer did not immediately decide upon whether or not there will be a disciplinary response, or how much of a response, is normally not relevant to credibility. Indeed due reflection is always to be encouraged in this regard.

As to the offense of employee insubordination, the ultimate concern is an employer's management authority having improperly been undermined. Accordingly, a workplace disruption caused by an employee challenge to the propriety of a particular management directive is generally considered unacceptable. As Arbitrator Harry Shulman observed in his often-cited arbitration opinion, Ford Motor Co., 3 LA 779, 781 (1944):

* * *

> When a controversy arises, production cannot wait for exhaustion of the grievance procedure. While that procedure is being pursued, production must go on. And someone must have the authority to direct the manner in which it is to go on until the controversy is settled. That authority is vested in supervision. It must be vested there because the responsibility for production is also vested there, and responsibility must be accompanied by authority.

What underlies insubordination as an employee offense, in addition to its overall acceptability is that, typically, under a labor contract, as here, there is included a grievance procedure; ie., the contractually provided for method by which employees are to resolve their differences with management as opposed to self-help. Therefore and as Arbitrator Gootnick indicated in her July 26, 1994, decision (Employer Exhibit - 3D), challenges to management authority are normally to be made subject to a grievance procedure filing, the main exception being when a legitimate health and safety concern renders this approach unreasonable. This principle is often referred to by the phrase -"Work now, grieve later." Again, the words of Harry Shulman as stated in the aforementioned Ford Motor Co. opinion are enlightening:

* * *

Some men apparently think that, when a violation of contract seems clear, the employee may refuse to obey and thus resort to self-help rather than the grievance procedure. That is an erroneous point of view. In the first place, what appears to one party to be a clear violation may not seem so at all to the other party. Neither party can be the final judge as to whether the contract has been violated. The determination of that issue rests in collective negotiation through the grievance procedure. But, in the second place, and more important, the grievance procedure is prescribed in the contract precisely because the parties anticipated that there would be claims of violations which would require adjustment. That procedure is prescribed for all grievances, not merely for doubtful ones.

* * *

Accordingly, while there often is disagreement between supervisors and those under their supervision regarding management directives given, it is fundamental that such be channeled through the grievance procedure as opposed to acts of workplace defiance. At the same time and

very importantly, an employer when imposing discipline in response to insubordinate conduct is contractually obligated to do so in accordance with the Common Law of labor arbitration, just cause standard. Thus, the surrounding circumstances are normally what are to be looked to regarding the propriety of the particular disciplinary penalty imposed.

Against this backdrop, what is critical to the determination of whether or not the Employee on September 10, 1993, during the third shift called supervisor Person 3 a "spineless bastard" and when leaving the room where they were situated shouted to him "kiss my balls" - all in the presence of two hourly employees - is what took place immediately before and immediately after, virtually all of which is undisputed. What led to this encounter was the Employee, acting in the capacity of a Union shop steward, having attempted to arrange a meeting concerning two disciplinary letters which Person 3 had issued shortly before, one each, to two Mechanics, Person 7 and Person 6 (Employer Exhibits - 14 and 15). Here, Person 3, undisputedly, did not want to have a meeting at that moment in the absence of a management witness being present, where in his estimation no one was readily available. Also undisputed is the fact that the Employee disagreed with his decision to not hold a meeting just then. Yet Person 3, immediately thereafter, who just before had not wanted to hold a labor/management meeting, undisputedly all of a sudden wanted to convene such a meeting with another shop steward being present and to terminate the Employee: an incredible change of sentiment in such a short period of time! Ultimately, this undisputed change of heart on the part of Person 3 is completely at odds with the Employee having just before only uttered "forget it" "forget it" as testified to by the latter and Messieurs Person 7/Person 6. At the same time, it is totally consistent with the Employee having then called Person 3 a "spineless bastard" and shouted to him "kiss my balls," which is insubordinate behavior in the extreme. Accordingly, for many such extreme behaviors would call

for an immediate response, regardless of the immediate circumstances. Moreover, the same day drafted, written account of Person 3 (Employer Exhibit - 7) reflects the version of events which he testified to at the arbitration hearing; one that is determined to be far more plausible in light of all the foregoing - unlike the three accounts which denied this ever occurred.

While Person 3 had been the supervisor involved in the prior April 8, 1993, insubordination matter, where notably his conduct on that occasion was in no way faulted by Arbitrator Gootnick, as well as the August 23, 1993, matter to be dealt with here subsequently; the record contains no evidence that he has ever acted in bad faith towards the Employee or anyone else. Simply put, the record is found to contain no basis upon which to conclude that Person 3 falsified his version of what occurred on September 10, 1993, or that he had a tendency to become excited or to overreact. Essentially, the version of Person 3 as to what happened is felt to be in total accord with his undisputed sudden shift in desire regarding the immediate holding of a labor/management meeting, where he sought the presence of another shop steward since the behavior of the Employee had obviously become his main concern. Again, this stands in direct conflict with the harmless "forget it", forget it" version of what took place offered by the Employee and two others (Person 7 and Person 6); the latter two, significantly, having then just received disciplinary letters from Person 3 for poor work performance. Also, the undated, written statements of these two witnesses regarding what took place (Employer Exhibits - 8 and 9) are noteworthy for their similarity in length and wording, wherein both end with a "Forget it, Forget it" reference, as well "and that was it." Accordingly, these statements are not accepted as spontaneous, independently arrived at accounts of what occurred at the time in question.

Turning to the April 6, 1994, incident of alleged employee insubordination which precipitated the instant discharge action, again the Employee denies the key facts (stating "get lost" twice and

"what an asshole" towards a supervisor in the context of a disagreement between the two). As before and seemingly without dispute, such facts constitute insubordination if proven. Here, it is important to note that the supervisor involved, Person 8, had never previously worked with the Employee and is no longer employed by the Employer. Accordingly, the record is gathered to suggest little possibility of this key witness having had an interest in testifying falsely. Very importantly, there is no explanation for why Person 8 would make this allegation only against the Employee and not Person 9 who was standing in the same room for the same reason; i.e., having received the same warning concerning the same job assignment. In addition, Person 9 had been disciplined by Person 8 as well provides at least a partial basis for why he would have testified that no disrespect was shown the latter by the Employee. Moreover, there are certain consistencies between the behavior of the Employee on April 8, 1993, and September 10, 1993, as compared with that displayed according to Person 8 on April 6, 1994, which cannot be overlooked. Furthermore, the surrounding circumstance of the Employee having undisputedly been unhappy with Person 8, due to having just received a warning from him, is consistent with the former being of a mindset to act disrespectfully. Also, it is felt important that Person 8, without dispute, immediately called attention to what he felt was disrespectful conduct by issuing a verbal warning. Finally, the brief, undeveloped testimony of Person 10, who answered in the negative regarding the question "Did you hear him yell 'you are an asshole'?", while Person 8 testified that he yelled "what an asshole" - cannot be held as controlling in the face of all the above.

As to the August 23, 1993, cutting of the conveyer belt incident which resulted in a three (3) day disciplinary suspension, it is first noted that the Employee - unlike in the case of the two herein insubordination matters -unquestionably engaged in the conduct at issue. Here, the employee

conduct rule involved (Rule 8) which proscribes "acts of willful negligence or deliberate destruction to Employer property or property under control of the Employer," is without question - like the Rule 7 proscription against employee insubordination - reasonable on its face. Essentially, the Union is understood to be urging that Rule 8 was unreasonably applied to the instant facts.

In addressing this matter, it is first emphasized that Rule 8 not only encompasses sabotage - i.e., the intentional destruction of property where the only purpose is to do harm - but the destruction of property as a result of negligence or bad judgment as well. Obviously, the concern behind Rule 8 is the unnecessary destruction of property within the Employer's control. Here, the evidence does not establish the Employee to have committed sabotage. Basically, the surrounding circumstances point to this beltline cutting incident as his chosen response to a lacing problem where the Employee made little effort to deny its having taken place. Indeed he proclaimed his responsibility by subsequently informing a foreman and leaving a note stating "Try again." Nevertheless, the Employee undisputedly acted to destroy the property of a subcontractor within the Employer's control, a clear Rule 8 violation. Accordingly, the question in considerable part becomes: Do the surrounding circumstances lead to a conclusion that this destruction of property was unnecessary or the product of bad employee judgment?

Upon fully considering the evidence presented and the arguments brought forth, it is held that the Employer was able to support this three (3) day suspension, disciplinary action as a reasonable application of Rule 8 and, thus, having been for just cause. Accordingly, the suggestion of the Employee that his decision to cut the beltline without consulting a supervisor at the end of the third shift was based upon a legitimate safety concern - i.e., that there was then no other way to insure the safe operation of the beltline after he left - simply was not established in the record. In

other words, while there is no premise upon which to conclude that the Employee was incorrect in his determination that there was a beltline mechanical problem involving the lacing, the evidence does not support this instance of "deliberate destruction to Employer property" as the only course available to him in response. In short, the evidence is determined to not lead to a conclusion that the only option then available in order to insure the beltline's safe operation was an act of property destruction. Again, the Employee is not understood to have been faulted for concluding that there was a beltline mechanical problem. Rather, and while recognizing that the Employee was acting as a Lead Mechanic that night, it was for the seemingly drastic step he took in attempting to solve the problem without consulting a supervisor in advance. The record simply provides no reason for why he could not have consulted a foreman beforehand. Ultimately, there is no basis upon which to conclude that the Employer was incorrect in determining such to have been unnecessary and, therefore, not justified.

Based upon all of the foregoing, the undersigned finds that the evidence establishes the Employee to have committed all of the acts of employee misconduct at issue in the absence of mitigation regarding the particular penalty imposed. Accordingly, it is held that the Employee subjected himself to the two disciplinary suspensions imposed and, finally, to having been discharged. In light of the April 8, 1993, insubordination incident having been upheld in a prior arbitration, as well as the September 10, 1993, insubordination incident where the conduct involved was particularly egregious; the record established the Employee to have been repeatedly warned that, should this type of misconduct reoccur as it did on April 6, 1996, he would be subject to termination. While the Employee may have had reason for disagreeing with Person 3 on September 10, 1993, as to when the Person 7/Person 6 disciplinary letters, labor/management meeting should be held and on April 6, 1994, with Person 8 for having

received a disciplinary warning regarding his performance in a particular job assignment; the evidence does not support there having been any provocation or justification for his affront to their management authority on each occasion: the key consideration. Ultimately, it is held that the Employee failed to respond to the progressive discipline given him concerning the prior instances of employee insubordination on April 8, 1993, and September 10, 1993. Thus, it is determined that there was just cause for his being discharged upon the third, April 6, 1994, occurrence which took place within an approximate one year period. Finally, all three grievances are denied.

AWARD

Grievances Denied.