

McCormick #7

VOLUNTARY LABOR ARBITRATION

In the Matter of the Arbitration between:

EMPLOYER

-AND-

UNION

GR: Employee 1/Suspension

OPINION AND AWARD

Hearings in the above-captioned matter were held before the undersigned arbitrator, Robert A. McCormick, on February 7 and June 28, 2006 in City A, Michigan. At the hearings, the Parties examined witnesses and introduced documentary evidence in support of their respective positions. Thereafter, the Parties, through their representatives, submitted written briefs to the Arbitrator. This Opinion and Award is based upon careful consideration of this evidence and argument.

ISSUE

Was the grievant, Employee 1, disciplined for cause within the meaning of the contract between the Parties?

RELEVANT CONTRACT PROVISIONS

ARTICLE 4. MANAGEMENT RIGHTS

SECTION 1. DIRECTING WORK FORCE

Except as otherwise specifically provided herein, the Management of the Employer and the direction of the work force, including but not limited to the right to . . . discipline or discharge for proper cause . . . are vested exclusively in Management. . . .

ARTICLE 50. SAFETY AND HEALTH COMMITTEE

It is understood that notwithstanding the provision of this Article, it remains the obligation and responsibility of the Employer to provide and maintain a safe workplace for all employees.

INTRODUCTION

On October 9, 2004, Firefighter Employee 1, a member of the Employer Fire Department and the grievant in this case, was serving as Acting Equipment Operator when he backed a vehicle, Engine 13, into the Street A Fire Station. In so doing, he caused it to make contact with another vehicle, Truck 1, causing damage to Truck 1. For his actions, Firefighter Employee 1 was issued a two-day, 24-hour per day, disciplinary suspension.

The Employer argues that this discipline was commensurate with the gravity of Firefighter Employee 1's offense and, therefore, was consistent with just cause principles. The Grand Rapids Fire Fighters Union, on the other hand, argues that the procedure utilized by the Department was flawed and that, in any event, the discipline was overly severe under all the circumstances of the case. For these reasons, the Union argues that the discipline was not in keeping with the just cause requirement of the Parties' collective bargaining agreement.

FACTS

The facts of this case were presented through the testimony of seven witnesses: Lt. Person 1; Cpt. Person 2; Firefighter Person 3; Deputy Fire Chief Person 4; Fire Chief Person 5; Firefighter Employee 1; and Union Vice-President Person 6.

Lt. Person 1, a twenty-five year veteran of the Department, testified that his duties include responsibility for Engine 13 on C shift. On Saturday, October 9, 2004, Lt. Person 1 recalled, he was in the front, or "watch," office of the Street A station working on manpower records. Cpt. Person 2, his superior officer, was there as well. That day, he recalled, firefighters

were stripping and waxing the floors of the station as they regularly do on Saturdays. Truck 1 was not in service and was parked in a bay in the engine house. It had been moved out while the cleaning work was being done and then was driven back into engine house by Firefighter Person 7 who then began backing Engine 13 into the station.

Lt. Person 1 testified that he heard Engine 13 start and that it sounded "revved up" and as though it was moving quickly. When he heard the sound of Engine 13, Lt. Person 1 recalled, he heard Cpt. Person 2 say something like "slow down Employee 1, slow down" and then, he said, he heard the sound of machines colliding. The vehicle that was struck, Truck 1, was an aerial or ladder truck. Lt. Person 1 testified that Firefighter Person 7 had had training as an Equipment Operator and had just driven Truck 1 into the station and so was aware it was there. To protect Truck 1, Lt. Person 1 said, two cement pylons, like those used in parking lots, had been placed in front of it. He testified that Firefighter Employee 1 had walked by these pylons and, thus, should have been aware they were there.

Lt. Person 1 identified a photograph¹ depicting Engine 13 and the cement pylons, one of which was placed in front of Truck 1, and the other of which was placed so as to stop the rear wheels of Engine 13. According to Lt. Person 1, the cement pylons, each weighing approximately five hundred pounds, had been put in place approximately two to four days before this incident and were placed so that if the rear wheels of Engine 13 had stopped at the pylons, only a few inches would have separated the back of Engine 13 from the bucket of Truck 1. He stated that Firefighter Employee 1 had to have had training in order to have served as Acting Equipment Operator as he did that day.

Lt. Person 1 described the standard procedure for backing in a truck. A spotter is posted

¹ Joint exhibit. 7.

outside and behind the moving vehicle to make sure no one walks behind it and that nothing obstructs the truck as it backs in. On the day in question, he said, Firefighter Russ Person 3 served as Firefighter Employee 1's spotter.

After the accident, Lt. Person 1 said, he spoke with Firefighter Person 3 who reported that Firefighter Employee 1 had been driving quickly, that he had yelled "stop, stop" and motioned to Firefighter Employee 1 with his hands, but to no avail. According to Lt. Person 1, Departmental policy requires that the spotter have a radio with which to communicate with the driver, but Firefighter Person 3 did not have one that day. He identified an Unwanted Incident Report² which he filled out that day. Later that day, Lt. Person 1 recalled, he talked with Firefighter Employee 1 about the spotter and Firefighter Employee 1 said he was looking at lines on floor through the mirror and had lost sight of the spotter.

Lt. Person 1 said that Firefighter Employee 1 worked less than a full shift that day because he had made arrangements to coach his son's football game, and that shortly after the incident another firefighter replaced Firefighter Employee 1 temporarily. While every accident is different, Lt. Person 1 said, he has not seen one like this where one fire rig was backed into another.

Cpt. Person 2, a thirty-one year veteran of the Department, testified that his duties include overseeing the Street A fire station and the fire company on all three shifts. He is a member of the same bargaining unit as others under his command.

Capt. Person 2 testified that on October 9, 2004 he was in the front office with Lt. Person 1 and that he both heard and saw the accident. He watched Engine 13 backing into the station through a window in the front office, he recalled, and observed that Firefighter Employee 1 was

² Joint exhibit. 2.

driving too fast. He recalled saying to Lt. Person 1, "why is he backing up so quickly" or "slow down Employee 1" or something to that effect. After the accident, Cpt. Person 2 recalled, he uttered "a few choice words," left the office, and entered the station. He then called the Battalion Chief to report the mishap and that no one had been injured, after which he accompanied Firefighter Employee 1 to the office to discuss what had happened. According to Cpt. Person 2, Firefighter Employee 1 said he had been looking at the concrete safety barriers behind engine, that he must have been focusing on the wrong barrier, and that he was sorry. The regular Equipment Operator was absent and Firefighter Employee 1 was the designated Acting Equipment Operator for that engine company that day. Truck 1 was a new vehicle, Cpt. Person 2 said, and had been brought to the Street A station a few days prior to the accident.

Cpt. Person 2 said he has worked with Firefighter Employee 1 for at least a year and could not recall another instance in which Firefighter Employee 1 had been called upon to back an engine into the station where a ladder truck was parked. He conceded that the pylons were placed in a staggered fashion, and that the pylon that was placed to stop the wheels of Engine 13 was out of the line of sight of the driver as he was backing in so that if he were focusing on the pylon, he would only view the one in front of Truck 1. Cpt. Person 2 acknowledged that the pylons were placed improperly and that, in retrospect, staggering them was a mistake. Finally, he also acknowledged that white lines painted on the floor of the fire station would not have been of help to Firefighter Employee 1 as he backed the vehicle in on the day in question. He stated that, in his view, it probably would not have been possible for the driver to look simultaneously at the white line and the spotter. Cpt. Person 2 acknowledged that the purpose of having the spotter have a radio is to forewarn the driver.

Cpt. Person 2 said that, as Captain, he can recommend discipline, but that in this case he

did not recommend discipline beyond counseling. He said he learned in December of that year that Chief Person 5 had issued Firefighter Employee 1 a two-day suspension for the incident. He understood that to mean 7.2 hrs per day, for a total of 14.4 hours, he said, because the average work day is 7.2 hours and, throughout his career, suspensions were assessed on the basis of 72, not 24 hours, per day.

Cpt. Person 2 specifically recalled one incident in November, 2004 in which firefighters were working on a vehicle when an alarm came in. They mounted the truck while one firefighter remained behind to close the door because of problems they had experienced with the door opener. As the truck was moving out of the station, one firefighter noticed that a door had not been fully closed. He tried unsuccessfully to close it in time, and the door was damaged. He identified a memorandum from Cpt. Person 2³ in which the accident was attributed to "human and mechanical error" and ascribed the human error as "a lack of attention and focus." The unit members received counseling memoranda for this incident.

In another incident, Cpt. Person 2 said, Truck 1 was pulling into the station when an alarm came in. As the vehicle headed back out of the station, the Equipment Operator accidentally activated the mechanism to close the door. Thus, the door came down as the truck left. No discipline was issued in this case because the conclusion was reached that the door button was too sensitive and was later taken out of service.

In a third incident occurring about this same time, Cpt. Person 2 recalled, a driver backed a brush rig into a light pole outside the station, denting the bumper. Again, he said, no discipline was issued for this incident. Cpt. Person 2 acknowledged that in none of these incidents was the operator driving too fast Cpt. Person 2 testified that a spotter is required to ensure safety behind

³ Union exhibit. 1.

the machine and to prevent accidents. The driver, he said, is supposed to watch the spotter, and it is possible simultaneously to watch the spotter and the white lines if he or she is traveling at a safe speed. He identified Department Regulation 8024 which states in relevant part that "All department members will operate safely, use good judgment, and be concerned for each member's welfare." In Cpt. Person 2's opinion, Firefighter Employee 1 did not back Engine 13 in safely, nor did he use good judgment on the day in question.

Firefighter Person 3 testified that he had been waxing the officers' office when Firefighter Employee 1 walked by and said "Hey, can you spot me?" He recalled positioning himself roughly where the back of Engine 13 would stop and in sight of the driver, and he testified that it was his job to make sure the path was clear. Firefighter Employee 1 backed the engine up faster than he was comfortable with, he recalled, and, consequently, he motioned with his hands to slow down. When he saw Firefighter Employee 1 was slowing down, he put his hand up and loudly yelled "stop." After twice saying "stop" and seeing Firefighter Employee 1 was not stopping, he said, he moved quickly to the left and out of the way. Engine 13 then crashed into Truck 1.

After the accident, Firefighter Person 3 said, he asked Firefighter Employee 1 what he was doing and Firefighter Employee 1 replied something to the effect that "I screwed up." Firefighter Person 3 said he has seen other drivers back up an engine faster than Firefighter Employee 1 did that day, but he has never seen an accident like this since joining the Department in 1997. He acknowledged he was not using a radio that day, and that he had not conveyed that fact to Firefighter Employee 1. He was never concerned that Firefighter Employee 1 would run into him, he said, and, instead, he moved quickly out of the way out of concern about what

⁴ Employer exhibit. 1.

would happen if when the two pieces of equipment collided.

Chief Person 4 served as Deputy Chief of Operations at the time of the incident in this matter. He testified that he investigated the accident, and that he interviewed Person 6, Union Vice-President, Person 8, Chief Steward, Person 9, Person 10, and Firefighter Employee 1. He also reviewed the accident report⁵ and the Unwanted Incident Report⁶ – both typical reports in an accident situation. He recalled that Firefighter Employee 1 gave no reason for the accident, offered no mitigating factors, and said only that he did not know what had happened. Firefighter Employee 1 did indicate, Chief Person 4 said, that he had taken his eyes off of the spotter and had not heard Firefighter Person 3's warnings to stop. Based upon his personal experience, he said, it is possible to simultaneously look in mirror and refer to the white line. Chief Person 4 said he concluded that this had not been a simple accident and that, instead, Firefighter Employee 1 had been negligent. Accordingly, he said, he recommended that a two-duty-day, or 48-hour, disciplinary suspension be imposed and that Firefighter Employee 1 be required to attend a day-long driving school.⁷ The average work week, he said, is 50.4 hours, so this suspension constituted nearly a one-week suspension.

Chief Person 4 said he was aware that Firefighter Employee 1's record showed no prior driving infractions or other discipline, and that his recommendation was based solely on this particular incident. He presented his recommendation to Chief Person 5 who, in turn, presented his recommendation to the Employer Manager who issued the discipline. He was not aware if arrangements had been made for Firefighter Employee 1 to attend a driving class.

⁵ Union exhibit. 2.

⁶ Jt. exhibit. 6.

⁷ Employer exhibit. 3.

Chief Person 5 described the discipline process in the Department. If a disciplinary action is contemplated, he said, an investigatory meeting is held in which the Battalion Chief gathers facts. If the matter goes further, he said, the Deputy Chief completes the investigation and submits findings and a recommended discipline to him. Under the Employer charter, he said, the Employer Manager makes the final decision regarding the level of discipline.

Chief Person 5 testified that the damaged truck was new at the time, and that it had to be transported to State A for repair. To do so, he said, the apparatus Captain drove the truck there and flew back and then, approximately one week later, flew back to State A to drive the vehicle back to Grand Rapids. He estimated the total costs for repair to have been in the range of \$8,000 to \$10,000, including travel costs.

In determining the severity of the discipline in this case, Chief Person 5 said, the main factor was "the blatant disregard for safety of the Firefighters and others in the station." In his view, Firefighter Employee 1, who was trained, certified, and had been a driver for seven years, was traveling at a high rate of speed, and that injury or death could have occurred. In his thirty-one years in the Department, Chief Person 5 said, he could not recall another accident like this. Chief Person 5 acknowledged that Firefighter Person 3 did not have a radio at the time, that that constituted a violation of Departmental policy,⁸ and that he was not disciplined for his actions in this instance. In Chief Person 5's view, Firefighter Employee 1 was backing up at such a high rate of speed that even if the spotter had had a radio, it would have made no difference. He, too, was aware, he said, that Firefighter Employee 1 had had no prior accidents, unwanted incidents, or other discipline.

Chief Person 5 said he was aware of a 2002 incident in which Equipment Operator

⁸ See Jt. exhibit. 5.

Person 11 had backed a fire rig into the station itself, causing one pillar to collapse and approximately \$100,000 in damage. According to Chief Person 5, Equipment Operator Person 11 was not disciplined because he was not backing up at high rate of speed and because the building maintenance Captain reported that the pillar in question had been hit many times, thereby weakening it.

Chief Person 5 conceded that the Department has not sent Firefighter Employee 1, or anyone else, to driving school since this incident. The Department, he said, endeavors to send groups of persons, not just one, to the school. He also said he was aware that Firefighter Employee 1 has continued to serve as an Acting Equipment Operator and that he "has done a very good job." Like Lt. Person 1, Chief Person 5 said that in his experience, is it possible to see both the spotter and the lines while backing an engine into a station if the driver is going slowly enough.

Firefighter Employee 1 testified that at time of the accident in this matter, he was in his second year of assignment to Engine 13. He had driven that engine many times before, he said, but he had rarely backed it into the station. And while he may have backed a pickup truck into the same lane as another vehicle, Firefighter Employee 1 said, he had not backed an engine into the same lane as a ladder truck. In other situations prior to this, he said, he had used a white line on the floor of the driver's side with arrows to guide him in positioning the tires.⁹ On the day in question, however, these lines were of no use because cement pylons had been set and, thus, he would have had to stop short of the white lines. While he had driven a rig into a station using cement blocks at Engine 11, he said, he had never done so at this station.

⁹ See Jt. exhibit. 7.

Firefighter Employee 1 remembered arranging to have Firefighter Person 3 serve as his spotter that day, but was unaware that Firefighter Person 3 did not have a radio. While backing the engine that day, he said, he did not hear Firefighter Person 3 yelling. Instead, he said, he was concentrating on the white lines on the ground, checking mirrors, glancing at Firefighter Person 3 who was off to the side and looking for the block to back up against. It would have been difficult, he said, to simultaneously view the spotter and look at the white lines and cement blocks. He did not see Firefighter Person 3 signal to stop, nor did he feel the rear tires of Engine 13 make contact with the cement pylon.

Firefighter Employee 1 said he believed this accident happened because the pylon that was behind the engine was set so that he could not see it and, thus, he backed up to the pylon that was set in front of Truck 1, thinking it was the one behind the engine. He was unaware, he said, of the staggered placement of these cement pylons before entering the cab. In addition, he said, he has seen others back up much faster than he did that day. At that time, Firefighter Employee 1 said, having a spotter was not mandatory, although now it is. He has not been sent to driving school, he said, and has been told nothing about it.

On the day in question, Firefighter Employee 1 said, the trucks were outside of the garage to flush floors. After helping clean floors, he said, he pulled the ladder truck forward into station. Shortly thereafter, he said, he backed Engine 13 in. In hindsight, he said, he was going too fast when he backed the engine in.

He could not, he said, simultaneously see Firefighter Person 3 and the other markers. Had he been backing up more slowly, he said, he might have been able to keep an eye on his spotter and other markers as well. He candidly acknowledged that Firefighter Person 3's not having the radio was not the reason he had the accident.

Firefighter Person 7 said that while he believed some discipline was warranted, his suspension for a period just short of one week was excessive compared to what other people had received in like cases and a one-day suspension would be proper. When he spoke to Chiefs Person 4 and Person 5 after they told him the extent of his discipline, he said, he understood that a two-day suspension meant 7.2 hours per day or 14.4 hours, not 48 hours.

Union Vice-President Person 6 testified that he oversees grievances in the unit. In this case, he said, he sought and was permitted to review,¹⁰ Departmental accident reports¹¹ for the past seven or eight years. In reviewing those files, he said, he found only one or two instances in which suspensions were issued for accidents.

Union Vice-President Person 6 described several incidents in which Departmental vehicles were involved in accidents. He identified an Unwanted Incident Report dated October 4, 2003¹² describing an event in which a vehicle traveling to take part in a parade struck a parked car, damaging its left mirror. No discipline was issued to the driver who, he conceded, was not driving too fast. In addition, he said, the car was parked a considerable distance from the curb. A second accident¹³ occurred when a fire truck, responding to an alarm with its lights and alarm activated, struck a car that had entered an intersection, damaging both vehicles. The driver was not traveling at an excessive speed or in violation of Departmental policy. In another incident,¹⁴ Acting EMS Coordinator Randy Walters inadvertently backed a transport bus into a Departmental car. There was no spotter utilized in this incident, and no discipline was issued. In a fourth incident,¹⁵ Cpt. Walters was involved in a minor car accident when a private vehicle in

¹⁰ Union exhibit. 3.
¹¹ Union exhibit. 4.
¹² Union exhibit. 4(a).
¹³ Union exhibit. 4(b).
¹⁴ Union exhibit. 4(c).
¹⁵ Union exhibit. 4(d).

front of him stopped suddenly. Again, no discipline was issued in this instance. In another event,¹⁶ Engine 4 struck a private citizen's light pole, causing approximately \$1,500-\$2,000 damage, when the Equipment Operator who was concentrating on an approaching vehicle, lost sight of the pole and struck it. Again, no discipline was issued in this event. In a sixth incident,¹⁷ Equipment Operator Joe Person 11 was utilizing a spotter as well as the floor stripe as he backed an engine into the Street B fire station.¹⁸ He cleared first set of pillars and continued to back in when he struck the right side of the overhead doorway with approximately 3 inches of the rear bumper's causing considerable damage to the building. Equipment Operator Person 11 was not traveling at an excessive rate of speed and was not disciplined for his actions in this event. In another incident,¹⁹ Equipment Operator Person 12 was driving a vehicle when the rear of the vehicle swung out and struck a parked car, scratching it. As in the instant matter, the spotter did not utilize a radio, and no discipline was issued to Equipment Operator Person 12. In the next event,²⁰ Acting Equipment Operator Person 13 bumped the mirror of a parked car that was illegally parked, breaking the mirror lens. Again, no discipline was issued. In another incident, Firefighter Person 14 was backing into an area at the scene of an alarm and made contact with the corner of a building. No spotter was used, and while there was no damage to the building, there was some damage to the vehicle. Again, no discipline was issued as a result of this incident. In another case,²¹ Cpt. Person 15, Acting fleet Maintenance Captain, was relocating a parked vehicle when it scraped against the front bumper of another vehicle, causing minor damage to it. Once again, no discipline was issued. The last incident²² occurred when Firefighter

¹⁶ Union exhibit. 4(e).

¹⁷ Union exhibit. 4(f).

¹⁸ Id.

¹⁹ Union exhibit. 4(g).

²⁰ Union exhibit. 4(h).

²¹ Union exhibit. 4(j).

²² Union exhibit. 4(k).

Person 16 was backing up a vehicle and struck a parked car causing \$2,224 damage to the car. No spotter was used. For his actions in this case, Firefighter Person 16 was issued a letter of instruction.

In his years in the Department, Union Vice-President Person 6 said, he has never been told that a driver should watch only the spotter when backing up a rig and he, himself, has always used all available resources, he said. Neither was he aware of any case involving an accident with a fire rig where an unpaid suspension of any length of time was meted out. Indeed, he was familiar with only two incidents in which personnel had been suspended, and neither involved vehicular accidents. The first was the 1995 one-week suspension of Firefighter Person 17²³ for his failure to properly investigate the existence of a structure fire; the second involved the suspension of Firefighter Person 18 of less than one week for using propane improperly during a training exercise, resulting in minor injuries for one person. Union Vice-President Person 6 did not dispute, however, that other personnel have been suspended. For example, he identified suspensions of Person 19,²⁴ Person 20,²⁵ Person 21,²⁶ and Person 22.²⁷ In each of those incidents, Union Vice-President Person 6 said, the penalty was calculated using a 24 hour day. This contrasted, he said, with the former practice of calculating a day of discipline as 7.2 hours.

Other facts that bear upon the resolution of this grievance appear later in this Opinion and Award.

²³ Union exhibit. 5
²⁴ Employer exhibit. 6.
²⁵ Employer exhibit. 7.
²⁶ Employer exhibit. 8.
²⁷ Employer exhibit. 9.

DISCUSSION

The issue in this case is straightforward: did the Employer have just cause to issue Firefighter Employee 1 a two-day, 24-hour per day, disciplinary suspension for his conduct on October 9, 2004. And, like the issue, the facts of the case are also essentially uncontroverted. On Saturday October 9, 2004, the firefighters assigned to the Street A fire station were washing the floors of the station, in keeping with their weekly routine. Firefighter and Acting Equipment Operator Employee 1 had pulled Truck 1— a new aerial ladder truck — forward into the station and was in the process of backing Engine 13 into a designated space in front of Truck 1. Lt. Person 1 and Cpt. Person 2 were in the watch office working on manpower records. Firefighter Employee 1 had asked Firefighter Person 3 to act as a spotter during the backing-in process, and Firefighter Person 3, who did not have a radio with him, stood behind and to the left of the place where Firefighter Employee 1 was to park the vehicle.

Unfortunately, Firefighter Burner began backing Engine 13 into the station at a rate of speed considerably faster than was appropriate — so much so that Lt. Person 1 heard the engine revving and Cpt. Person 2, who was watching the scene unfold through the watch office window, commented "slow down, Employee 1," or words to that effect. Firefighter Person 3, for his part, seeing that Firefighter Employee 1 was driving too fast and that a collision with Truck 1 was about to take place, began motioning for Firefighter Employee 1 to stop. He then began yelling, "stop, stop," but Firefighter Employee 1 neither saw his signaling nor heard him call out his warning. The result of all this was that Engine 13 either vaulted the cement pylon placed where the tires were positioned to stop it, or moved the 500 pound pylon back and struck Truck 1, causing some damage to it. Truck I had to be transported to Nebraska for repairs, a process that cost the Employer several thousand dollars.

In this case, then, the question is not whether Firefighter Employee 1 engaged in activity that warranted some discipline, but primarily whether the two-day disciplinary suspension was proportional to the gravity of his wrongdoing. The Union points out that Cpt. Person 2 independently counseled Firefighter Employee 1 for his conduct and argues that additional discipline was procedurally and substantively improper. Moreover, the Union notes, the Department was also at fault in several respects. First, they note, Firefighter Person 3 had no radio with him that morning as standard (and now required) procedure mandates, and that had he had a radio, he might have effectively forewarned Firefighter Employee 1. Second, they observe, the cement pylons placed in front of Truck 1 and behind Engine 13 were staggered such that Firefighter Employee 1 was unable to determine easily that the pylons in his view were, in fact, those in front of Truck 1, not behind the tires of Engine 13. Finally, they argue, the two-day disciplinary suspension was inconsistent with, and substantially greater than, other disciplines meted out to firefighters in like circumstances. Lastly, they say, suspending Firefighter Person 7 for two 24-hour days is the equivalent of suspending him for nearly a week and is inconsistent with the Department's past practice of calculating the day at 7.2 hours, not 24 hours.

At the outset, it is important to note that every witness in this case, and especially Firefighter Employee 1, testified honestly and forthrightly and impressed the Arbitrator with their professional demeanor and dedication to their work. Having said that, however, there is no doubt that Firefighter Employee 1 had a considerable lapse in judgment on the day in question – a "brain fart" as Lt. Person 1 aptly described it – when he drove Engine 13 at such a high rate of speed. There was no urgency whatsoever in Firefighter Employee 1's task and, therefore, no reason for him to have acted as he did. Indeed, he was driving at such a high rate of speed that Firefighter Person 3 quickly jumped to the side, fearing the consequences of the impending

collision with Truck 1_ To his credit, Firefighter Employee 1 did not seek to minimize his wrongdoing in conducting himself as he did that morning, and he candidly acknowledged that he should not have driven his vehicle as fast as he did.

As regards the other cases in which the Department either issued no discipline or discipline short of that imposed here upon unit members who were involved in accidents, none of those individuals was driving at a plainly excessive rate of speed. It is because Firefighter Employee 1 knowingly drove his vehicle at an excessive rate of speed that discipline is warranted. Thus, despite the fact that the pylons were placed in a staggered fashion and that Firefighter Person 3 had no radio as he should have, the Arbitrator has determined that some discipline greater than counseling for Firefighter Employee 1 was not unwarranted.

It bears remembering the question before the Arbitrator is whether the Chief's decision to impose a two-day suspension was supported by just cause. The fact that another, lesser, penalty might have been selected does not, by itself, render the Department's assessment inappropriate. Thus, while a lesser penalty might have appropriately been selected to apply to Firefighter Employee 1, the Arbitrator has concluded that the two-day, 24-hour per day, penalty was not so disproportionate to the gravity of his offense that it could be branded unjust.

Although the award in this matter will deny the grievance and sustain the Department's decision in this case, it is important to note that Firefighter Employee 1 has earned an otherwise unblemished disciplinary record, and that he, as Chief Person 5 said, "has done a very good job." Having said that, however, the Arbitrator has determined that the level of discipline in this case was supported by just cause and, accordingly, the grievance in this matter must be denied.

AWARD:

For the foregoing reasons, the grievance is denied.

Robert A. McCormick

Arbitrator

August 25, 2006