Nevins #5

IN THE MATTER OF ARBITRATION BETWEEN:

Employer

AND

Union

PRELIMINARY STATEMENT

David C. Nevins, Arbitrator: This proceeding involves a dispute between the Union and the Employer. A hearing was held on February 6, 1997, before the parties' System Board of Adjustment, where the parties participated, presented evidence, and put forth their respective arguments.

The general question to be resolved in this proceeding is the following:

ISSUE:

Was the Employee discharged for just and proper cause, and, if not, what should be the remedy.

BACKGROUND

The Employee began working for the Employer as an A & P mechanic in mid-1986. He began in City 1, transferred to City 2 in 1990, then transferred to City 3 in 1992, and transferred back again to City 2 in September of 1994. While in City 3 he sustained an occupational injury and was off work for about three months. In April of 1995, when back in City 2, Person 1 became one of the Employee's lead mechanics and, according to the Employee, Person 1 had a tendency to lose his temper, raise his voice, and talk down to his workers. As acknowledged by the

mechanic supervisor in City 2, Person 2, at least two other employees had complained about Person 1's treatment of them, and Person 2 had counseled Person 1 about such complaints. In this regard, the Employee recalls that in January of 1996, several days after he returned to work following a recurrence of his back injury, Person 1 yelled and used profanity toward him, faulting him for delaying an aircraft departure, even though the delay was caused by someone else (which Person 1 subsequently realized). The Employee says that prior to February of 1996, he complained twice to Person 2 about Person 1's behavior toward him, including the January incident, but Person 2 does not recall any such complaints and, obviously, nothing was done by Person 2.[1]

On February 6, 1996, the Employee and Person 1 had another run-in. The Employee arrived at work at about 8:20 p.m., apparently with a fever. He attests to a written statement which indicates that Person 1 saw him in the "readyroom" at about 8:50, confronted him rudely, in an angry tone, and assigned him to review some training videos and then to perform an aircraft check. The Employee says he proceeded into the readyroom, selected one of the videos he was to review, began rewinding it in the VCR, went into an adjacent room to collect his paycheck from a desk drawer, and, while he was at the desk reviewing his check, Person 1 came up and they exchanged contentious jabs at one another about Person 1 having assigned the Employee work and the Employee not yet performing it.

The Employee says that when he then returned to the readyroom to watch the video, Person 1 followed him and aggressively asked him, "Do you have a problem?" The Employee says he

[1] In August of 1995, while back in City 2, the Employee experienced a recurrence of his back injury and was off work until January 12, 1996. The night he returned to work, he recalls that Leadman Person 1 remarked in assigning him work, "Since you've got a bad back, you can do the brake change tonight." It appears that brake changes, because of the torque-wrenching involved, is one of the most strenuous jobs a mechanic performs. The Employer's records show that two other mechanics, not the Employee, signed off on the brake job that night, and the Employee acknowledges that those co-workers offered to perform the strenuous part of the job for him.

responded, "Yeah I do have a problem; I've got a fever and you've been riding my ass since I walked in the door. I don't feel well, get off my ass, you fucking bastard." What happened next is somewhat unclear. Apparently, from an adjacent room Person 1 telephoned Person 2 at home and complained to the supervisor about the Employee's conduct, and Person 2 asked to speak to the Employee. According to Person 2, he overheard Person 1 put down the phone and yell to the Employee that Person 2 wanted to talk to him and then heard the Employee yell back, "If Person 2 wants to talk with me tell him to come down here." Conversely, according to the Employee, he thought Person 1 had called Person 2's office and told Person 1, who had yelled to him from the adjacent room about talking to the supervisor, "tell him I'll come and see him." He says he then proceeded to Person 2's office (at another location) to talk with him. The Employee's statement says that when he found that Person 2 was not in his office, he called his message machine and advised him he had a fever and was leaving work. Person 2 says that when Person 1, at his instruction, went to tell the Employee to leave work for the night, the Employee had already gone.

The Employee recalls that on February 7 he called Person 3 of the employee assistance program and complained about being upset with Person 1 and that he could not handle his type of treatment in the workplace. That same day Person 3 arranged for an appointment with Person 4, the Employee saw him and related the previous night's incident and conditions at work. According to the Employee, Person 4 said he felt the problem existed at work, not with him, and that the Employee should take some time off and Person 4 would contact the Employee's supervisor. Person 2, apparently on February 8, was informed by Person 3 that the Employee had called, that he was extremely emotional and upset and had been given an appointment with a psychiatrist, that he had the potential to do some violence to his work group, and advised Person

2 to give the Employee time off if he needed it. But, Person 3 also told Person 2 that the Employee's doctor had said he had been defused and was not a threat at that time.[2]

On February 7, Person 2 and the Employee spoke by telephone, and being advised that an investigative meeting had been scheduled, the Employee indicated he would be at work. At around 6:30 p.m., Person 2 saw the Employee, who wanted to talk with him about what happened the night before, but despite the Employee's persistence, Person 2 insisted he would not talk to him about it until the meeting at 8:30 with the Union committeeman, Person 5.

While waiting around, the Employee began to work on an aircraft, but after a short time he was confronted by Person 2 and told he could not work on the aircraft, that he was not allowed to begin his shift, and that he should get off the clock. The two then exchanged views about why the Employee could not begin working and could not use flex time to begin work. The Employee says the discussion "was not at all heated," but Person 2 describes it as involving the Employee screaming statements that this was "bullshit" and that City 2 was a lousy place to work, and that he should be allowed, as others were, to work flex time. Person 2 shut off the discussion, telling the Employee he would not tolerate screaming, and that he could not begin work until 8:30.

Because Person 5 was late in arriving, the investigative meeting began at 9:15 p.m. in Person 2's office. According to Person 2, they initially discussed several subjects: an alleged timecard falsification, the Employee's attendance record, and the Employee's behavior the previous night. The Employee denies that his attendance was discussed on February 7. The Employee admitted calling Leadman Person 1 a profane term, but he claimed Person 1 was singling him out and

[2] What we are told about the call from Person 3 to Person 2 is told to us by Person 2. The supervisor did not issue any cautionary warnings to anyone-in the Employee's work group, and no other precautions were initiated.

picking on him. Person 2 recalls discussing the Employee's refusal to speak with him over the telephone and his resistance earlier that night. Person 2 said that he was still investigating the matter and it was possible that discipline would result.

Another meeting was subsequently scheduled with the Employee and Person 5 by Person 2 for February 21, when Person 2 intended to issue a Level Two discipline to the Employee for only his conduct on February 6. One item early in the meeting concerned Person 5's attendance record, which the Employee, apparently at that night's briefing, had raised a question about. During their private meeting, Person 2 corrected Person 5's attendance record in keeping with the Employee's earlier complaint, which resulted, to the Employee's chagrin, in Person 5's disfavor.[3] Person 2 then informed the Employee that he was issuing a Level Two discipline for his conduct on February 6 and began to explain or read the disciplinary notice. At some point during this procedure, the Employee became upset, took up the disciplinary notice and began to leave the room. Person 2 asked where he was going and he said he was upset and did not want to be in the same room as Person 2.

The Employee then proceeded across the hall, into a locker-room and began slamming some locker doors and yelling, "This is bullshit." Person 2 says the Employee's yelling lasted some 9 or 10 minutes; Person 5 says it lasted 1-2 minutes. Person 5 then went to the Employee, reviewed the Level Two disciplinary notice, and the two of them returned to Person 2's office. The Employee returned the discipline notice to Person 2's desk and began to angrily complain about it, saying it was wrong, that he was being singled out, that Person 2 was treating the symptom

[3]According to the Employee, but disputed by Person 2, Person 2 also raised the Employee's attendance record at the February 21 meeting. The Employee says he complained that a wrong time period was used by Person 2, similar to what had happened to Person 5, and it was at that point that Person 2 changed Person 5's attendance record to his disfavor. Person 5 recalls the Employee brought up the attendance records for both him and Person 5, and Person 2 then reviewed them and "corrected" them.

not the cause, and that City 2 was a bad place to work. Both before and after the Employee's complaint, Person 2 asked him to sign the discipline, but the Employee refused. Somewhere around this juncture, Person 2 told the Employee he thought he was too upset to work that night and the Employee asked if Person 2 was authorizing him to leave work, which Person 2 said he would.

It is at this point that our case is particularly focused. The Employee was seated, and, according to both him and Person 5, leaning back in his chair against the wall, sideways (but in front of) Person 2's desk. Two slightly different versions of what the Employee then did are offered: Person 2 says the Employee put his finger on the disciplinary notice, stared at him in an icy manner, and said, "it's because of things like this that that supervisor and co-worker were killed over there;" the Employee and Person 5 say the Employee leaned forward (though the Employee says he could not directly see Person 2's face at the time) and said, "Now I know why that man shot those two people over there."[4]

As the Employee uttered his statement he was pointing over and beyond Person 2's shoulder, and everyone in the room understood him to be referring to a gunshot killing and wounding of a supervisor and human resource person that had taken place a month before and committed by a fired worker at a nearby Employer.

Person 2 immediately reacted, saying that he considered the Employee's utterance to be a threat and that Person 5 was his witness. To Person 2's claim, the Employee quickly protested that he did not threaten Person 2, and he did not intend to threaten him. To Person 2's insistence that he was threatened and/or that Person 5 was his witness, the Employee repeated some two more

[4]The statement quoted from Person 2 was how he described the Employee's statement at our arbitration. In his written statement proposing the Employee's discharge, he said the Employee stated, "This is why the Supervisor and coworker were killed over there." And, in his police statement on the day after, he said the Employee had stated, "It's because of this, employers and co-workers get killed."

times that he had not threatened and/or had not intended to threaten Person 2. Even Person 2 recalls that the Employee's demeanor at this time was conciliatory and un-agitated. Person 2 says that he thought, when hearing the Employee's utterance about the recent shootings, that if he were to discipline him the Employee would kill him, and the Employee was capable of doing that based on his recent outbursts.

There is some dispute, though not terribly relevant, about what happened next. Person 2 says he insisted that the Employee turn over his identification badge and leave, and that he and Person 5 then escorted the Employee to the exit. Person 2 says that Person 5 then returned with him to his office and they discussed the situation. Both Person 5 and the Employee, however, say that after the Employee had repeatedly said he had not meant to threaten Person 2 he left the room. The Employee says he went to the restroom, where he freshened himself.

Both Person 5 and the Employee say that as the Employee returned to the area of Person 2's office, Person 2 and Person 5 were exiting the area, and Person 2 then confronted the Employee and insisted he turn in his badge and leave the premises. The Employee and Person 5 say that all three then went to the building's exit, the Employee gave over his keys, and both Person 5 and the Employee left the building, where they stood outside talking for about 30 minutes.[5]

The following day, Person 2 notified the local police and the Employer's security force about the Employee's conduct the night before, as well as advising his superior, Person 6, and a labor relations official, Person 7, what had happened. A door lock was changed at work. Person 2,

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[5] Person 2 says that when Person 5 returned to his office with him, Person 5 acknowledged that he had never heard an employee speak so badly to a supervisor and that Person 5 had assured his frightened wife that his attendance at the meeting would be safe, because he and Person 2 could handle the Employee. Person 5 says that while he did say to Person 2 that the Employee had spoken very badly to him, and that Person 2 did not have to worry because there were two of them, and Person 5 had his three-cell flashlight, while they were escorting the Employee to the exit, he did not say anything about his wife, since he spoke to her about the matter only after the Employee was subsequently discharged.
Person 5 says, as he always has, that he did not consider the Employee's utterance to be a threat, that he considered it a figure of speech.

pursuant to some security advice, began to vary his work times and routines. On March 4, he proposed a Level Five discipline, discharge, for the Employee's conduct.

On March 11, Person 6 held an investigative review hearing on the Employee's proposed discharge. After Person 2 presented his view of the incident in question, the Union's representative, Person 8, attempted to question Person 2. It appears that Person 8 wanted to question Person 2 about Leadman Person 1's behavior, and why nothing had been done about it in connection with the Employee. Person 6 stopped Person 8's questions, saying that he would not allow Person 8 to attack or question the victim. According to Person 8, he tried several more times to ask Person 2 questions, but each time Person 6 stopped him. Person 6, without providing any real detail, says he let Person 8 ask questions of Person 2 later, though Person 8 denies that; Person 9, an Employer observer at the meeting, does not recall Person 8 asking any further questions of Person 2.

Of course, after Person 2 presented his view of the incident, the Union, through the Employee and Person 5, was able to present its version of the incident.

In a decision dated March 14, Person 6 upheld the proposed discharge. He found that the Employee's statement on February 21 "was fully intended to indicate and imply a threat to Person 2." Person 6's decision was duly appealed to the Third Step, another hearing was held before Person 7, and on July 15 she upheld the discharge. Person 7 concluded that the Employee's behavior "included a very pointed threat of violence" and she could "find no other plausible explanation for [his utterance] being said other than to threaten and intimidate Person 2."

ANALYSIS AND CONCLUSIONS

I. The Basic Issues

Apart from the rendered facts, some written provisions also bear on our dispute. Article XVII, Paragraph B, of the parties' collective bargaining agreement (the "Agreement") provides, in part, for the following:

> No employee shall be discharged without a prompt, fair and impartial investigative hearing at which he may be represented and assisted by Union Representatives.
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> * * * *

And the Employer's Rule 5, a violation of which "will result in discharge unless mitigating factors are considered applicable," provides as follows:

> Actual or attempted: a) threatening, b) assaulting,} c) intimidating a Supervisor or other member of management.

The Employer insists it had just cause for discharging the Employee, since the evidence demonstrates he violated Rule 5 on February 21. Noting its huge employee force, the Employer points out that it must rely on the integrity of those workers and that it must be able to protect its interests and maintain reasonable rules. Rule 5, the Employer says, is very basic; it goes to the heart of the employment relationship, and it captures an uniformly recognized proposition--that threatening and intimidating a supervisor is a dischargeable offense. There can be no question, argues the Employer, that the Employee threatened Person 2, and nothing preceded his conduct to justify it. Unquestionably the Employee was indicating his intent to tell Person 2 that if he disciplined him his life was at risk. The Employer also rejects the Union's notion that the discipline should be altered because of any procedural infirmity at the investigative review hearing, for even if some infirmity occurred it was not prejudicial and was cleansed by a full and fair hearing at the Third Step appeal. It likewise rejects the notion that the fault can be shifted

from the Employee to Leadman Person 1. As past arbitrations between the Employer and Union have shown, when employees threaten supervisors such conduct merits discharge.

The Union, conversely, challenges the Employee's discharge. It contends that even despite enduring improper harassment from Leadman Person 1, the Employee, himself, may have acted unreasonably when Person 2 imposed discipline on him on February 21, but he did not threaten Person 2 and he did not violate Rule 5, as his utterance on February 21 and contemporaneous conduct show. In addition, the Union says the Employee did not receive the fair and impartial investigative review hearing to which he was entitled, since Person 6's statement about Person 2 being a "victim" shows that Person 6 had made up his mind before ever hearing the Union's presentation, and because Person 6 prevented the Union from questioning Person 2 at the hearing. Nor, says the Union, did the Employee get a fair Third Step hearing, since Person 7, the hearing officer, was involved with Person 2 from the very beginning in constructing the Employee's discipline. The Employee should be reinstated and made whole and the disciplinary action set aside.

II. Discussion

A. The Employee's Investigative Review Hearing

Two very troublesome items are raised in connection with the Employee's investigative review hearing. One is whether Person 6 may have already prejudged the Employee's proposed discharge, having been consulted by Person 2 prior to his proposing discharge and in quickly citing Person 2 as the "victim", and two is whether Person 6 denied due process to the Employee

as is seemingly imbedded in both the idea of "just cause" and that of a "fair and impartial investigative hearing," as is expressed in Article XVII, Paragraph B, of the Agreement.[6] Ideally, a hearing officer should be objective, without prior or active involvement in the discipline challenged before him. Although in general industrial life that ideal is rarely preserved in pristine fashion, Article XVII of the Agreement certainly suggests that something close to it should be maintained. In the practical world of labor arbitration, however, theories and abstractions are often tempered by real, tangible, demonstrable considerations. Rights in the abstract and perceptions of slight should be buttressed by supporting facts before they are used to overturn what might otherwise be realistic, fair and reasonable, and practicable disciplinary decisions.

When our evidence is carefully examined, it fails to adequately support an adverse finding against the Employer on either charge raised by the Union. We have very slight evidence concerning Person 6's involvement with Person 2's proposed discharge prior to the investigative hearing. While we know they talked about the February 21 incident, we know virtually nothing more. While meaningful evidence about this kind of communication might be difficult to attain, our hearing contains virtually no significant effort to uncover it. And while Person 6 referred to Person 2 at the investigative hearing as a "victim," perhaps an unfortunate choice of words, this does not convincingly demonstrate he had prematurely made up his mind about what occurred.

A more serious prospect exists that Person 6 improperly curtailed the Union's effort to question Person 2 at the investigative hearing. While arbitrators should not generally evaluate in detail

[6] Although the Employer argues that any infirmity in the hearing process was cured at the Step Three level, this view cannot truly erase an unfair or biased process at the preceding, investigative hearing level. Article XVII, Paragraph B, specifically mandates a fair and impartial hearing at the investigative hearing level, without regard to subsequent hearings, and it is generally recognized that objectivity or impartiality is most important early in the disciplinary process, before views are hardened and before opposing positions are staked out by the participants.

how an investigative hearing officer performs under an internally developed grievance procedure, still it seems questionable, not in a merely procedural sense but a substantive sense, when one party's ability to question or challenge the testimony of an opposing witness is broadly restricted during an investigative hearing that is supposed to be fair and impartial. Such a limitation could truly impact the ability to present one's case or point of view or to uncover material facts. Unfortunately, in our case it is unclear just what the Union's representative, Person 8, was attempting to prove through his prohibited questioning of Person 2, what was the relevance of his questions, and how the Union or Employee was potentially prejudiced by the question ban. We should not simply dance around the bush in these matters; we need to know with some clarity what injury resulted, or might have resulted, before we take the significant step of concluding that an investigative hearing officer, like Person 6, has breached the mandate of fairness and impartiality, and infected the disciplinary process sufficiently as to warrant a remedy. After all, there might be any number of reasons why a hearing officer bars a question, many of them valid.

In our case, we are basically told that Person 8 sought to question Person 2 about Leadman Person 1, and about why Person 1's conduct did not lead to some action on Person 2's part. It is unclear, however, what direct bearing those questions had to the Employee's purported threat to Person 2, and why or how their preclusion meaningfully prejudiced or infected the hearing's outcome. After all, we know that the Union was able, at the investigative hearing, to present its two principal witnesses, the Employee and Person 5; moreover, at our arbitration there was very little effort to pursue the same kind of previously prohibited questioning of Person 2 (beyond showing that he had previously counseled Leadman Person 1 about his behavior toward other workers), all of which suggests that the questions had little real importance to our dispute. We

simply know too little about this issue to justify something so significant as to dismiss or abrogate the Employee's discharge, as the Union asks, even though one is naturally taken aback and troubled at the kind of blanket prohibition on questioning of a percipient and strategic witness, namely, Person 2, that Person 6 seems to have imposed.

B. The Rule 5 Violation.

There is no reason to falter at how the Employer emphasizes the importance of Rule 5, which prohibits real or attempted assaults, intimidation, or threats to supervisors and management. Rule 5 does go to the heart of the employment relationship, and employees cannot be allowed to engage in such detrimental, destructive, and disruptive conduct. As previous arbitrators have recognized for the Employer and Union, when employees engage in real threats it is not unreasonable for the Employer to summarily discharge them. See Case No. A19266-BOSMK (Eva Robins, October 13, 1988); Case No. A05361 EXO (Eva Robins, July 10, 1984); Case No. 31630 DCA (Nathan Cayton, December 2, 1971).

The basic parameters of scrutiny in this case are self evident. We must determine whether the Employee engaged in threatening or intimidating conduct toward Person 2 on February 21 within the context of Rule 5's prohibition. As this Arbitrator said in a similar situation in another recent case involving these parties (Case No.B12231-SFOTJ; August 30, 1996),

> The special severity attached with Rule 5 makes sense, because it concerns conduct going to the heart of the employment relationship. For one thing, it bans conduct which seriously undermines the ability to supervise an employee and to maintain discipline and decorum at the workplace. For another thing, it seeks to protect members of supervision from the kind of fear and revulsion experienced when threatened, assaulted, or intimidated by those they must supervise and direct. Finally, it seeks to clarify a line that employees may not cross, even though in the day-to-day work-world strains and conflicts between supervisors and their subordinates can and do arise.

> But, it is important to remember that Rule 5 addresses specific conduct--namely, that which is threatening, assaultive, or intimidating. It does not, for example, sweep within its reach other disrespectful or disruptive acts, or acts such as "[u]sing abusive or offensive language" toward a supervisor, as is specifically addressed under Rule 36, a rule whose violation is consigned more to progressive discipline, not summary discharge. As a long-time employee, indeed a 28-year employee, the Employee is entitled to a full, careful, and objective evaluation of whether he breached the serious prohibitions found in Rule 5. While one should not be overly technical or abstract in performing such an evaluation, one also should not ignore what Rule 5 is essentially aimed at or incautiously or inadvertently convert disruptive, profane, insulting, or unnerving conduct into threatening, assaultive, or intimidating conduct.

Despite the Employer's strenuous views, the core factual issue involved in our dispute is not easy to resolve. However, we can, at least up to a reasonable point, take Person 2's claim seriously that he considered the Employee's remark to him that "it's because of things like this that that supervisor and co-worker were killed over there" to be a threat of death. Acting apparently upon his fears, Person 2 the following day contacted and consulted the local police and the Employer's security personnel, and subsequently changed his work patterns and a door lock. These features contiguous to the Employee's utterance tend to confirm that Person 2 felt threatened by the Employee's remark. But, Person 2's personal reaction to the Employee's utterance cannot alone serve as the test of whether the Employee's remark constituted a threat under Rule 5. One person's subjectivity cannot alone determine a more objective matter, particularly when it seems exaggerated, as Person 2's reaction appears to have been.

What are the features connected with the Employee's utterance? We know that after Person 2 began to explain that he was disciplining the Employee for his conduct on February 6, the Employee left his office, stormed around the locker-room (though it hardly can be imagined that this went on for some 10 minutes, as Person 2 says), slammed some locker doors, and yelled about the discipline being "bullshit." While this behavior was improper and is not to be condoned, it is noteworthy that he engaged in it not before Person 2, but in another room,

completely out of view. When the Employee returned with Person 5 to the office, he no longer engaged in profanity and, it appears, he was no longer yelling. Person 2's descriptions say he then spoke loudly and aggressively or that he was "very loud, rude and aggressive" about why the proposed discipline was wrong, why he was the wrong person to receive it. Clearly, the Employee was angry and frustrated at being disciplined for something he believed was the fault of someone else, Person 1, about whom the Employee claims he had previously complained to Person 2 and received no satisfaction. While it is surely unpleasant and uncomfortable to deal with the kind of anger shown by the Employee, he was engaged in a disciplinary process and one cannot always expect that the participants remain calm and collected.[7]

It was in this frustrated, angry context that the Employee then uttered his remark about the recent shooting at different, nearby Employer. Now, argue as one might, this remark did not, on its face, contain a direct threat toward Person 2. Nor is it very evident that it contained an implicit threat. It was a statement as consistent with being an expression of frustration or with being a frustrated reference to some commonly known tragedy offered to encapsulate the speaker's frustration and anger. It is not at all difficult to imagine someone voicing such a frustrated image without any thought on his or her part to convey a threat or to intimidate.

Had the matter ended there, however, perhaps one might still be tempted to infer a threat from the Employee's remark, despite its indirectness and ambiguity, but it did not end there. Person 2 immediately responded to the remark by calling it a threat and turning to Person 5 as his witness. Just as immediately, and in apparently genuine response to Person 2's reaction, the Employee

[7] While one cannot condone the Employee's level of frustration or its manifestation, our evidence does suggest some reasonable basis for it. While we have only his side of the story, it appears that Person 1 engaged in belligerent or demeaning conduct toward him and it appears, as well, that the Employee sought Person 2's help. Likewise, he sought help from the employee assistance program. In this connection, despite what Person 2 was told by Person 3 from the assistance program (which we know only through single and/or double hearsay), the Employee's previous conduct had manifested anger and frustration but no particular violence.

repeatedly offered that he was not threatening the supervisor and/or that he had no intent to threaten him. In repeating his assurances, the Employee was conciliatory. While we must be careful to protect supervisors from threatening remarks, the remarks here in issue should not and cannot be lifted out of their context and what immediately followed and was a part of them. As an objective matter, regardless of what Person 2 spontaneously thought about the Employee's utterance about the recent shooting, the Employee immediately, not some time later with hindsight, did as much anyone could do to reassure him that no threat was meant or intended. By immediately repeating his assurances, in an apparently genuine and sincere manner, the Employee effectively removed his ambiguous remark as a possible threat. And after that, there was nothing menacing or threatening about his conduct and he left peacefully and willingly.

It is always upsetting when confronted by expressions of anger and frustration which breach the rules of civility. But, they do occur, and normally people becalm themselves, continue to get along, go back to their jobs or proceed with their family-life. Rule 5, it would seem, was meant to summarily eliminate those offering real threats or intimidation to supervision, not those whose uncontrolled outbursts, while most discomforting and unnerving, can and should be controlled with lesser, progressive discipline to correct the misbehavior.

While this Arbitrator is sensitive to the Employer's view that the Employee's remark constituted a threat to Person 2, and while that view is deserving of significant respect, a fair, objective appraisal of the remark in its context precludes this Arbitrator from agreeing with that view. This being a case of serious discipline, the Employer still has the burden to adequately prove its charge, and in this matter our proof fails to convincingly demonstrate that the Employee engaged in threatening conduct. Accordingly, it is concluded that the Employee did not violate Rule 5 by his conduct on February 21 and should not have been discharged for it. He was, however, guilty

of using abusive and offensive language toward and around Person 2, a violation of Rule 36, and was deserving of a disciplinary suspension.[8]

AWARD

The grievance is sustained. The Employee's discharge was not for just cause. He is to be offered reinstatement to his former position in City 2 or other mutually satisfactory place, without loss of seniority, and except for a period of one month, the Employee is to be reimbursed his lost wages and benefits, less his interim earnings during the same period. That one month shall be deemed a disciplinary suspension. As a condition of his reinstatement, the Employee is to seek employee assistance counseling and is to continue that counseling until the counselor feels it unnecessary.

[8] Because the Employee evidenced several times in his last weeks of work in City 2 a level of meaningful frustration or anger, which perhaps reflects that his attitude needs attention, he should address this concern through the Employer's employee assistance program. He must realize that profane, abusive conduct toward others is unacceptable in the workplace, no matter how frustrated he may feel, and he must take steps to overcome any kind of frustration causing discomfort to his co-workers.
Working among a large workforce is no place in which to periodically engage in outbursts. As a condition to and as a part of the Employee's reinstatement he shall need to pursue employee assistance help, until his counselor or therapist feels it unnecessary.