IN RE ARBITRATION BETWEEN:

IGUA, LOCAL 172

And

HONEYWELL FEDERAL MANUFACTURING AND TECHNOLOGIES

DECISION AND AWARD OF ARBITRATOR

FMCS CASE 250822-09018

JEFFREY W. JACOBS

ARBITRATOR
7300 Metro Blvd. #300
Edina, MN 55439
Telephone 952-897-1707
E-mail: jjacobs@wilkersonhegna.com

June 9, 2026

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IGUA, # 172

DECISION AND AWARD OF ARBITRATOR

And

FMCS 250822-09018

Mark Sample grievance

Honeywell Federal Manufacturing and Technologies

APPEARANCES:

FOR THE UNION:	**FOR THE EMPLOYER**
Scott Kamins, Attorney for the Union	Mary-Ann Czak, Attorney for the Company
Mark Sample, grievant	Trecia Moore, Attorney for the Company
Ryan Edwards, Security Police Officer	Nick Jones, Security Police Officer
Samuel Haggard, Security Police Officer	Meghan Mohler, former HR Manager
	Bryan Gomez, Sr. Security Manager
	Mark LaBeau, Ph.D. Expert Witness

PRELIMINARY STATEMENT

The hearing was held at the Employer's facility in Kansas City, MO, March 24, 2026. The parties submitted briefs on May 29, 2026, and the record official closed at that time.

CONTRACTUAL JURISDICTION

The parties are signatory to a collective bargaining Agreement, CBA, effective February 16, 2023, through August 2, 2027. Article 7 provides for the grievance procedure. There were no procedural arbitrability issues raised, and the matter was properly before the arbitrator. The arbitrator was selected from a list provided by the FMCS.

ISSUE

Did the Company have just cause to terminate the grievant and if not, what shall be the remedy?

RELEVANT CONTRACT PROVISIONS

ARTICLE 4 MANAGEMENT

Except as specifically limited by this Agreement, the management of the Company and the direction of the working forces, including but not limited to the location of plants, any increase or decrease in the work force, scheduling of hours and shifts, the scheduling of overtime, the assignment of duties and post, methods and means by which this facility shall be protected, the right to hire, establish new jobs, promote, demote and transfer employees, to establish rules of conduct, to discharge or discipline for just cause, and to maintain discipline and efficiency of employees, are the sole and exclusive rights and responsibilities of the Company.

ARTICLE 7 GRIEVANCE PROCEDURE (selected provisions)

STEP FOUR - Selection of an Arbitrator

The arbitrator shall have no power to add to, subtract from, or modify any of the terms of this Agreement, or any other terms made supplemental hereto, or to arbitrate any matter not specifically provided for by this Agreement, or to arbitrate any new provisions into this Agreement. The arbitrator shall have no power to establish new or change the existing wage rate structure or establish new or change existing job content. The arbitrator shall render a decision in writing to both parties within thirty (30) days after the close of the hearing or receipt of the transcript, whichever is later. There shall be no appeal from the arbitrator's decision, which shall be final and binding on the Company, the Union, and the employees.

Costs pertaining to arbitration proceedings shall be shared equally by the Union and the Company except that, if either party desires a transcript, costs thereof shall be borne by the party requiring the same.

In disciplinary layoff and discharge cases, the arbitrator shall have the power to adjudge the guilt or innocence of the employee involved and review any penalties imposed and modify or amend penalties. If in the arbitrator's judgment the penalty is too severe. Any backpay awarded to an employee by arbitrator shall be reduced by any payments derived from Article 10(C), the amount of money the employee received from other employment during the time they were off (beyond employment/ earnings already earned in other employment before the employee was terminated if the employee has filed out the Company conflict of interest legal review for and provided notification of additional employment), including self-employment, Unemployment Compensation, Workers Compensation, and less pay for any time during the period when the employee would normally not have been working.

ARTICLE 18 DISCIPLINE AND DISCHARGE

A. The Company may discipline, suspend, or discharge any employee for just cause. A suspended or discharged employee may, upon their request, be permitted to see their steward before leaving the plant.

B. Any written record of discipline which is issued to an employee and is made part of the employee's file will be removed from the employee's file after a period of eighteen (18) months has elapsed from the date the latest written discipline was issued to that employee, upon receipt of a request of the employee that it be removed.

RELEVANT POLICY PROVISIONS - FROM CODE OF BUSINESS CONDUCT

SUBSTANCE ABUSE

Substance abuse limits our ability to do or work safely, which puts us all in jeopardy. For this reason, we may never work on behalf of Honeywell while under the influence of alcohol, illegal drugs, misused prescription drugs, or over-the-counter medications. This applies whenever you are performing services for, or on behalf of Honeywell, even if the use occurs after hours or off Company premises. …

1.2 Potential Discipline

Covered Employees who violate this policy will be subject to discipline up to and including discharge. Covered employees who are under the influence of drugs or alcohol on Company premises or while conducting business may be disciplined with or without confirming tests. Employees who plead guilty to or who are convicted or driving while under the influence of alcohol or drugs in the course of duty will be subject to discharge.

2.2 Working under the Influence

Covered Employees may not be under the influence of illegal drugs or alcohol while on Company property or on Company business.

8.5 Reasonable Suspicion testing

A drug and/or alcohol test may be required where (i) there is a reasonable suspicion that a Covered employee is under the influence of alcohol or drugs while on Company property or on Company business, and (ii) there is the reasonable prospect of impaired job performance. Reasonable suspicion testing must be based on the observation of an impaired condition or other circumstances by a member of management or a human resources representative who has been trained to make such observations reliably. Two or more supervisory or management officials, at least one of whom is in the direct chain of supervision of the employee or who is a licensed health care professional from the Medical Department, must agree that such testing is appropriate.

9.2 Alcohol Tests

9.2.1 *Testing Designated Positions.* For Covered Employees working in a Testing Designated Position or positions that have been designated as Safety Sensitive Positions either by Law or a business or site policy), a confirming breath alcohol level of .02 or greater will be considered a positive test result. Covered Employees working in Testing Designated Positions or positions designated as Safety Sensitive Positions whose confirmed breath alcohol level is from .02 to .039 must be removed form duty until they test negative for alcohol. Covered Employees working in Testing Designated Positions or positions designated as Safety Sensitive Positions whose confirmed breath alcohol level is .04 or greater must be removed from duty and may be subject to discipline including termination of employment, without offering the opportunity for assessment and rehabilitation.

RELEVANT SELECTED PROVISIONS FROM EXHIBITS[1]

COMPANY EXHIBIT 2 - 1st Checklist: - eyes watery; no alcoholic odor; employee drinking coffee, stated he did use mouthwash. 2nd checklist: Had some redness,; no alcoholic odor; neat appearance, cooperative calm, polite, grievant appeared calm and willing to cooperate with the testing. He stated that he had been on a date the night before. Grievant was confident that his test would be negative and he was willing to cooperate with all testing.

COMPANY EXHIBIT 7 - Protective Force Command Officer Orders - CO GO 01 General Duties[2]

6 Fit For Duty

6.1 If at any time it is believed a SPO is physically or mentally unable to perform their duties (due to intoxication, drugged, extreme fatigue, etc.), the Command Officer will refuse to issue equipment and/or provide relief for the SPO.

6.2 The Command Officer will meet with the SPO and Union representative to discuss their apparent condition.

6.3 If it is determined the officer is not fit for duty, the Command Officer will escort the individual to Medical.

[1] All exhibits were reviewed including Mr. Jones' interview regarding his observations of the grievant on 06-11-2025.

[2] As discussed herein, the provisions of the policy regarding Protective Force Command Officers, Company Exhibit 7, was not considered germane to this discussion as it was clear from the record that the grievant is not a protective Force Command Officer. Thus, that policy did not apply to the grievant per se but provided the protocol for Command officers to deal with a situation where an officer is suspected of drug or alcohol use.

6.3.1 During non-business hours, the Command Officer may contact medical personnel at home.

6.3.2 If medical personnel or the Command Officer determines the officer is not fit for duty, the Command Officer will inform the officer that he/she had been relieved of duties.

6.3.3 If the individual has been relieved of duty because of the use of alcohol or drugs, the Command Officer will obtain the officer's ID badge and escort the officer out of the facility.

6.3.4 Command Officer will make an attempt to call someone to drive the individual home or contact a taxi at the employee's expense.

COMPANY EXHIBIT 9 - Protective Force officers are prohibited from consuming alcohol a least 8 hours prior to shift, or from taking any prescription medication that impacts their ability to carry a firearm or perform their duties. Anyone who feels unfit to perform the upcoming tour of duty, for any reason including impairment, fatigue, etc., must notify a command officer immediately.

COMPANY EXHIBIT 10 - Result of alcohol test done by LifeLoc technologies June 11, 2025: BAC of .019. Time 8:32.

COMPANY EXHIBIT 11 - Narrative from Dr Zhong from testing done 3-19-25 - Checked "yes" to certification that "the Applicant or incumbent BRS SPO meets medical standards as contained in 10 CFR part 1046.13 and can perform the essential functions found in our site specific JA/METL and 1046.11 without being a danger to themselves or others." Also, checked "yes" to the certification that "Applicant or Incumbetnt BRS SPO has a reasonable expectation of being able to meet the applicable on site- specific and 10 CFR 1046 FPRS and BRS readiness standards."

PARTIES' POSITIONS

COMPANY'S POSITION

The Company took the position that there was just cause for the grievant's termination in this matter. In support of this position the Company made the following contentions:

1. The Company asserted throughout the process that it cannot and should never have to tolerate any employee who is impaired or under the influence of drugs or alcohol, especially not one who carries a firearm as part of their job.

2. The Company also asserted that any amount of alcohol in a police officer's system is "fundamentally incompatible with Honeywell's mission, its policies, and federal regulatory expectations," despite the stated policies set forth above.

3. The Company pointed to the sensitive nature of the products and manufacturing facility at the plant at which the grievant worked and the need to be absolute certain that the employees charged with maintaining security are fully capable of performing the essential functions of their jobs and are never impaired or physically compromised in any way due to drugs or alcohol.

4. The Company pointed to the requirements and regulations set forth in 10 CFR 1046.11 (b) et seq., and asserted that the grievant was authorized to carry a firearm as part of his job and to use deadly force as a result. Those regulations require that Security Police officers, SPO's, be able to perform the essential functions of their jobs 100% of the time. Those functions include:

> control of voluntary motor functions, strength, range of motion, neuromuscular coordination, stamina, and dexterity needed to meet physical demands associated with routine and emergency situations of the job;
>
> the ability to maintain the mental alertness necessary to perform all essential functions without posing a direct threat to self or others; the ability to understand and share essential, accurate communication by written, spoken, audible, visible, or other signals while using required protective equipment;
>
> the ability to Safely operate motor vehicles when their use is required by local missions and duty assignments; to use weaponless self-defense and;
>
> the ability to make that decision; the ability to safely use tools and weapons as required, and to use deadly force, and;
>
> to perform complex tasks, make life or death and other critical decisions, and take appropriate actions under confusing, stressful conditions including potentially life-threatening environments throughout the duration of emergency situations.

5. The Company also noted that these regulations also require that a SPO be able to safely operate an armored vehicle, provide interdiction, Interruption, neutralization and support the recapture of assets. A SPO must therefore be able to protect the assets, personnel, information and nuclear weapons and components and to protect and defend the site against all threats, including a violent assault. The Company asserted that any impairment creates an unsafe and potentially deadly risk that it simply cannot tolerate or ignore.

6. The Company outlined the procedures when SPO's appear for work, including a daily briefing and which includes the Fitness for Duty advisory that includes the statement, set forth above regarding the use or consumption of alcohol within 8 hours of the commencement of their shift. SPO's are required to acknowledge that requirement and state that they are in compliance with it.

7. The Company noted too that an officer can report that they may be impaired and that there are no disciplinary consequences for reporting that. Mr. Gomez characterized it as a "no harm, no foul" situation and that it is both appropriate and acceptable for an officer to claim that they are not fit for duty for any reason. The grievant failed to do that in this case, as discussed below.

8. The Company also cited the Code of Business Conduct rules, set forth above, and asserted that it is clear that SPO's may never work while under the influence of alcohol or drugs and that the grievant acknowledged receipt of a copy of those rules and that he understood them. See also, Policies regarding Drugs and Alcohol in the Workplace, #'s 1.2, 2.2 and 8.5, also set forth above. The Company pointed to those as clear notice to employees that any impairment may be grounds for discipline up to and including discharge.

9. The Company also acknowledged the test of Rule 9.2.1 set forth above, but asserted that contrary to the statements there, nothing prevents the Company from taking disciplinary action based on a confirmed breath test result of a level lower than .019 BAC. That policy does not state nor imply that a BAC detected below that level is immune from discipline or otherwise acceptable for employees in Testing Designated or Safety-Sensitive Positions, including armed police officers.

10. The Company also pointed to the Protective Force Command Officer Orders. Company Exhibit 7 and noted that it provides a clear procedure to determine fitness for duty when a Command officer believes that a SPO is suspected of drug or alcohol impairment. See above for a recitation of that policy. The Company asserted that this policy also clearly shows what the policy is and that the Company followed it correctly in this instance.

11. The Company turned to June 11, 2025, and noted that the grievant appeared for work and a co-worker clearly detected the odor of alcohol on the grievant's breath. The Company asserted that this alone was enough to warrant a reasonable suspicion test to determine if the grievant was in fact fit for duty on June 11, 2025.

12. The Company also noted that the person who noticed that odor was a co-worker and a personal friend of the grievant, yet he acted appropriately and reported his suspicions to a supervisor.

13. The grievant appeared at approximately 6:10 a.m. for is shift that started at 6:18 and at approximately 6:56 a.m. Mr. Jones, a Union official and the grievant's friend, as noted, detected the odor of alcohol, and immediately reported that. Upon being notified of Mr. Jones' concerns a Captain ordered two Lieutenants to meet with the grievant to assess his condition. The Company noted that both saw that the grievant's eyes were red and watery and concluded that there was reasonable suspicion for a test to see if there was alcohol or drugs in the grievant's system. See Reasonable Suspicion checklists. Company exbibit 2.

14. The grievant submitted to a breath test at 8:32 a.m. which showed a BAC of .019. As discussed above, the Company asserted that despite this level, and the testimony of their expert, the grievant's BAC was likely far higher than .02 when he appeared for work more than 2 hours earlier.

15. The Company asserted that Dr LaBeau's expertise and testimony showed that the grievant's BAC had to have been higher than the .020 cut off in Rule 9.2.1 at 6:10 when he appeared for work and was issued his gear, which included a firearm. Mr. LaBeau referenced the Widmark calculation and opined that the standard elimination range for an adult male of alcohol is between .010 and .025 grams of alcohol per hour. The grievant's test was 2 hours after he was at work, which must lead to the conclusion that he must have had more than .020 BAC in his system when he was at work.

16. The Company asserted that despite the grievant's claim that he did not consume alcohol within 8 hours of the beginning of his shift that cannot be credited as credible. The grievant claimed that he consumed 6 alcoholic drinks - both beer and mixed drinks but stopped at around 9:30 p.m. The Company asserted that this was unlikely and that grievant may not have been truthful.

17. The Company discounted the grievant's claimed so-called G6PD condition that he asserted affected his red blood cells and may therefore have affected the rate at which his body metabolizes alcohol. The Union provided no evidence other than the grievant's statement about this, and certainly no expert witness testimony to corroborate that claim.

18. Further, he never claimed any disability in any of his prior statements to the Company, including the Company's doctor who examined him in March 2025 It must therefore be discounted as fanciful and a mere attempt to divert attention from the science as testified to by Dr. LaBeau.

19. The Company further asserted that it carefully considered the grievant's situation, his length of service and the totality of the circumstances, including that he was likely impaired while on duty, while armed, and concluded that termination was the only appropriate action to take.

20. The Company asserted that it met all relevant tests for establishing just cause. It followed the pertinent policies for conducting the reasonable suspicion test, and determined that the grievant was guilty of having alcohol in his system based on a test that showed at least .019 BAC while he was on duty. It further determined that termination was appropriate.

21. The Company reiterated the policy that a SPO may never work while under the influence and that despite the policy statement of Rule 9.2.1, it has the right to discharge even where the BAC does not rise above .020. The Company asserted that based on the science, it must be concluded with that the grievant had a BAC far higher than .019 and that he was likely being untruthful when he claimed he had not consumed alcohol within 8 hours of the beginning of his shift.

22. The Company asserted that there was no Weingarten violation on these facts. The grievant had a steward with him at all times relevant and the mere fact that the two lieutenants continued to observe him for a short time until the steward appeared did not constitute a violation of the grievant's Weingarten rights. There is nothing in the CBA or under law that requires the Company to provide a steward prior to conducting any sort of investigation at all, especially in this situation where time was critical.

23. Further, there was no reason for the grievant to believe that the brief conversation between himself and the two lieutenants would result in discipline. This was best characterized as a shop floor conversation or "small talk," and as such Weingarten does not apply. See, *Southwestern Bell Telephone Co*., 338 NLRB 552, 552 (2002) and *General Elec. Co.*, 240 NLRB 479, 480 (1979).

24. There was also no violation of the grievant's HIPAA rights in sharing medical information with the laboratory that performed the test. The Medical Examination form and breath alcohol test result were created in Honeywell's capacity as an employer and not as a plan administrator. The purpose of the Medical Examination is to ensure the SPO is fit for duty and can perform the essential functions of the position required by 10 CFR Part 1046, thereby confirming its employment-related purpose. Accordingly, the grievant's health information is not protected under HIPAA and Honeywell did not violate the law when it disclosed the information to its BAC expert in preparation for the underlying proceeding.

25. The Company asserted finally that the grievant cannot be reinstated on these facts. The Company cited arbitrator Whitley McCoy for the proposition that "where an employee has violated a rule or engaged in conduct meriting disciplinary action, it is primarily the function of management to decide upon the proper penalty. … The mere fact management has imposed a somewhat different penalty or a somewhat more severe penalty than the arbitrator would have, if he had had the decision to make originally, is no justification for changing it…." *Stockham Fitting*, LA 160 (McCoy 1945).

26. Here it was clear that the grievant violated clear policy and that the arbitrator is not justified or empowered to alter that reasonable management decision. Reinstatement would send a very dangerous message that one can be impaired and still be trusted with a firearm to protect the people and the facility. The discharge should stand and not be disturbed.

The Company seeks an award denying the grievance in its entirety.

UNION'S POSITION:

The Union took the position that there was not just cause for the grievant's termination. In support of this the Union made the following contentions:

1. The Union first pointed to the grievant's long history of service both to the Company and in the military. There was no evidence of prior discipline in the grievant's file and no indication that he has ever been untruthful or that he has ever worked in an impaired state.

2. The Union first asserted that the test was not reasonable and not based on reasonable suspicion. The Union acknowledged that Mr. Jones believed in good faith that he smelled the odor of alcohol on the grievant's breath and reported; as he was required to. However there was no evidence of anything unusual or "off" about the grievant's behavior that day and no indication that the grievant was impaired in any way.

3. The Union noted that the two lieutenants were sent to observe the grievant's behavior and both filled out the checklist and neither noticed any odor of alcohol on the grievant's breath, even though they met with him within a few minutes of when Mr. Jones had. They noticed the grievant had some redness in his eyes and that his eyes were watery but noticed no other signs of impairment. To the contrary they both observed the grievant to be calm and cooperative and more than willing to engage in the testing process. He was observed calmly drinking coffee and there was no evidence at all of any impairment or that the grievant was unable to perform the essential functions of his job.

4. The Union pointed to the policy on reasonable suspicion which provides as follows:

> "Reasonable suspicion testing must be based on the observation of an impaired condition or other circumstances by a member of management or a Human Resources representative who has been trained to make such observations reliably. Two or more supervisory or management officials, at least one of whom is in the direct chain of supervision of the employee or is a licensed health care professional from the Medical Department, must agree that such testing is appropriate." See Mohler testimony.

5. Thus, for the test to be per that policy, it needed to be determined by two supervisory officials, at least one of whom was required to be in the grievant's direct chain of command. There was no member of management there or Human Resources representative present. The Company simply violated its own policy.

6. The Union further asserted that the evidence requires that a negative inference be drawn against the Company since neither of the two lieutenants who observed the grievant that day and upon whose checklist the test was required were called to testify.

7. The Union cited multiple sources, including Hill & Sinicropi, *Evidence in Arbitration* (BNA 2d Ed. 1987); Elkouri & Elkouri, *How Arbitration Works* BNA 6th Ed. 2003) @ pages 381-382; *Smith's Food and Drug Centers,* 129 LA 1384 (Jennings, 2011) *National Carbide Co.,* 27 LA 128 (W, 1956); *Piscataway Township Board of Education,* 74 LA 1107 (1980); *Vickers Petroleum Corp*., 73 LA 623 (1979); *Shop Rite Foods, Inc*., 75 LA 625, 628; *Ionia County Rd. Comm'n*, 139 LA 771 (Hornberger, 2019); *Casino Spas and Resort*, 2019 LA 82 (Perea, 2019)-and *Airco Alloys and Carbide*, 63 LA 395 (1974) for the proposition that it is an established rule of evidence that an arbitrator may draw a negative inference from a party's failure to produce evidence under its control and is available to it.

8. Both of those lieutenants could have been called to give further evidence of what they actually observed, and the Union asserted that the fact that they were not called leads to an inference that their testimony would not have supported the Company's case and would not have supported the reasonable suspicion test that was done that day. The failure to call them is a fatal flaw in the Company's case.

9. The Union also noted that Officer Edwards was assigned to take the grievant home after the test and that he observed no impairment or odor of alcohol on the grievant's breath either. Moreover, Officer Haggard sat directly next to the grievant that morning at the regular officer meeting and noticed no evidence of odor or of impairment at all.

10. Thus, there was no reason to believe that the grievant was under the influence or impaired in any way. The grievant should never have been tested at all since there was no reasonable suspicion based on the totality of the record.

11. The Union also asserted that the Company's analysis of this case is fatally flawed since the grievant tested below the threshold for any discipline at all. It was clear that he tested at .019 BAC, See Company exhibit 10. That policy simply requires that the grievant be sent immediately back to work, yet Ms. Mohler, the former HR Manager, decide to abrogate the policy and recommend that the grievant be arbitrarily terminated despite the clear policy that provided otherwise.

12. The Union noted that Mr. Gomez did essentially the same thing and further acted contrary to the clear policy and made the decision to terminate the grievant despite no evidence of impairment and no evidence of a violation of the policy. This was a fatal flaw in the Company's case.

13. The Union asserted throughout the process that the grievant was fired for violating the Drug and Alcohol policy even though there was no evidence at all that he violated it. The Union noted that if a person's BAC is between .02 and .039 the policy clearly states that a person is to be removed from work until they test negative - there is no disciplinary consequence.

14. The Union asserted most adamantly that the grievant did not violate the Drug and Alcohol policy, as discussed herein. He tested well below the .019 standard and even if one assumes that it may have been higher than that there was no evidence whatsoever that it exceeded the policy .039 level calling for any discipline at all.

15. Thus, the notion that there is essentially a zero tolerance policy in place is contrary to the policy itself. The policy allows for some alcohol to be in an employee's system without any consequences. Here, the .019 BAC level would not result in any consequences at all and the arbitrary action by the Company is contrary to well-established notions of notice and due process.

16. The Union noted that one of the fundamental principles in any just cause analysis is whether the employer has provided adequate notice to the employees of the consequences of certain behavior. Yet here, the Company admitted that the policy does not provide that testing at .019 will result in the employee being fired, or even disciplined in any way. See Mohler testimony at page 71.

17. Here the notice provided to employee through the Company's own policy clearly allows for some alcohol use and some alcohol to be in a person's system without any disciplinary consequences. The Union asserted that the Company cannot arbitrarily decide through a lower level HR person that the policy does not or should not apply and apply it in a manner patently contrary to its terms. Such an action undermines the notion that notice is required.

18. The Union also asserted that the Command Officers General Orders 01 do not apply here as the grievant is not a Command Officer. Ms. Mohler admitted that she was unaware of that order, nor did she even know what it was. She was also not aware that the grievant was even aware of it. See tr at 83-84. This too was yet another fatal flaw in the Company's case and is once again indicative of the lack of due process applied in this case.

19. Regarding the allegation that the grievant violated CFR 1046, Ms. Mohler also acknowledged that she had no idea what the grievant did to violate it, or even where in this over 100 page document she was referencing in his termination. See, Tr. at pages 89-92. She further admitted that was unaware if the grievant was ever told that violation of this CFR code could result in discharge, or whether he was ever provided with this document. See, Tr. at pages 93-94. The Union pointed to this as yet another example of the Company's bungling and failure to prove the basis for the discharge.

20. The Union noted that the Company accused the grievant of 5 separate violations of policy and has a heavy burden to prove all of them to support its case for termination. As noted above, the Union asserted that the Company was able to prove literally none of them.

21. The Union cited multiple prior arbitration decisions, including, *Harbison-Walker Refractories Company*, 119 LA 624 (Fowler, 2003), *Tenneco Automotive, Inc*., 2005 LA Supp. 111218 (Hanft, 2005); *Harrison-Walker*, 119 LA 624, 628 (2003) and *Argonne National Laboratory*, 95 LA 543, 551 (1990) for the general proposition that when an employer seeks to rely on multiple reasons to justify discipline or discharge it must prove each and every one of those allegations to prevail. Here, as noted, the Company not only failed to establish any policy violations but also admitted that several of the allegations, as discussed above, did not even apply to the grievant. These "errors" were not minor in nature and undermined the Company's case.

22. The Union pointed to yet another "mistake" in the Company's case and noted that the termination letter accuses the grievant of violating Missouri Law 571.030 even though Mr. Gomez admitted at the hearing that the law did not apply to the grievant. The Union pointed to this, and other examples of mistakes made, and errors committed in applying the policies in place and making accusations against the grievant which were clearly unsupported by the evidence. Tr. at page 183-184.

23. The Union noted what it called yet another fatal flaw in that neither Mr. Gomez nor Ms. Mohler ever actually spoke with the grievant before firing him. This lack of a fair investigation was also a fatal flaw in the Company's case according to the Union and demonstrated arbitrary and capricious action; also in violation of the principles of just cause and due process.

24. The Union cited *IAM*, 2015 LA Supp. 199166 (Eischen, 2015) and *Decor Corp*. *and Allied Industrial Workers*, , 44 LA 389 (Kates 1965) for the proposition that "the Arbitrator's inquiry is not limited to whether the grievant committed the misconduct of which s/he stands accused. … Even where a transgression has been factually demonstrated, it is well established by authoritative precedent that disciplinary action must also meet the requirements of industrial due process before an arbitrator will find that it was for proper cause."

25. Here there was "scarcely an investigation at all, according to the Union. The two lieutenants who observed the grievant on June 11th made no indication that he was impaired yet the managers who decide the grievant's fate never met with him, never checked to see if he actually violated the policy and arbitrarily changed the policy to result in his discharge.

26. The Union assailed the conclusions reached by Dr. LaBeau and noted that he was unable to testify with any degree of certainty that the grievant's BAC was anywhere near the .039 cutoff for any discipline to be imposed. All Dr. LaBeau could opine about, even if one accepts his entire testimony as credible and accurate is that the BAC may have been "higher" than .019 at 6:10 a.m. but there was no evidence that it was higher than ,040. Further, there may well have been a violation of HIPAA by giving access to the grievant's record without his consent.

27. Further, the grievant has a medical condition that could well affect his ability to metabolize alcohol, yet Dr. LaBeau was unaware of that or how it might have affected his assumptions about the level of alcohol in the grievant's system at any time relevant on June 11, 2025. Tr. at pages 267, 271-272.

28. The essence of the Union's case is that there was a comedy of errors made here that were fatal to the Company's case. There was no reasonable suspicion for the test, there was a violation of Weingarten rights, a violation of HIPAA in giving medical records to an outside expert without the grievant's consent, no showing of a violation of the applicable policies and an arbitrary and capricious imposition of discharge even though there was no violation of any of the applicable policies.

The Union seeks an award sustaining the grievance and order that the grievant be reinstated with full seniority, back-pay and benefits paid for the time he was improperly out until he is returned full time, and that its costs and attorneys' fees be awarded. The Union also requests that the Arbitrator retain jurisdiction until all aspects of the remedy have been fully implemented.

MEMORANDUM AND DISCUSSION

FACTUAL BACKGROUND

The operative facts giving rise to the termination and this grievance were straightforward and in many ways undisputed. However, that said, the analysis of the case was far more complicated than it might at first appear.

The Company is the management and operating contractor of the Kansas City National Security Campus for the Department of Energy's National Nuclear Security Administration. The NNSA is the federal agency responsible for the nuclear weapons mission of the United States. The facility does not manufacture nuclear weapons per se but does apparently manufacture certain component parts for nuclear weapons in the US arsenal. It is a secure facility and one that requires a security force to safeguard not only the facility and equipment, but also the personnel and various secure information relative to the Company's mission. As noted above, there are requirements for he security officers regarding their role as outlined in those various rules and regulations.

The grievant is a Security Police Officer authorized to carry a firearm and to potentially use deadly force in his role as a SPO. He has been with the Company since 2017 and there was no evidence of any prior discipline on his record. There was also no evidence of any prior issues or problems with the grievant's use of alcohol nor any indication that he has ever been untruthful in any of his dealing with the Company. The grievant was responsible for providing armed security, responding to alarms, and handling security incidents. He has also served as the Union Treasurer. He is a military veteran and has served with distinction in that capacity.

The events leading to this case occurred on the morning of June 11, 2025. Prior to that day the grievant had been on a date and consumed alcohol. He testified credibly that he had a steak at a local restaurant and consumed a mixed drink there.

He left the restaurant and went to his friend's home where he drank 2 light beers and perhaps a third of another one. He testified that he left the friend's home and had not consumed any more alcohol after 9:30. He arrived at his house at around 10:20 and went to bed by 10:30.

The following morning he arrived at work at 6:10 a.m. for his shift that was scheduled to start at 6:18. The evidence showed that he attended the regular morning meeting and that other officers who sat next to him testified that they detected no odor of alcohol on the grievant nor did they observe any unusual behavior nor actions that led them to believe that the grievant was in any way impaired by drugs or alcohol. See Haggard and Edwards testimony.

Later that same morning at approximate 6:56 Mr. Jones, who sat near the grievant, did detect what he thought was an odor of alcohol on the grievant's breath. He immediately reported his observation to a manager. See Company exhibit 1.

It was clear that the grievant and Mr. Jones are personal friends and there was no evidence that the report by Mr. Jones was anything other than a good faith belief that he smelled alcohol. He reported that due to his responsibility as an officer as well.

The HR Manager sent two lieutenants to observe the grievant's behavior and they filled out checklists, see, Company exhibit 2, indicating what they saw and observed. These checklists were done around 8:30 that day. The evidence showed that by this time the grievant was drinking coffee, which was not unusual in any way. Both lieutenants reported on the checklists that they did not smell an odor of alcohol on the grievant's breath.[3] One noted that the grievant's eyes were red and the other that his eyes were watery. There was no other indication of impairment by either lieutenant, and both also noted that the grievant was calm, cooperative, and more than willing to take a test.

[3] Ms. Mohler claimed in her testimony that one of the lieutenants had reported an odor of alcohol on the grievant's breath. Tr at 16. However, her testimony did not ring true as credible given the clear indication by that same lieutenant that he did not detect alcohol on the grievant's breath that day. As noted, the fact that neither of those employees testified served to create something of a negative inference regarding their testimony. On this record, the only person who reliably testified that there as nay odor of alcohol was Mr. Jones.

There was also clear evidence that neither of the two lieutenants who observed and were sent specifically to assess the grievant made any negative inferences or conclusions regarding the grievant's cognitive or mental abilities. See TR at page 180-181. It was further clear that Mr. Gomez never spoke to the grievant that day even though he was apparently just outside the area where the two lieutenants were with the grievant supposedly assessing his mental and physical abilities. See, Tr at 181-182. Yet 3 weeks later the Company determined to fire the grievant based solely on the alcohol that was found in his system even though that level constituted a negative test and even though no one made any negative comments about his fitness.

It was also clear that the company did not retain Dr. LaBeau to render his opinion regarding the BAC level until approximately 2 months prior to the hearing. It was thus clear that the company made its decision based not on a positive test for alcohol but rather on a negative test for alcohol under its own policy and without any evidence of impairment or a diminution of the grievant's ability to perform the essential functions of his job. This was significant evidence on this record.

The grievant asked for a Union steward who arrived approximately 10 minutes after the lieutenants began their conversations with the grievant that day. It was clear too that the lieutenants' presence there was not about making small talk, as the Company suggested, but was instead a deliberate effort by management to assess the grievant and was in essence an interrogation that could have led to possible discipline. It was not clear when the lieutenants made their observations about the grievant's eyes on this record, so it was not clear if that happened before the steward arrived or not It was noted that neither of the lieutenants were called as witnesses, even though there was no evidence that they were unavailable to testify directly as to their observations and conclusions about the grievant's demeanor or actions that day.

It was also not clear if two or more supervisory management officials employees at least one of whom was in the grievant's direct chain of command agreed that the test administered that day agreed that the test was appropriate. There was a paucity of evidence that any professional from the medical department was consulted before administering the test.

At any rate, the grievant agreed to the test and went to a lab where the test was administered. The BAC at that time, approximately 8:32, was .019 BAC. Based on that the grievant was suspended and sent home that day. The person who gave him a ride also indicated that he did not notice anything unusual about the grievant's demeanor or behavior nor did he smell alcohol on the grievant.

The evidence further showed that no one from the management or HR team met with the grievant prior to issuing the termination letter dated June 19, 2025. That letter read as follows:

> Effective June 19, 2025, your employment is being terminated. On June 11, 2025, an employee notified management at approximately 7:30 a.m. that they smelled alcohol on you. You were subjected to a drug and alcohol screening, and your breath alcohol content was recorded as .019. As a result, you are being terminated for violating the Honeywell Code of Business Conduct, Honeywell FM& T's Alcohol (sic) and Drugs in the Workplace Policy, Command Officers General Order 01, 10 CRF 1046 and Missouri Law 571.030.

The Union grieved that action, and the matter was processed through the appropriate steps of the grievance procedure to arbitration. As noted above the matter was properly before the arbitrator. It is against that general factual backdrop that further analysis of the matter proceeds.

REASONABLE SUSPICION TESTING

The first matter to decide is whether there was reasonable suspicion for the test in the first place. As noted, the initial report was an odor of alcohol on the grievant's breath. Mr. Jones testified that he in good faith smelled that and even though he and the grievant are friends, he performed his duty to report his observations to management. No other person who met with or was near the grievant that day reported any such odor and no one, including Mr. Jones, reported any unusual behavior by the grievant. There was no evidence of slurred speech, unusual behavior, or difficulty processing information , standing, or walking issues that one might expect from a person who is impaired.

The two lieutenants who were sent to observe the grievant also did not detect any odor of alcohol on the grievant's breath and, as noted, it was not clear if the process used to determine reasonable suspicion per the Company's policy was in fact properly followed.

The policy regarding conducting reasonable suspicion testing is quite specific and requires that "Reasonable suspicion testing must be based on the observation of an impaired condition or other circumstances by a member of management or a human resources representative who has been trained to make such observations reliably. Two or more supervisory or management officials, at least one of whom is in the direct chain of supervision of the employee or who is a licensed health care professional from the Medical Department, must agree that such testing is appropriate."

Assuming that the lieutenants were members of management, although it was not entirely clear since neither of them testified, the first part of the requirement would have been met. The second step though was to have two or more supervisory officials, one of whom is the direct chain of command or who is a licensed professional from the medical department must agree that the testing is appropriate.

It was not clear that the Company met the second portion of the requirement for reasonable suspicion testing since it was not clear that two or more supervisory officials agreed that the test was reasonable.

That said, the evidence showed that the grievant agreed to take the test and the Union steward was present when that decision was apparently made. Thus, on this unique record, the Company's case did not fail due to the assertion by the Union that the test should never have been done. As noted, the test came back with a BAC content of .019.

WEINGARTEN VIOLATION

The Union also made a reference to a potential Weingarten violation. That was a far more serious allegation and one that deserved considerable attention. The allegation stems form the case of *NLRB v. Weingarten, Inc.*, 420 U.S. 251 (1975).

That case essentially requires that employees who are about to be interviewed in an investigation that may lead to discipline must be given the right to Union representation. The Weingarten "rules" have been distilled to these:

> **Rule 1:** The employee must make a clear request for Union representation before or during the interview. The employee cannot be punished for making this request.
>
> **Rule 2:** After the employee makes the request, the employer must choose from among three options. The employer must: grant the request and delay questioning until the Union representative arrives and has a chance to consult privately with the employee; deny the request and end the interview immediately; or give the employee a choice of having the interview without representation or ending the interview.
>
> **Rule 3:** If the employer denies the request for Union representation, and continues to ask questions, it commits an unfair labor practice and the employee has a right to refuse to answer. The employer may not discipline the employee for such a refusal.
>
> NOTE – employees should be advised to not leave or refuse to meet even if the employer fails to honor the request for a steward. Leaving or refusing could be separately disciplined as insubordination in the face of a direct order to stay. They should though not say anything in that meeting, although any statements made there could likely not be used against them later in the absence of a Union representative.

Here the grievant requested and was granted a Union steward. It took 10 minutes for the steward to arrive and while that does not appear at first glance to be of great consequence, it was clear that all the while the two lieutenants were in effect interrogating the grievant and could well have used any statements he made during that time to support the discipline. They were also tacitly observing the grievant and those observations could not only have been used to discipline - but, frankly were. The checklists were used as the basis of the test, and the test was the basis of the discharge.

This was not a minor matter and one that could easily have been corrected by having the lieutenants wait outside for 10 minutes until the steward showed up.

Again though, the basis of this decision was based on the lack of evidence of any policy violations, as discussed below, and the clear errors that were made by management during all of this and the facts that at least 3 of the 5 allegations against the grievant in the termination letter of June 19, 2025, were shown not to even apply to him. The more serious problems arose in the application of the policy and the manner in which it was applied in this case.

JUST CAUSE ANALYSIS

As discussed more herein, the Company's position in ignoring and apparently dismissing the very policy it used to terminate the grievant was inconsistent with notions of industrial due process and just cause that have existed for decades. Having a Union contract with a just cause provision in it, as this one does, requires that the employer follow the process for establishing that there is a rule or policy violation that is shown by sufficient evidence, (here, by clear and convincing evidence[4]), and that discharge is appropriate after a fair and through investigation by the employer.

Arbitrators have for years used a series of "tests" to determine whether just cause exists for the imposition of discipline. Not all use them, but many still do and even if they do not, they provide a roadmap to see if the employer has provided adequate proof of the existence of just and proper cause for employee discipline.

These tests were first articulated by Arbitrator Carroll Daugherty in *Grief Bros. Cooperage*, 42 LA 555, 558 (1964). See also, *Enterprise Wire Co*., 46 LA 359 (Daugherty 1966). Professor Daugherty notes that a negative answer to any of these questions may well mean that there is insufficient cause for the discipline imposed. These tests are as follows:

1. Did the Company give to the employee forewarning or foreknowledge of the possible consequences of the employee's conduct?
2. Was the Company's rule or managerial order reasonably related to the orderly, efficient, and safe operation of the Company's business?
3. Did the Company, before administering the discipline to the employee make an effort to discover whether the employee did in fact violate or disobey a rule or order of management?
4. Was the Company's investigation fair and objective?

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[4] Regarding the quantum and burden of proof to be applied in such a case, Elkouri notes as follows:
"The quantum of proof required to support a decision to discipline or discharge an employee is unsettled. Arbitrators have primarily imposed one of three standards, listed below from the least to the greatest burden:

1. Preponderance of the evidence;
2. Clear and convincing evidence;
3. Evidence beyond a reasonable doubt

Concerning the quantum of required proof, many, if not most arbitrators apply the 'preponderance of the evidence "' standard to ordinary discipline and discharge cases. However, in cases involving criminal conduct or stigmatizing behavior, many arbitrators apply a higher burden of proof, typically a 'clear and convincing evidence 'standard,…"

Here given the nature of the offense and the dire consequences of the discipline imposed the standard used on this unique record was whether the Company showed by clear and convincing evidence that the grievant was impaired or under the influence of alcohol while on duty. As discussed herein, the evidence fell far short of that.

5. At the investigation, did the "judge" obtain substantial evidence of proof that the employee was guilty as charged?
6. Has the Company applied its rules, orders, and penalties evenhandedly and without discrimination to all employees?
7. Was the degree of discipline administered by the Company in a particular case reasonably related to (a) the seriousness of the employee's proven offense and (b) the record of the employee in his service with the Company?

The ones most germane to this issue are those dealing with notice to the employees of the alcohol policy, the question of whether there was a fair investigation and whether the penalty was appropriate. The focus will be on those to expedite matters.

Fundamental to the notion of just cause is the requirement that there be adequate notice to the employee of what is and what is not acceptable conduct and what will get an employee fired. Here, the policy in question clearly provided the very notice that arbitrators and commentators have required for just cause to exist.

The Company chose to simply ignore those clear provisions and decided to terminate the grievant even though he tested below the threshold that very policy called for to impose any discipline at all. Further, as discussed below, even if one assumes that the BAC was higher than .019 but lower than .039,[5] that policy calls for no discipline at all and requires essentially that the employee be removed from duty until they sober up and test negative. That is exactly what *should* have happened here. Simply stated, an employer operating under a just cause requirement in a labor agreement cannot simply arbitrarily decide to ignore or alter that policy, which provides the very notice to employees as to what is and what is not acceptable behavior, mid-stream and expect to prevail. That is what actually *did* happen here and that proved fatal to the Company's case. The facts of this case showed that the termination letter was fraught with several errors and misstatements that were material and serious.

[5] As discussed below there was no evidence whatsoever that the grievant's BCA was ever higher than that when he was at work. Dr. LaBeau did not testify that the BAC was higher than .039, and the absence of any such evidence was again fatal to the Company's case.

First, one of the allegations used as the basis of the discharge was that the grievant violated 10 CFR 1046. As noted, Ms. Mohler was unsure which part of that lengthy document the grievant violated. The Company's post hearing brief cites several of those sections, but it was entirely unclear that the HR person who drafted the discharge letter and the manager who was responsible for the decision had any idea which portion(s) of 10 CFR 1046 applied.

It was also incumbent on the Company to state with at least some degree of specificity which portions of that document were violated. That is necessary and required so the grievant and the Union can mount a meaningful defense to the charges. It is incumbent on the employer operating under a just cause analysis to be clear about what the basis of discipline is. Here that was lacking.

There was also the allegation that the grievant somehow violated Missouri statute 571.030. There was no evidence at all on this record of how that was the case or what the grievant could have done to violate that statute or how such a violation would result in termination. More to the point, Mr. Gomez candidly acknowledged that reference to that was an error. Tr at 183-184.

Moreover, as the Union pointed out in its brief, there is a body of arbitral caselaw that sands for the proposition that where an employer alleged multiple reasons for termination it must be prepared to prove them all and cannot simply ignore one or more of them. Each must be proven and an error in referencing that undercuts the employer's case Here, at least 2 out of the 5 allegations were shown simply not to apply at all to the grievant and the reference to 10 CR 1046 was so obtuse as to not provide any meaningful context or notice to the Union as to the basis of that allegation.

Third there was the allegation that the grievant violated the Command Officers General Order. That was equally curious in that the grievant is not a command officer. While the Company referenced it to show that it used the process for conducting the investigation, the charge is that the grievant violated that order. Clearly he did not and could not since it does not apply to him.

Frankly, these little "errors" were not inconsequential and undermined the validity of the Company's case considerably. It gives rise to the conclusion that the people responsible for ensuring that there is just cause for discharge, especially for a charge as serious as impairment while on duty and while charged with carrying a firearm were not taking this seriously enough. As discussed below, there was evidence too that the policy in place was not followed or that those responsible for administering it simply did not believe it applied in this situation. It is to that issue that the analysis turns.

The two policies that could apply, if the evidence supported it, were the allegations of a violation of FM & T Alcohol and Drugs in the Workplace policy and Code of Business conduct.

The Code is clear that impairment and being under the influence is strictly prohibited and, as one can imagine, being responsible for the safety and security of a facility dealing with nuclear weapons is a very serious matter. The evidence on this record fell far short of establishing that the grievant was in any way impaired or under the influence of alcohol while on duty. It is true that there was alcohol in his system but a level that fell well below the FM & T Policy cutoff for any discipline to be imposed. However, the evidence from those who actually observed him that day showed that he was not impaired and was fully capable of performing the essential functions of his job. Any claim that his BAC was higher than 039 is simply speculative.

The two policies can legitimately be read together and while the Code prohibits being under the influence, the FM & T policy effectively defines what that is. Policy 9.2.1 has a clear recitation of what such impairment is. Thus, as clearly as the Code prohibits impairment, the FM & T policy just as clearly allows for some alcohol to be present in a person's system without any disciplinary consequences as at all. The evidence here though did not establish that the grievant was in fact impaired by any measure - either under the BAC levels set forth in 9.2.1 or by any "field sobriety" observation of him that day.

More to the point, even if Dr. LaBeau's testimony is credited to some extent and the grievant's BAC was somewhat higher than that there was no evidence that his BAC was higher than .039 at any time on June 11, 2025. It was of some note that Dr. LaBeau never opined that the BAC would have been higher than that level and at best he could only opine that it might have been higher than .019. Assuming that to be the case, the policy calls for no discipline in that instance and calls for the employe to be relieved of duty until they can test negative.

So, even if one takes Dr. LaBeau's testimony at face value, there was insufficient evidence on this record to show that the grievant's BAC was higher than .039, and even if it was between .02 and .039, the policy called for the grievant to have been removed for duty until he tested negative.

The HR manager simply ignored that clear notice to the employee and decide to abrogate and ignore that and discharge the grievant. The Company asserted that policy 9.2.1 does not imply that alcohol detected below that level is immune from discipline or otherwise acceptable for employees in Testing Designated or Safety-Sensitive Positions, including armed police officers.

The short answer is this: yes it does and the text of that policy quite clearly provides for the consequences for a BAC between .019 and .039 - which is essentially to be removed from duty until the employee tests negative. The absolutely clear statement is that if an employee tests below .02 - which was the case here, there are no disciplinary consequences whatsoever.

As discussed herein, that policy provides clear notice to the employees of the consequences, or as here, the lack of consequences for a BAC test below .020. The assertion that the Company was still allowed to terminate the grievant under a just cause requirement, on these facts, was unsupported by the clear policy statements, the facts and, as noted above, constituted a fatal error.[6]

[6] Mr. Gomez claimed that the termination was based on the "culmination of everything together. It was the presence of alcohol in his system and the ability of alcohol at any level to impair you in some way, shape or form." Tr at 182. His views may or may not be scientifically valid, but the decision to terminate the grievant was patently contrary to Company polices and pronouncements regarding alcohol, as discussed at some length here, which clearly *does* allow for some alcohol in a person's system, in any way shape or form, as long as it does not meet certain thresholds. Just cause requires that the policies in place providing notice be applied as written, not as an HR manager wants them to be written.

The simple answer is that you can't do that consistent with a just cause analysis. One of the most fundamental principles of just cause is that the employees be placed on notice of acceptable behavior and that applies to the employer as well. An overzealous HR department cannot simply decide to change it in the middle of an investigation and fire somebody because they disagree with the policy. It is the Company's policy, and Company has to live with it too.[7]

On this record, there was insufficient evidence of a policy violation and as noted, even if one accepts that the grievant's BAC was higher than .019 in the early morning hours of June 11th, there was no evidence it was higher than .039. Thus, there was no basis for discipline at all on these facts.

The Company argued too that once a violation has been established, it is virtually incumbent upon the arbitrator to follow the disciplinary decision and not disturb it. Indeed, it has been said that leniency is the province of the employer, not the arbitrator. Elkouri cited Arbitrator McCoy as follows:

> "Where an employee has violated a rule or engaged in conduct meriting disciplinary action, it is primarily the function of management to decide upon the proper penalty. If management acts in good faith upon a fair investigation, and imposes a penalty not inconsistent with that imposed in other like cases, an arbitrator should not disturb it. The mere fact that management has imposed a somewhat different penalty or a somewhat more severe penalty than the arbitrator would have, if he had had the decision to make originally, is not justification for changing it. The minds of equally reasonable men differ. A consideration which would weigh heavily with one man will seem of less importance to another. A circumstance which highly aggravates an offense in one man's eyes may only be slight aggravation to another. If an arbitrator could substitute his judgment and discretion for the judgment and discretion honestly exercised by management, then the function of management would have been abdicated, and Unions would take every case to arbitration. The result would be as intolerable to employees as to management. The only circumstances under which a penalty imposed by management can be rightfully set aside by an arbitrator are those where discrimination, unfairness, or capricious and arbitrary actions are proved – in other words, where there has been an abuse of discretion." See, *Stockham Pipe and Fittings Company*, 1 LA 160, 162 (McCoy 1945) and American Olean Title Company, 107 LA 338, 339 (Welch 1996)); see also, *Kansas City Area Transportation Authority*, 127 LA 1196, 1206 (Wayland 2009) ("In discipline and discharge cases, arbitrators have generally acknowledged that they should not substitute their judgment for that of management as to the appropriate penalty unless they can find that the penalty imposed was arbitrary, capricious, or discriminatory."), Elkouri & Elkouri, How Arbitration Works, at 348 (6th Ed. Supp. 2008)

[7] It was also of some note that despite the claim that no alcohol is acceptable the policy allows prohibits use of alcohol within 8 hours of appearing for work. That implies that a person can use alcohol prior to that time and that depending on the circumstances they could appears with some BAC presence, albeit subject to the levels set forth in the FM & T policy 9.2.1.

However, Elkouri cited that same Arbitrator McCoy and commented that:

> "it is said to be axiomatic that the degree of penalty should be in keeping with the seriousness of the offense." Arbitrator McCoy explained that "offenses are of two general classes: (1) those extremely serious offenses such as stealing, striking a foreman, persistent refusal to obey a legitimate order, etc., which usually justify summary discharge without the necessity of prior warnings or attempts at corrective discipline; (2) those less serious infractions of plant rules or of improper conduct such as tardiness, absence without permission, careless workmanship, insolence, etc. which will not call for discharge for the first offense (and usually not even for a second or third offense), but for some milder penalty aimed at correction." Elkouri 5th Ed at page 916.

It is thus clear that any arbitrator called upon to review discipline has the obligation to review the degree of discipline to determine whether the "punishment fits the crime." Without going into excruciating detail, that entails a review of the entire record such as length of service with the employer, overall record, any extenuating circumstances and whether there exists a prognosis that the employee can be corrected.

Here, significantly, the parties CBA *specifically grants* to the arbitrator the authority to "adjudge the guilt or innocence of the employee involved and review any penalties imposed and modify or amend the penalties." See, Section 9 of the CBA. On this record, there was no basis for any discipline given the findings set forth above. Thus, any discussion of penalty is moot at this point.[8]

The summary of the analysis is that there may well have been a Weingarten violation here but that alone did not control the result given the other findings. There may also have been a very thin basis for a reasonable suspicion test but, again, the fact that it was agreed to and in fact showed a level of some BAC put the Company's case on that limited issue over the top so to speak.

The real issue here was the application for the policy and the clear fact that there was insufficient evidence to establish a violation of it. The grievant was not under the influence as defined by the Company's policy and there was no extrinsic evidence of impairment or lack of his ability to perform the essential functions of his job.

[8] Likewise, the question of whether there was a HIPAA violation on this record is moot as well given the finding that the grievant did not violate the policy as it is written. Further, even if there was, that claim is outside of the jurisdiction of a labor arbitrator to rule on.

Lastly there was insufficient evidence that his BAC was at a level that would have resulted in any discipline and the HR managers were frankly not entitled to ignore their own policy to impose a discharge where a Union contract called for just cause.

Accordingly, the grievance is sustained the grievant will be ordered reinstated within 10 business days of this award with full back pay and contractual benefits reinstated as set forth below. The Union's request for attorney's fees and costs however cannot be granted. The terms of the grievance procedure set forth above requires that each party share the cost of arbitration equally. Further there is no provision for attorney fees in the CBA.

AWARD

The grievance is SUSTAINED. The grievant is ordered to be reinstated to his former position within 10 business days of this award with full back pay and accrued contractual benefits. Back pay is to be mitigated/reduced by any income paid pursuant to section 10(C) of the CBA, wages, salaries, or governmental wage replacement benefits received in the interim.

The Union and the grievant are directed to provide any appropriate documentation to properly calculate the backpay awarded herein.

The Union's request for costs and attorney's fees is denied.

The arbitrator will retain jurisdiction to resolve any issues regarding this award.

Dated: June 9, 2026

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Jeffrey W. Jacobs, arbitrator

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