

IN THE MATTER OF THE ARBITRATION

BETWEEN

**THE STATE OF OHIO
DEPARTMENT OF TRANSPORTATION
ROSS COUNTY**

AND

**THE OHIO CIVIL SERVICE EMPLOYEES ASSOCIATION
AFSCME, AFL-CIO LOCAL 11**

Arbitration Date: April 23, 2015

GRIEVANT, Charles Lightle
CASE NO. 31-09-14-09-30-29412-01-07

BEFORE: Arbitrator Craig A. Allen

Advocate for the Employer:

John Tornes
Assistant Administrator, ODOT
Office of Labor Relations
1980 West Broad Street
Columbus, Ohio 43223

Advocate for the Union:

Jeff Freeman
OCSEA, AFSCME Local 11
390 Worthington Rd., Suite A
Westerville, OH 43082

I. HEARING

The hearing was held April 23, 2015 at the OCSEA Union Hall. The hearing commenced at 9:07 A.M.

The Stipulated Issue before the Arbitrator is "Did Management have Just Cause to remove Charles G. Lightle? If not, what shall the remedy be?"

II. STATEMENT OF THE CASE

Grievant was removed September 30, 2014 for "violations of WR-101 Item 8 - carelessness with tools, keys and equipment or vehicle resulting in loss, damage, or unsafe act."

The grievant, Charles G. Lightle, has Prior Discipline; 5 day suspension November 5, 2012; 2 day working suspension July 16, 2012, and a 1 day working suspension May 1, 2012.

On October 3, 2014 the Union filed a Grievance and the matter is properly before the Arbitrator.

III. THE EMPLOYER'S CASE

The Ohio Department of Transportation's ("the Employer") first witness was Tracy Ann Taylor. Ms. Taylor is a Safety Consultant. She has been with ODOT for thirty-two (32) years six (6) of which have been as a Safety Consultant. Ms. Taylor's role is to investigate accidents.

Ms. Taylor was referred to Joint Exhibit (JX) Pages 13-26. She said Page 13 is the Vehicle Accident Review. She said the Review shows the Grievant was backing up and it was a preventable accident. Ms. Taylor testified the rule is WR-101-8. The information goes to the Discipline Panel. Vaughn Wilson is the District 9 Executive Director. Ms. Taylor said JX 15 is

an E-Mail from Dave Kellough. JX 16 is the Grievant's statement. Ms. Taylor testified that JX 17 is a photograph of the loader and the number in the photograph is the equipment number. She said JX 18 shows where the I beam hit. JX 19 is another photograph of the I beam damage and JX 20 is another view.

Ms. Taylor testified that the driver is 7 ½ -8' off the ground. She said JX 21 is a side view. JX 23 is a photograph of the Loader Forks. JX 24 is the Loader and JX 25 is a photograph of the Forks.

Ms. Taylor testified that the I beam was eight (8) to ten (10) feet up and that the load needs to be centered. She said the Forks need to be low and the load was up too far.

Ms. Taylor testified that the Grievant went over a dip and the I beams slid off and into the windshield. She said the dumpster was up an incline. She testified that the I beam that hit the loader was forty (40) feet down the hill. She said the loader was at the old salt storage and the accident had nothing to do with the dumpster.

Ms. Taylor testified the accident was forty (40) feet from the garage and within easy walking distance.

Ms. Taylor testified that Wayne May was the Crew Leader. Mr. May was making an I beam pile using a Track Hoe with a thumb. She said Mr. May went to another job and told the Grievant to wait for him until tomorrow. The Grievant was moving wood and debris.

Ms. Taylor said the Grievant used a Track Hoe to remove the I beam from the vehicle. She said the Grievant was not trained on the Track Hoe. The thumb keeps the I beam secure. Ms. Taylor testified that Mr. May told her he was using the Track Hoe and had told the Grievant not to use it.

Ms. Taylor testified that JX 16 is the Grievant's statement and it showed a safety violation. She said the load is to be close to the ground as the loader will rock and the load will shift. She said the load had to be centered.

She said JX 31 is her report to the Interview Committee. Ms. Taylor testified that Kendra Thomas gave work assignments. Ms. Taylor said she had investigated the Grievant before and always asked about cell phone usage. She testified that the Grievant told her the load was not secure. Ms. Taylor asked the Grievant "Why use the Track Hoe?" The Grievant answered, "Get job done faster."

Ms. Taylor testified that the Grievant hit a little ditch while he was backing up and the Forks were eight (8) to ten (10) feet up in the air. The loader will rock and the I beam will slip. She said Mr. May told the Grievant not to touch the Track Hoe.

Ms. Taylor testified that JX Page 58 is Grievant's Accident History. He has four (4). The first March 12, 2012 and the fourth August 2014.

Ms. Taylor said JX Pages 59-62 show Grievant's new employee training December 20, 2010. Ms. Taylor was present and talked about safety. No cell phone usage while operating equipment. She said JX Pages 60-61-62 show the Grievant's Training History. JX Pages 63-70 show safety meetings weekly.

She said JX 71 shows training materials and JX 75 shows the Fork Lift Rules. Ms. Taylor testified the fork Lift was only to handle stable loads. The loads are to be carried close to the ground.

Ms. Taylor testified that JX 79 is the Loader Course. She said JX 81 shows how to prevent the shifting of a load. Ms. Taylor said the load has to be kept secure and down low.

Ms. Taylor testified the Fork Lift Operator should not hurry. She said the Grievant violated policy and could have been killed or injured. She said the Forks were too high and the accident was preventable. She said the Grievant did not have to be removing I beams and this was a serious safety violation.

Ms. Taylor reviewed JX Page 44 and said these are ODOT work rules. JX 48 shows the offense charged and the grid says removal. The Grievant had four (4) priors.

Ms. Taylor read JX 54 and said it shows a five (5) day suspension. She said she was at one accident and asked the Grievant to get out of the vehicle. The Grievant said he couldn't because he didn't have his safety gear on. Ms. Taylor said in another accident Grievant hit an ODOT vehicle and also had an accident where he backed into an ODOT vehicle.

On Cross-Examination Ms. Taylor said she was not there the day of the accident. Ms. Taylor testified that the I beam rolled over and slid. She said the I beam had an extension and it was at the same height as the windshield. She said the Grievant had moved three (3) or four (4) feet.

Ms Taylor testified that she doesn't operate equipment. She said she has never seen I beams moved by a loader. Ms. Taylor then testified that she had heard that loaders move I beams.

Ms. Taylor then read JX Page 29 which is her Investigative Report. She said she talked to County Managers in District 9 and was advised to use a Track Hoe. Ms. Taylor testified that there was no Union representative at the Grievant's interview. She read JX Page 73 and said it is about Material Handling. Ms. Taylor also read JX Page 81 which concerns load securement. Ms. Taylor testified that the correct vehicle was to be used which was not a Fork Lift. She said the Grievant could have put a binder on the equipment.

Ms. Taylor was then shown Exhibit Union 1 which is a Performance Evaluation of the Grievant. The Performance Evaluation says the Grievant had a better attitude and was accident free during this period.

Ms. Taylor testified that she takes accidents to a review committee to determine if they are preventable.

On Re-Direct Examination Ms. Taylor testified that the Operator is responsible for equipment and safety. The Operator can do a walk around. She said the Operator should keep Forks close to the ground. Ms. Taylor testified that the Grievant never asked for Union Representation.

Ms. Taylor then testified that the Forks were higher than the driver. She said the terrain was flat and there was no reason to have the Forks high.

The Employer's next witness was Wayne May, Jr. Mr. May is an HT1 in Ross County. Mr. May has been with ODOT for eight (8) years and is a member of the Union.

On August 7, 2014 Mr. May was the Crew Leader. Mr. May testified that the day before he had torn down the salt shed. On August 7, he and the Grievant were to clean up.

Mr. May testified that there were two (2) stacks of I beams and a big pile of rubble. Mr. May said he started cleaning up, working side by side with the Grievant. The Grievant was on the loader. Mr. May testified that the metal dumpster came on the job on top of the hill. He said he wanted to move the dumpster down the hill but Kendra Thomas said "NO". Mr. May testified he told the Grievant, "Don't worry about it. I'll take care of it tomorrow".

Mr. May then testified that a Track Hoe with a thumb is a better way to move I beams. He said you could move I beams with a loader if the I beams were secured. He said the loader had a

bucket when he left. Mr. May testified that he told the Grievant to leave the I beams alone. Mr. May testified that the Track Hoe was too slow to go to the dumpster. He said he would have it moved down hill the next day. Mr. May said he left the job site at 11:30 to go to the ODOT booth at the County Fair.

Mr. May testified that I beams could not be secured on Forks. The Forks are to be kept low to the ground.

Mr. May then testified that the loader is three (3) steps up and the seat is eight (8) feet off the ground.

Mr. May said he saw the loader the next day. He said the I beams were on Forks and the Grievant was backing up. Mr. May testified that he wouldn't back up as he would want to see where he is going.

On Cross-Examination Mr. May said the dumpster on top of the hill was moved down hill later, but not by him. Mr. May testified that if I beams are strapped down on the Forks they can be moved.

On September 16, 2014 Mr. May had a discussion with the Union Advocate. Mr. May testified that he did not give the Grievant a direct order not to move the I beams.

Mr. May said his lunch was at 11:30 and he was leaving. He was going to bring the dumpster down tomorrow.

The Employer's next witness was Patricia Piekarczyk. Ms. Piekarczyk was the Investigator assigned to investigate the accident. She was shown JX Page 28 which is her report. Ms Piekarczyk testified she was contacted by District 9 and interviewed Tracy Taylor. She read JX Pages 31, 32 and 33 which is Ms. Taylor's interview and said Ms. Taylor's testimony is

accurate. Ms. Piekarczyk testified that the I beams should have been secured. She read JX Page 33 about a County Managers meeting and I beams cannot be secured on the Forks of a loader.

Ms. Piekarczyk testified that she interviewed Kendra Thomas and Ms. Thomas said she did not tell Grievant to move I beams with a loader. She said she did not interview Mr. May.

Ms. Piekarczyk read JX Pages 38 - 41 and said it was Grievant's interview. She said the Grievant was not certified to use the Track Hoe. She testified the Grievant said trying to tie down I beams is a safety hazard when unloading. Ms. Piekarczyk said the load was insecure and the Grievant was unsafe.

Ms. Piekarczyk read JX Page 41, the Grievant's Interview. She testified the accident occurred during transport. She said the dumpster was on the hill and the location of the dumpster had nothing to do with the accident. Ms. Piekarczyk then testified that the Grievant could have contacted a Supervisor for help or another job.

Ms. Piekarczyk read JX Page 30 and said these are her findings. She testified the Grievant was careless and the accident was preventable. The Grievant could have called the Manager or waited until tomorrow.

Ms. Piekarczyk testified that she has conducted over three hundred fifty (350) investigations over five (5) years. She said the Grievant was lucky.

On Cross-Examination Ms. Piekarczyk read JX Page 41, the Grievant's statement. The Grievant said two (2) dumpsters were full of wood and the only one left was to clean up I beams. She said the Grievant wasn't told not to move I beams. Grievant was told to clean up.

Ms. Piekarczyk testified that Kendra Thomas was gone in the afternoon. She is not sure if other supervisors were there but the Grievant could have called one.

The Employer's next witness was Bobby Johnson, Labor Relations Administrator. Mr. Johnson has been with the State twenty-six (26) years. He reviews suspensions.

Mr. Johnson read JX Page 8 and said it is the Discipline Route Slip.

Mr. Johnson testified he reviews the charge, prior discipline, Date of Hire and Classification. He said the Grievant was hired in December, 2010 and has less than four (4) years on the job.

Mr. Johnson testified that the Grievant had priors. Two (2) priors were for similar work rule violations.

Mr. Johnson read JX Page 8 and said it is the removal letter. He read JX Page 44 which is the Work Rules. JX Page 48 #8 is the Work Rule with which Grievant is Charged. Mr. Johnson testified that the Grid shows the Third Offense is removal.

Mr. Johnson then read JX Pages 54-56 which are Grievant's Prior Disciplinary Actions. JX Page 54 shows a five (5) day for Rule #8; JX Page 55 shows a two (2) day for Rule 2(a); JX Page 56 is a one (1) day for Rules 8 and 2(c).

Mr. Johnson read the Collective Bargaining Agreement and said Rule 24 says discipline is to be removed from the employees record after twenty-four (24) months. Mr. Johnson testified that the prior discipline is still active. The Grievant was removed September 3, 2014.

Mr. Johnson testified that Larry Helscel is the Labor Relations Officer (LRO) for District 9. Mr. Johnson read Exhibits M-1 and M-2. Mr. Johnson testified that M-1 is E-Mails between Larry Helscel and himself. He said the Administrative Database Disc had expired in the system.

Mr. Johnson then testified that the District LRO's were to review discipline. The system is to help track discipline. Mr. Johnson said that because of problems with the CROME Program

they had returned to Internet Explorer.

Mr. Johnson read Exhibits V-1, V-2, and V-3, all of which are dated June 23, 2014. He testified that when Mr. Helscel went into the System, the System was incorrect. Mr. Helscel did not correct the System. Mr. Johnson said Mr. Helscel should not have erased the discipline. Mr. Johnson testified that the contract rules and can only be changed by agreement.

Mr. Johnson then testified that the Grievant was not harmed and could not have relied on this action. The only negative effect was on Managements System.

Mr. Johnson said prior disciplines are not put in the Hearing Officer's information. Mr. Johnson testified that the Hearing Officer is to consider the facts at hand.

On Cross-Examination Mr. Johnson read Exhibit V-1. This is an E-Mail from Mr. Helscel to four (4) ODOT employees. He said some of the employees are not in District 9.

Mr. Johnson testified that Mr. Helscel was the District 9 LRO at the time of the incident. Mr. Johnson said the E-Mail tells the County Manager to tell the Grievant the discipline was removed.

On Re-Direct Examination Mr. Johnson testified that Exhibit V-1 says the discipline was inactive because it was two (2) years old. He said this was incorrect as it was not two (2) years old.

IV. THE UNION'S CASE

The first witness for the Ohio Civil Service Employees Association ("The Union") was David Leach. Mr. Leach has been with ODOT for eighteen (18) years and is now a Heavy Equipment Training Officer.

Mr. Leach was not involved in this accident investigation. Mr. Leach gives instruction on

the Fork Lift and there is no specific instruction on lashing the load to the Forks.

Mr. Leach testified that the load could be secured by the angle of the Forks. He said you could use a rope or chain but how would you get it off?

Mr. Leach then testified that I beams are twelve (12) to fifteen (15) feet long and some are twenty (20) feet long. He said to set Forks wide to pick up the load but the load is unstable.

Mr. Leach said he has never been asked about moving I beams with a Fork Lift.

Mr. Leach read JX Page 80 which concerns Load Securement and testified that JX Page 81 says it refers only to trucks.

On Cross-Examination Mr. Leach was asked: "Why keep the Forks wide and load centered?" He said, "Secure any load." Mr. Leach read JX 81 and said it said Prevent load from shifting and contain and secure cargo.

Mr. Leach said select correct equipment to do the job. If there's a choice use Track Hoe with a thumb. He was asked: "If there is a loader with Forks and a twenty (20) feet long I beam?" He said, "Set the Forks wide, center load and go slow. The operator is responsible. The load should be barely off the ground. If backing, go slow and creep along. The driver of the loader is eight (8) feet up."

The Union's next witness was Dave Kellough. He has been with ODOT 27 years and is District Equipment Manager. He said he buys equipment and oversees maintenance.

Mr. Kellough read JX 15 which is an E-Mail from him to Vaughn Wilson and Tracy Taylor. The E-Mail says "We have always used Fork Lifts with Forks to move I beams. He looked at JX 25 and said that is a photograph of a Fork Lift attachment.

On Cross-Examination Mr. Kellough testified that he sent the E-Mail because the District

Director asked him to look at it. He said improper equipment is not the issue here.

Mr. Kellough then testified that the operator had to be sure the load is centered. The load is to be kept close to the ground. He said when backing, keep load centered , go slow. He said he saw the loader after the accident.

The Union's next witness was James M Darbyshire. Mr. Darbyshire has been with ODOT 37 years. His title is Transportation Administrator but his working title is County Manager. He said he doesn't personally oversee all work details; he had meetings to assign work.

Mr. Darbyshire testified that on August 7, 2014 he was not at the garage. Kendra Thomas was there. He said he was familiar with the accident August 7, 2014. Mr. Darbyshire testified that he has seen Fork Lifts move I beams. He said this was not a piece of improper equipment for this job.

Mr. Darbyshire said in 1983 he became the Equipment Superintendent and bought equipment for all eight (8) Counties. He also oversaw Maintenance. He said he retired January 1, 2000 and had his own business where he operated equipment.

Mr. Darbyshire testified that in 2008 he went back to work for ODOT as County Manager. He was removed March 6, 2015. He said he had worked on Fork Lifts but had not moved I beams. Fork Lifts are typical.

Mr. Darbyshire then read Exhibits U-1, U-2, U-3. These are E-Mails from Mr. Helscel who was the District LRO. He said the LROs take care of discipline.

Mr. Darbyshire testified he made copies for employees and gave it to them. He said he congratulated the Grievant as he had others. On January 27, 2015 he met with the Union advocate. He said he had no input on removal.

Mr. Darbyshire testified that the Grievant was a good employee. The Grievant had gotten a license on noxious weeds. He said the Grievant was respectful to Management and a reliable employee.

On Cross-Examination Mr. Darbyshire said Kendra Thomas was at the garage. If she was not there contact someone else.

Mr. Darbyshire was asked, "If the equipment was not wrong and there was an accident, what caused it?" He answered: "Terrain, many factors." He was asked if the accident was preventable. Mr. Darbyshire said all accidents are preventable unless they are acts of God. Sometimes it is the operator.

Mr. Darbyshire read JX 42 which is his E-Mail to Larry Helscel requesting discipline against the Grievant. He said this is normal procedure, anytime there is an accident we have to send in a request for a Pre Disciplinary Investigation.

Mr. Darbyshire was given Exhibit U-1. He said he presented it to the Grievant. He said it wasn't his job to check dates.

Mr. Darbyshire testified that Crew Leaders have weekly tail gate meetings. He read JX Pages 63 - 70 and said these are records of weekly safety meetings.

Mr. Darbyshire then read JX Page 48 which is the Discipline Grid. He testified that the District makes the decision, not him. Mr. Darbyshire said he doesn't remember Grievant's other accidents. Mr. Darbyshire was referred to JX Page 58 which is Grievant's Accident History Report. He said he will stick by the Grievant as a good employee.

Mr. Darbyshire read Grievant's Performance Evaluation of July 15, 2013. It said "Grievant involved in several accidents. Needs to be more aware of equipment usage." He said

make the Grievant aware by tail gate conference. This go out and inspect work Crew. They get reports from the Crew Leader. He testified that the Performance Evaluation of July 15, 2013 said "Grievant has a better attitude toward safety goals."

On Re-Direct Examination Mr. Darbyshire was given Exhibits U-1, U-2 and U-3. He was asked; "Did you get any corrections of memos removing discipline from the Grievant?" He said, "No Sir."

Mr. Darbyshire testified that there was a meeting after the accident. It was brought up about moving the dumpster close to the work site and it was moved closer to the work site.

Mr. Darbyshire read JX Page 58, Grievant's Accident History. It shows backing a vehicle while relying on ground guard. He testified that he was suspicious of this and the Grievant was not responsible.

Mr. Darbyshire testified that he never saw anyone terminated for an accident.

The Union's next witness was Charles R. Leach, II. Mr. Leach is a Highway Tec. 1 and has been with ODOT for five (5) years. He is the Chapter President. He said Matt Day is not a Union Steward.

Mr. Leach testified that he knows of Rt. 772 repair and I beams were moved by Fork Lifts. He said he was on vacation August 7, 2014. Mr. Leach testified that he got a phone call that there was a meeting on Monday about moving the dumpster closer to the work site.

Mr. Leach testified that he has operated a Fork Lift. He said he went to an ODOT class and there was no secure load training.

On Cross-Examination Mr. Leach testified that Matt Day was the prior Chapter President. He doesn't know if Management knew about this.

Mr. Leach said he was assessed on a Fork Lift and Loader. He testified that with a Fork Lift raise the load just a little, can't have a skid on this. Mr. Leach said he had operated a Fork Lift at Lowe's and has had no training anywhere on securing a load on a Fork Lift.

The Union's last witness was the Grievant, Charles G. Lightle. The Grievant said he is a four (4) year employee of ODOT. He said prior to working at ODOT he worked with heavy equipment for twenty-five (25) to thirty (30) years.

The Grievant testified that on August 7, 2014 he was using a 928G with a bucket. He was moving wood. He said around 10 A.M. Kendra Thomas had him drive a tractor to Pike County. The Grievant testified he returned around noon and nobody was there. He said he went back to debris clean up. The Grievant testified that when the wood dumpsters were full he decided to move the I beams. The Grievant testified that he was never told not to move I beams and Wayne May never told him not to move I beams. He said he had talked to Kendra Thomas about moving I beams.

The Grievant was given Exhibits U-1, U-2 and U-3 and said Mike Darbyshire gave them to him. He said he felt relieved and showed them to Matt Day, the Union President. The Grievant testified that he got no correction from ODOT about the E-Mail.

The Grievant was given JX Page 58 which is his accident history. He said that at the "improper backing" accident that he had a ground guide. The Grievant testified that Kendra Thomas and Ed Cox came out. The ground guide said it was his fault.

The Grievant testified that he is not a trained Union Steward. He is not an officer and has had no Union training. He said the termination has been rough on him and his family.

The Grievant testified that he has had no special safety training. Kendra Thomas came to

the job site to watch him. The Grievant had moved seven (7) or eight (8) loads before the load came off. He said the I beam was one (1) foot off the ground.

The Grievant looked at Exhibit U-5 and said it is the hillside behind the salt shed. The I beams were in front of the brine pumps. He said he had to back up to get around the other I beams.

The Grievant testified that it was about two hundred (200) yards to the dumpster. He said the I beam slid, the Forks caught it and it slid right through. The Grievant testified the I beam never went inside the cab. He said he had used a Fork Lift at a saw mill and the I beam was three (3) to four (4) feet off the ground.

On Cross-Examination the Grievant testified that Matt Day was with him at the OIS Investigation. The Grievant testified that Matt Day did not have a conversation with him and Matt Day was not truthful.

The Grievant read JX Page 39 and testified he was not assessed on the Track Hoe but used it later. He said he worked with Mr. May part of the morning.

The Grievant read JX Page 40 which is his statement. He testified that the I beam stuck in the loader. The I beam stuck in the ground and came across the windshield. He looked at JX Page 41 and said it was an accident.

The Grievant testified there was no one there at 2 P.M. to get another assignment. Darbyshire was in a meeting. He said his assignment was to clean up debris and he doesn't know if there were tie downs.

The Grievant testified that the Forks were three (3) or four (4) feet off the ground. He said he was eight (8) feet off the ground in the loader.

The Grievant looked at JX Page 22 which is a photograph of the loader. He said if the Forks are three (3) feet or four (4) feet high they are above the engine compartment. He was carrying one (1) I beam when the accident happened. The Grievant read JX Page 41 which is his statement. It says it was an unsafe act.

The hearing adjourned at 2:45 P.M.

The parties agreed to do written Closing Arguments by close of business May 8, 2015.

VI. OPINION AND AWARD

The Advocates have done an excellent job presenting the position of their case.

The Employer says the Grievant was removed from his position on September 30, 2014 for violation of, "ODOT Policy WR-101, Item 8 - Carelessness with tools, keys and equipment or vehicles resulting in loss, damage or unsafe act."

The Employer says the Grievant's hire date was December 20, 2010. The Grievant was employed by ODOT for less than four (4) years as a Highway Technician 1, assigned to the Ross County Garage.

The Employer points out that during the Grievant's tenure he had committed four (4) preventable accidents and including this incident was charged three (3) times with a violation of Work Rule, Item #8.

The Employer argues that in accord with the work rule grid for the third offense of this rule violation, the recommended level of discipline is removal.

The Employer asserts that it has shown both through documented evidence and the testimony of both the Safety Consultant, Tracy Taylor and Bobby Johnson, Administrator of Labor Relations at ODOT, that the removal of the Grievant for the current incident is

commensurate with the offense.

The Employer argues that the removal of the Grievant is also progressive. The Union has not disputed the prior discipline history of the Grievant. The stipulated record of discipline is: 11/05/12 Five (5) Day Suspension - Item #8 Carelessness with tools, keys and equipment or vehicle resulting in loss, damage or an unsafe act; 7/16/12 Two (2) Day Suspension - Item # 2C Failure to follow policies of the Director, Districts or offices; 5/01/12 One (1) Day Suspension - Item #8 Carelessness with tools, keys and equipment or vehicle resulting in loss, damage or an unsafe act and Item #2C Failure to follow policies of the Director, Districts, or offices.

The Union has made a procedural argument that the prior discipline should have no force and effect because they were inactivated on information provided to the Grievant by the former Labor Relations Officer, Larry Helscel. The Employer argues that it has shown both through contractual language and the testimony of Bobby Johnson that the Collective Bargaining Agreement overrides an Administrative Error.

Bobby Johnson testified that the provisions of Article 24.07 of the Contract determine what is active discipline and when such prior disciplinary actions cease to have any force and effect. The Employer points out that to over-ride the contract provisions is by an agreement signed by the parties.

The Employer points out that Bobby Johnson testified the former Labor Relations Officer made an administrative error in attempting to update the discipline data base. He mistakenly deactivated all the prior discipline of the Grievant. The Employer argues that his administrative error had no effect on the contractual rights of the Grievant. All contractual rights were retained.

The Employer asserts that under the provisions of the contract all three (3) prior suspensions of the Grievant have full force and effect. The Employer points out that the prior discipline of the Grievant is a joint stipulation of fact and are included in the Joint Stipulated Documents. The one (1) dy suspension and the five (5) day suspension are the same work rule violation as the current incident.

Mr. Johnson testified that he reviewed the discipline and approved the removal. He said he made his determination based upon the facts of the investigation, the work rule violation, and the disciplinary grid for that work rule, the longevity of the employee and the active prior discipline record of the Grievant. He testified there was "Just Cause," and the discipline was both progressive and commensurate with the offense.

The Employer says the parties have stipulated the facts of the incident.

"On August 27, Mr. Lightle was assigned with a work crew to clean up debris of an old salt shed at the Ross County Garage. He was operating a front end loader. Wayne May was operating a track hoe with thumb in the morning to move steel I- beams. Mr. May had another assignment in the afternoon. Mr. Lightle was not certified to use the track hoe, and attempted to move the I-beams with the front end loader with forks. While moving the load, the I-beams shifted, slid off the forks, over the rail and into the windshield of the loader. Mr. Lightle removed the I-beam from the windshield of the loader by using the track hoe with thumb."

The testimony of Tracy Taylor, Wayne May and Patricia Piekarczyk all support these jointly stipulated facts.

The Employer argues that the Grievant made a poor choice in attempting to move a load he could not secure or move safely. He not only was not required to do so, but was directed by

the crew leader not to do so. Wayne May testified that he was the crew leader at the old salt shed clean-up, and that he was moving the steel I-beams with a track hoe with thumb because the track hoe with thumb was the safest piece of equipment to securely move the steel I-beams. He testified that the steel I-beams could not be securely moved with the other piece of equipment at the site, a front end loader being operated by the Grievant. The Employer argues that the fact that the accident occurred using the front end loader supports this testimony. Mr. May also testified that he told the Grievant not to move the I-beams because he would move them the following day.

The Employer says Mr. May is a long-term bargaining unit employee with no reason not to tell the truth or provide false information. His testimony is believable and consistent throughout. Mr. May was the crew leader and the Grievant should have obeyed his direction. Because he is a bargaining unit employee he cannot give a direct order, he can only give direction.

The Employer argues that the Grievant chose to ignore the direction of the Crew Leader and to move an unstable load with a front end loader.

The Employer says the Grievant was careless in using the equipment and it resulted in damages and an unsafe act. The Employer contends the Grievant could have easily waited for Mr. May to move the I-beams with the Track hoe the next day. The Grievant was within easy walking distance to the County Garge to get further direction from his supervisor or other management representative.

The Employer argues the testimony of the Grievant during the Arbitration was not credible and inconsistent with his prior statements. The Grievant testified at the arbitration that

he did not see Mr. May at the old salt shed on the day of the accident because Mr. May had already left the site by the time he arrived.

The Employer argues that this is in conflict with Mr. May's testimony and is in conflict with the Grievant's prior statements during the investigation. In the Joint Exhibits the Grievant states, "When Wayne was there in the morning he was using the Track hoe while I used the loader." This statement proves they were working at the same time together. The Grievant says in the Joint Exhibits that Mr. May did not tell him not to move the I-beams. The Employer argues that this shows some conversation between Mr. May and the Grievant and that they were there together at the site. The Employer also argues that this shows the Grievant was not truthful in his arbitration testimony. The Employer contends Mr. May was believable, credible, and had nothing to gain.

The Employer says that the documentation, joint stipulations of fact, and the testimony of Tracy Taylor, Safety Consultant for ODOT District 9, and Patricia Piekarezyk, Ohio Investigative Services, supports a just cause finding to impose discipline upon the Grievant.

The Employer points out that the Grievant's statement in the Joint Exhibits say that the I-beam slid over the rail into the windshield to cause it to slide down into the windshield. The investigation by Safety Consultant, Tracy Taylor, supports the facts originally provided by the Grievant about the accident.

Safety Consultant, Tracy Taylor states in the Joint Stipulated Exhibits, that the accident was preventable and occurred as a result of carelessness with tools and equipment. The Employer contends Ms. Taylor's testimony was in agreement with Mr. May, the crew leader, that the proper piece of equipment to move the I-beams was the track hoe with thumb because it can

effectively secure each piece of I-beam. She also said this was the consensus of county managers whom she polled at a subsequent meeting. Ms. Taylor testified that if the Grievant chooses to use the front end loader with forks, he is also responsible to ensure it operates in a safe and effective manner. Ms. Taylor also reviewed the training the Grievant received in operation of a fork lift. Ms. Taylor testified that the evidence she collected as part of her investigation indicated that the Grievant followed none of the training protocols.

The Employer says the Union called Dave Kellough as a witness to testify that the front end loader was not a poor choice of equipment, but one that is commonly used to move similar items to I-beams. In the opinion of Mr. Kellough the cause of the accident was not the fault of the equipment. The Employer does not dispute the testimony.

The Employer says it agrees with Mr. Kellough that if the fault was not the equipment then the logical conclusion is that the fault resides with the operator. The Employer argues that Mr. Kellough indicates as much in his E-Mail. Mr. Kellough said in the Joint Stipulated Exhibits that "if the operator had the I-beam centered properly on the forks it should not have been an issue in my opinion."

The Employer argues that since the Grievant chose to use the piece of equipment that he did, he was responsible to operate it in a safe and effective manner but failed. According to Mr. Kellough, the Grievant is responsible to ensure the I-beams were centered, and the Grievant is to be aware of his surroundings and his speed to ensure he moves the load safely.

Ms. Taylor's testimony and her statement in the Joint Stipulated Exhibits is "Greg told me he was backing up in the loader with the I-beams, that he went over a little ditch and the I-beam started to shift and came around and struck the loader's window. I asked him if he had the

I-beam secure and he said No.”

The Employer argues that Ms. Taylor summarizes the accident and rules it as preventable and says the contributing factor was “carelessness with tools and equipment.” The Safety Consultant also testified that this incident is the Grievant’s fourth preventable accident in the last 2 ½ years according to the Grievant’s Accident History Report.

The Safety Consultant also testified that an operator is responsible for knowing their surroundings in moving loads and its impact on safety. It is the operator’s responsibility to notice the ditch and to ensure they back at a safe speed so the load does not shift. The Employer points out the Grievant admits he was attempting to move an unsecured load. He also admitted that to move the load without securing them was an unsafe act to the SIS Investigator.

The Employer also argues that in addition to these components of safe operation of equipment, the evidence shows that the Grievant had the forks too high while moving, another safety violation.

The Employer cites the Joint Stipulated Exhibits where the Grievant says he struck a ditch which caused the load to shift over the fork rail and down into the cab of the loader.

The Safety Consultant testified that the operator in the loader sits about 6 feet off the ground. She estimates that the fork lift with the I-beams had to be approximately eight feet in the air to go over the rail and down into the cab. Loads being moved by front end loaders are to be moved close to the ground. The Employer argues that loads close to the ground would not go over a three foot fork rail, and then over the loader and down into the cab.

The Grievant’s testimony at the arbitration is contrary to his prior statements during the investigation. The Grievant testified at the arbitration that he carried the loads 3 to 4 feet off the

ground. He testified an "I-beam shifted and flipped up and did not go through the windshield but was against the side of the loader." The Employer argues that the Grievant's earlier statements, the pictures of the damage, and gravity tell a different story.

The Employer argues it has proven the Grievant was careless in his operation of the equipment on several counts. He committed an unsafe act in operating the equipment the way he did. This unsafe act could have seriously injured him and did result in damage to the loader at a cost of over \$7,500.00.

The Employer says according to the initial investigation and statements of the Grievant the I-beam was lodged in the windshield of the loader and the Grievant had to use the track hoe, which he was not certified to operate, to remove it from the windshield. In the Grievant's statement, in the Joint Stipulated Exhibits, to Investigator Piekarczyk he indicates that the I-beam was stuck in the loader. The investigation by Patricia Piekarczyk of the Office of Investigative Services also found the Grievant was careless with ODOT equipment.

At the arbitration the Grievant testified that the I-beam was not in the windshield, but against the side of the loader. The Employer argues that this change of testimony of the Grievant further undermines his credibility.

The Employer points out that the Grievant, despite his short career, was already under a performance improvement plan.

The Union called the former Ross County Manager, James Darbyshire, to testify as to the work ethic of the Grievant. Mr. Darbyshire admitted that he, himself, was removed from his position. The Employer claims Mr. Darbyshire was evasive in his response to cross-examination questions concerning his belief that the Grievant was wrongfully removed from employment for

being involved in an accident.

The Employer argues that if Mr. Darbyshire thought the Grievant was such a good employee why could he not adequately explain: Why he requested a pre- disciplinary meeting for the Grievant's accident and operation of equipment; how a short term good employee could have 3 active suspensions on file; how many other good employees has he placed under a performance improvement plan; how many other good employees have committed four (4) preventable accidents in less than 2 ½ years; his comment on the Grievant's performance evaluation "demonstrating a better attitude " towards safety goals.

The Employer argues that despite being a long term manager, Mr. Darbyshire, a Union Witness, claims to have been unaware of the meaning of a discipline grid and a third violation of a work rule in ODOT policy WR-101. The Employer claims Mr. Darbyshire's testimony is discredited.

The Employer also argues that the Union was unable to support its procedural argument about the Grievant not being provided a Union steward at his investigatory interview with Ms. Piekarczyk. When interviewed the Grievant was accompanied by Matt Day. Mr. Day was the Chapter President and Union Steward. During this period Chuck Leach became Chapter President. Mr. Leach testified he was not able to provide documentation that the Union would have provided to Management that Mr. Day was no longer a Union Steward. The Union was not able to substantiate any merit to its argument that the Grievant was not provided a Union representative at his investigatory interview. The Employer cites Article 3.01 which says the Union shall furnish the names of its representatives to the employer.

The Employer argues that the Grievant violated a clear and reasonable work rule. The disciplinary action imposed was commensurate with a third violation of the same work rule in accordance with ODOT policy and the work rule grid. The removal of the Grievant is both commensurate with the offense and progressive.

The Union argues that the Employer has failed to meet its burden of proof with the documents and testimony that was put forward.

The Union says that the unfortunate accident that Charles "Greg" Lightle was involved in was not a result of Mr. Lightle acting in a careless manner or engaging in an unsafe act. It was simply an accident.

The Union says Tracy Taylor, ODOT District 9 Safety Consultant, testified that Mr. Lightle must have been driving the forklift loader too fast; or that he must have had the forks raised too high; or that it may have been because he was backing up when the metal I-beams slid off the forks and into the windshield. When asked in cross examination whether there were any witness to the accident she testified no there weren't, Mr. Lightle was working alone.

Tracy Taylor testified that Mr. Lightle, in her opinion, had acted in an unsafe and careless manner when he failed to follow the instructions in the truck and loader training that is outlined beginning on pages 80 through 85 in the Joint Exhibit Book. Upon cross-examination Tracy Taylor testified that the training involving load securement on pages 80 -86 in fact involves instruction on securing loads while using a truck or trailer; and that it was not instructions or guidelines on moving equipment with a fork lift.

The Union says Wayne May an HT-1 who was also assigned to clean up debris on August 7, 2014 testified that he had been using a track hoe to sort out the debris, creating two piles of

debris , one of wood and the other of I-beams. He testified that Mr. Lightle was loading wood debris in one of the wood dumpsters. Wayne also testified that he left at 11:30 that morning to work an assignment at the Ross County Fairgrounds.

On Cross-Examination, when asked if he recalled a phone interview with Union Staff Representative, Jeff Freeman, on September 16, 2014, Wayne May testified that he did recall having a conversation with Mr. Freeman regarding the accident and that he stated that he did not give Charles "Greg" Lightle a directive to not move any I-beams.

Bobby Johnson, ODOT Labor Relations Administrator, testified that Union Exhibit 1-3 which is a correspondence authored on June 23rd by the ODOT District 9 Labor Relations Officer, Larry Helscel, was a mistake and was done outside his realm of authority. Union Exhibit 1-3 is correspondence informing Mr. Lightle that his prior discipline has been inactivated. Mr. Johnson testified that Union Exhibit 1-3 was not mistakenly authored and sent by an administrative assistant, but was also sent to another ODOT Central Office, Human Resources and Central Office Labor Relations personnel. Mr. Johnson testified that he was not aware of any follow-up correspondence from his office or from District 9's labor relations office informing Mr. Lightle that the prior discipline being removed was a mistake and could not be relied upon.

The Union called Dave Kellough, Transportation Manager for ODOT District 9. Mr. Kellough testified that he had been offered a written statement regarding the accident on August 14 which is in the Joint Stipulated Exhibits. Mr. Kellough testified that from the reports that Tracy had received he doesn't feel that using the caterpillar brand forks, which have 60 inch long tines with a 60 inch spread, was an improper or poor choice of equipment. Mr. Kellough went on to testify that through the years they "ODOT" have always used the loaders with forks

and their fork lifts at the district to load and unload I-beams.

Dave Leach, ODOT District 9 Training Officer, testified that it would not be out of the ordinary to move I-beams using the loader that Mr. Lightle was using the day of the accident. Mr. Leach also testified that he is unaware of any training manual that instructs users of fork lifts to climb under a fork lift that is loaded to secure the load. He testified that securing a load with a fork lift generally means that the load is back to the elbow of the forks with the forks tilted back.

The Union called Mike Darbyshire, who was the Ross County Manager at the time of the accident. Mr. Darbyshire testified that he had been working with ODOT for nearly 37 years. Mr. Darbyshire testified that he had been District 9 Transportation Manager prior to taking the position of Ross County Manager. Mr. Darbyshire testified that as a manager and leader of ODOT workers through the years he could tell who was or who was not a good and valued employee. Mr. Darbyshire testified that he felt Mr. Lightle was a valued employee and was very reliable and hard working. Mr. Darbyshire testified that Mr. Lightle had taken the pesticide training offered by ODOT and was the “to-to-guy” they could rely on in carrying out the pesticide spraying in Ross County.

Mr. Darbyshire testified that he hand delivered the letters Union Exhibit 1-3 to Mr. Lightle when he was instructed to do so by the District Labor Relations Officer. Mr. Darbyshire testified that historically he had handed out many similar letters informing employees that discipline had been inactivated and that as a manager he enjoyed presenting employees with the news that they didn’t have any discipline. Mr. Darbyshire testified that although he didn’t have final authority on the level of discipline that was issued to his employees; historically he had been consulted and was afforded input into any discipline that involved employees he directed.

Mr. Darbyshire was asked if he was afforded the opportunity to give input into this accident, he testified he was not.

Mr. Darbyshire testified that on January 27th Union Staff Representative Jeff Freeman interviewed him regarding the Charles "Greg" Lightle case. He testified that he thought removal of Mr. Lightle was harsh and had he been consulted as he historically had, he would not have recommended removal. Mr. Darbyshire testified that in his 37 years with ODOT he was unaware of an employee being fired for an accident.

Chuck Leach, a highway technician and current Vice President for OCSEA Chapter 7100; testified that at the time of the accident he was the Union President for Chapter 7100. Chuck Leach testified that he had been through the ODOT fork lift training while he worked at the ODOT District 9 warehouse. Chuck testified that he had never been trained or instructed to secure a load to the forks of a forklift by using webbing or straps. Chuck testified that he was instructed that securing a load while using forks meant that the load was pushed toward the elbow of the forks and was tilted back. Chuck testified that he recalled co-workers offering suggestions that the dumpster should have been moved closer to the cleanup site of the old salt shed. Chuck testified that the dumpster was eventually moved closer in proximity to the debris.

Chuck Leach also testified that a recent project on State Route 772 that involved I-beams being used to control a slippage, was transported and moved using the same piece of equipment that Charles "Greg" Lightle used to move the I-beams from the salt shed debris pile.

Chuck testified that the Chapter President for the Union names who are stewards for the Chapter. Chuck testified that he had not designated or named Matt Day a Union Steward for at the Ross County garage. Chuck testified that he wasn't sure if Matt Day had ever been trained

as a steward.

The Grievant, Charles "Greg" Lightle testified that on the morning of August 7th he was assisting in the cleanup of debris from the salt shed. Greg testified that he was using the loader with the forks on it to load wood debris into a dumpster. Greg testified that about 10:30 or so he was asked to stop work on the cleanup and take a tractor to Pike County. Greg stated that when he got back to the Ross County garage it was around noon and everyone else had left for the Ross County Fair. He testified that he resumed his assigned task of cleaning up the debris

Greg testified that he filled the dumpster that was designated for wood debris and then he began to haul the I-beams up to the dumpster that was designated for the I-beams. Greg testified that he had made approximately 7 or 8 trips hauling the I-beams to the dumpster on the hill before the load shifted and hit the window of the loader. Greg testified that he was not driving fast and that he was just creeping along when the load shifted. Greg testified that the reason he was backing up when the I-beam shifted was because there was limited entry and egress to the debris pile. The proximity of brine tanks prevented him from simply picking up the I-beams and driving forward. Greg testified that when the I-beam slipped he used a track hoe to move the I-beam off of the loader. Greg testified that although he was not signed off to operate ODOT track hoes; he had operated track hoes for many years in previous jobs.

Mr. Lightle testified that he had the forks a few feet off the ground when the I-beam shifted and slid on the arm of the fork lift loader; not the 8 - 10 feet that Tracy Taylor claimed. Mr. Lightle pointed out through testimony and the photo of the loader that it only takes raising the arms of the forks a small amount for the angle of the arms to be pointed back toward the window of the loader.

Mr. Lightle testified that Wayne May never instructed him not to move the I-beams. Mr. Lightle also testified that one of the alleged preventable accidents Mr. Lightle was involved in was in fact , a result of a ground guide backing Mr. Lightle into another vehicle.

The Union argues the Employer has failed to meet its burden when it relied upon speculation. The Union also argues that the accident is not unlike many mysterious undetermined or unresolved accidents.

The Union argues that the Employer bears some culpability for failure to take reasonable measures to locate the dumpster close to the debris site. The Union asks that the grievance be granted and the Grievant be made whole.

The Arbitrator has reviewed the testimony of the witnesses, the Exhibits, and the arguments of the parties.

The Record shows that the Grievant has three (3) violations of Work Rule 101-8. The Union has attempted to cancel or dilute one of the violations by claiming it was the fault of the ground guide. The fact is, however, that the discipline for that violation is still part of the record.

The Union's argument about the Administrative error is not persuasive. This is not a situation where the Grievant's reliance on the error would have protected him from the consequences of his action. The Contract rules and the Grievant had all his contractual rights.

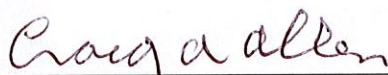
The evidence is clear that when the Grievant and Wayne May started cleaning debris both of them were there. The Arbitrator finds Wayne May's testimony credible.

The Arbitrator finds the argument that the Grievant was not certified to operate the Track Hoe irrelevant. The accident happened with the fork lift. The Grievant's use of the Track Hoe was improper but had nothing to do with the accident.

The Arbitrator finds there was Just Cause for the discipline. The discipline was progressive and commensurate with the offense.

The Grievance is denied.

Issued at Ironton, Ohio this 2nd day of June, 2015



Craig A. Allen
Arbitrator