Exhibit No.: 26
Issue: Gas Safety
Sponsoring Party: USW 11-6
Type of Exhibit: Post-Hearing
Case No.: GC-2006-0060

ARBITRATION DECISION DATED JULY 8, 2006

BETWEEN

LACLEDE GAS COMPANY

AND

USW 11-6

CASE NO.: GC-2006-0060

Jefferson City, Missouri
July, 2006

IN THE MATTER OF THE ARBITRATION

LACLEDE GAS COMPANY)
)
and)
UNITED STEELWORKERS, LOCAL 11-6)
)
[formerly PAPER, ALLIED-INDUSTRIAL,)
)
CHEMICAL & ENERGY WORKERS)
)
INTERNATIONAL UNION, LOCAL 5-6])
)

APPEARANCES:

FOR THE COMPANY:

JUDITH L. GARNER, Attorney at Law

FOR THE UNION:

RONALD J. WILKEY, International Representative

The undersigned was appointed as the Impartial Arbitrator per the collective bargaining agreement. The Arbitration Hearing was held on March 24, 2006, at the Raddison Hotel Downtown in St. Louis, Missouri. There was a transcript of the proceedings and the parties filed post-hearing briefs.

FACTS

At the opening of the Arbitration Hearing the parties presented "Stipulations" to the Arbitrator. Those particularly pertinent to the "facts" of this case are listed below:

* * *

4. Grievant was employed by Laclede as a General Fitter, commonly referred to as a Service Technician in the Service and Installation Department ("SAID").

5. Grievant was properly trained in the procedure for the Turn-off/Turn-on ("TF/TO").

6. Grievant was properly trained in the use of a Combustible Gas Indicator ("CGI").

7. As part of a TF/TO for an inside meter the Grievant was required to perform an inside CGI test at the inside point of entry of the service where the gas line enters the building and is further required to record the CGI reading on the Customer Information System ("CIS") ticket.

8. Attached hereto as Jt. Group Ex. 2 are accurate copies of the CIS tickets for the addresses on Grievant's route for March 3, 2005.

9. Attached hereto as Jt. Ex. 3 is the Grievant's route sheet for March 3, 2005.

10. Attached hereto as Jt. Ex. 4 are accurate copies of the Donnelly/Jaudes letters (dated July 1, 1991, March 2, 1987 and May 3, 1991) that state that discipline, up to and including discharge, will result from failure to perform required safety inspections or tests, and other safety related conduct.

11. Under the Donnelly/Jaudes letters discharge may also result from the falsification of or failure to properly prepare on a timely basis, all required work reports and other documents related to leak tests and safety inspections.

12. The requirements to perform an inside service entrance CGI reading is a safety inspection or test performed when Laclede is on a customer's premises to insure that gas is not accumulating at the point of entry.

13. Arbitrators have upheld the discharges of five (5) Laclede employees who were discharged for failure to perform required safety related inspections or tests in violation of the Donnelly/Jaudes letters.

14. Attached hereto as Jt. Group Ex. 5 are accurate copies of the arbitration decisions in the five (5) discharges for failure to perform required safety related inspections or tests in violation of the Donnelly/Jaudes letters.

15. Attached hereto as Jt. Group Ex. 6 are accurate copies of letters of compliment from the public, concerning the service provided by Grievant while working as a Service Technician.

16. Attached hereto as Jt. Group Ex. 7 are accurate copies of memoranda concerning prior discipline received by Grievant.

17. The Laclede first employed Grievant on January 12, 1998.

18. That the last day worked by Grievant for Laclede was March 3, 2005, and he was indefinitely suspended on that date.

19. That Laclede discharged Grievant from employment on April 21, 2005.

* * *

The issue was also "Stipulated" and reads:

> Did Laclede Gas have just cause as provided in Article VIII, Section 15 of the Labor Agreement, to discharge Louis Jackson on April 21, 2005. If not, what should the remedy be?

The discharge of the grievant, Louis Jackson, was due to his allegedly failing to perform a required safety test, falsifying Company documents and his overall work record. The Union and Company have stipulated that the work which the grievant was supposed to do that day was required by the procedures of the Company's rules and regulations on safety and not performing the work could lead to discharge. (Stipulation #12)

Mr. Walter A. Reitz, Manager of Labor Relations, testified that the Missouri Revised Statutes require providing safe and adequate service to its customers because "there could be exposure to gas leaks, fires, explosions, carbon monoxide poisoning...He (grievant) failed to go into two homes with the required CGI in order to perform the safety-related test, and then he falsified the documentation claiming that he performed those tests, and his overall record."

Mr. Reitz explained that there were two letters which were dated in March of 1987 and May of 1991 about the Company's position on safety related work. The 1991 letter included the statement - - "Failure of an employee to properly implement practices and procedures related to safety will subject that employee to immediate discharge." Mr. Reitz also stated that although employees "hadn't been discharged in the past for some of these offenses, (they) would be subjected to discharge for a first offense from this point forward."

He said the specific provisions of the July 1, 1991, letter which applied to the grievant were:

> Paragraph A. Failure to require the required gas leak test.
>
> * * *
>
> Failure to conduct required gas leak test with the assigned detection...equipment is the CGI.
>
> Failure to conduct prescribed inspections of company facilities, which was the turn off turn on procedure that he was out there to do on those two homes...
>
> And then D when he falsified the CIS ticket which documents the readings he claimed to have taken, that he falsified those records.

The grievant was aware of the content of these letters and that seven (7) employees had previously been discharged by the Company under these two Company letters. Five of the discharges proceeded to arbitration and "the discharges were upheld."

Mr. Reitz also testified the grievant "does not" have a good work record - - "he had a minor suspension for, I believe, one day and a couple of hours for falsification of records...is dishonest...and loafing...October 29, 2001...Failure to follow Company policies." In addition, the grievant was issued a warning in October, 2003 - - "Mr. Jackson failed to notice some cracks in a fireplace of a furnace...if it occurred again, he would be subject to progressive discipline." Then, on May 10, 2004, there was a documented "complaint that we received from a customer" about the grievant.

He further commented that the grievant was, according to a Settlement Agreement, "suspended on January 29, 2002, for alleged theft of Company property and tampering with a gas meter. On February 26, 2002, he was discharged." The Settlement Agreement also

provided - - "1) The termination of Louis Jackson is converted to a disciplinary suspension without pay; he is to return to work on April 24, 2002, a suspension including 60 workdays and holidays. This suspension shall remain in his record and may be used in any further case involving Louis L. Jackson. 2) This Settlement Agreement constitutes a final warning to Louis Jackson that repetition of conduct similar or related to the alleged conduct that caused his disciplinary suspension will result in discharge."

Mr. Reitz also commented about the grievant - - "We did not trust Mr. Jackson to work independently with intermittent supervision in the performance of his work according to our procedures and accurately record the information based on his previous disciplinary problems." As to why he recommended the grievant be discharged, he stated, "On the basis of his failure to follow company procedures related to safety, falsification of company documents and his overall work record."

Mr. Reitz further said that he believed the information given to him by Supervisors Ferris and Sisak because they observed the grievant on the day in question and he did not believe the grievant's version of what happened on the pertinent day.

On cross-examination, Mr. Reitz agreed that the grievant "denied it" with regard to the theft of Company property charge. He also agreed "There's a different twist on every one of them (discharge cases) as far as their inspections." He also agreed that he had not contacted the customers at the two pertinent homes involved in this case.

Mr. Joseph J. Wiliams, General Foreman, Central District, in March of 2005 was now General Foreman in the North District. He said his responsibility had been to supervise the foremen - - "they have to supervise approximately 15 or 20 Service Technicians who go out and do the work independently by themselves."

According to Mr. Williams, the technicians are to take a CGI reading (Combustible Gas Indicator) which has a wand or gooseneck, both with a filter. He said "No" when asked if the CGI had a filter on it without either the gooseneck or the hose and the wand. Regarding the importance of doing an inside service entrance with CGI on an inside meter, he stated, "Because - - you have to make sure that the gas service entering the building is not leaking, and that there is no migrating gas from another source outside entering the building that can accumulate." He further explained the wand is used for "an outside reading bar hole underground...outside." A technician is not to use the CGI without any attachment because there would be no filter on it which would damage the machine. There is also information on a plastic card which is "placed in the case that the Ranger (CGI) comes in" and states under "Maintenance - - Filter check - - do not use a detector without proper filters."

Mr. Williams also explained that the Company's Service and Installation Service Manual contains a "list of tools...the service technician is supposed to take in within a bucket when he does a job."

About the pertinent morning, he testified - - "Mr. Sisak...came to me, said he was having problems with Mr. Jackson, and that he wanted to follow him to see...Why he was working through lunch all the time." In response he told Mr. Sisak to go and do that but "take Mr. Steve Ferris with him to follow Mr. Jackson that day." Later Mr. Sisak called and "they indicated that he (grievant) didn't do an inside CGI check, get a reading on the inside...on both of the jobs...On each of those two addresses...He didn't see Mr. Jackson take his CGI equipment in on the jobs."

Furthermore, when Mr. Sisak returned to the office later that day he - - "took his (grievant's) CIS forms and his route sheet and brought them in to me...Because he noticed that Mr. Jackson had falsified his CIS forms...He had put on the back (it) had a CGI reading

on the inside" for the two houses. After reviewing the CIS route sheet, Mr. Wilson said "I informed Mr. Jackson that he was indefinitely suspended for falsification, for not following Company safety procedures and loafing...The danger is that (if) he - - Mr. Jackson was to leave a leak or didn't perform a CGI and there was gas migrating into the building and it accumulated that there could be loss of life or property."

On cross-examination, Mr. Williams was asked if he had run a business for some time and he replied, "I do not have a licensed business on the side...We bring property together...buying rental property."

Mr. Mike Sisak, Foreman, North District, testified that he has been in his Foreman position for the last three years but he had been a service technician for the prior 23 years. He said he was the grievant's direct supervisor from September of 2003 until March, 2005. The reason he gave for following the grievant that pertinent day - - "We had an issue the last four, five days about working through lunch without permission, and I noticed on that particular day, his route from the day before on the 2nd, that he found a street leak that just so happened to let him work through lunch that day, past 2:00."

Mr. Sisak explained that it was the time of the year when overtime is to be managed but when an employee works through lunch and works through the rest of the day there is going to be an hour of overtime. After he asked Mr. Williams if he could follow the grievant and was given permission by Mr. Williams, he was told to take Mr. Ferris with him, they then used Mr. Ferris' unmarked rental car to follow the grievant on his route. They arrived at 8021 Titus before the grievant where he was to perform an inside meter turn off/turn on.

According to Mr. Sisak, the grievant was wearing "A light green, long-sleeved Laclede Gas work shirt, he pulled into the driveway, got out of his van with a flashlight and his paperwork, and no tool bucket or CGI equipment, and entered the house even though service technicians are required to take in a bucket, tools and the CGI."

About the CGI and the gooseneck device, Mr. Sisak said that they are to be used - - "When you go inside to check around the inside piping and the meter." He also identified what is called the wand and was asked if the CGI could be used without either the hose and the wand or the gooseneck and he replied, "Because it doesn't have a filter on it...It will ruin the machine if you don't have it on there." Although he agreed that some technicians sometimes use a cut-down wand.

Mr. Sisak continued that when the grievant arrived at the 8021 Titus address, he parked in the driveway near the street and exited the driver's door and entered the house without a CGI. He then exited the house "across the front...the walkway, down the side of the house, back from the side of the house, back across the walkway into the house, and again exited the house, crossed the driveway, got back in his van...Sat there for ten to fifteen minutes." When asked if he had a good view of the grievant, he replied, "Absolutely."

They then went to 8735 Trumbell, arriving before the grievant, saw him enter the home - - "Exited the van...Paperwork and a flashlight in his hand...up the driveway, across the walk, up the steps and into the house" but he did not have his CGI or tool bucket with him. He then came "out of the house, crossed the walkway into the side doors of his van, got his CGI equipment (and wand) out of there, out of the van, cut across the yard, did a CGI check here...the foundation wall , came down the yard, made a CGI check here...At the curb and made a CGI check here...across the street...at the curb...underground...He crossed back across the street, up the curb, put the equipment back in the van, walked around the back of

the van and got into the passenger door." Mr. Sisak explained he was about 170 feet away but that he "absolutely" had a clear view of the grievant.

When Mr. Sisak and Mr. Ferris returned to the office and reported what they had observed, they were instructed by Mr. Williams to go back out and follow the grievant again. They found him at 1948 Driftway and they observed the grievant go to the side of the truck, retrieves his "tool bucket and his CGI equipment (gooseneck), walk up the driveway to the door, knocked on the door...he had his tool bucket in his right hand and his CGI equipment in his left hand." However, the grievant did not gain entry to that house. When asked if he noticed anything else at the Driftway location, Mr. Sisak replied, "That he (grievant) was very prominent in displaying that he had his tool bucket and his CGI at that time." When asked for his opinion why, he replied,"Because he had been warned that we were out there looking at him."

The grievant was then followed to 9028 Trefore and, according to Mr. Sisak - - "he did the required work there...including the CGI check outside. It did take a long time thought...We then observed Mr. Jackson set in his truck for about 15 minutes and then drove off, and we followed him."

Later, after they had all arrived back at the office, Mr. Sisak testified - - Mr. Jackson handed me his CIS tickets...I checked...I noticed that he had falsified company records by indicating that he did a CGI check at the inside wall for the two addresses at Trumbell and Titus." Mr. Sisak said he handed the information to General Foreman Williams and the grievant was "indefinitely suspended for...falsification of company records, failure to perform safety checks and loafing."

He further explained about the grievant working through his lunch period without permission - - "He (grievant) just refused to do it." When asked if the grievant had refused to comply with his direct order to call him if he was going to work through lunch, Mr. Sisak replied, "Yes," the grievant always had an excuse but he never called him.

On cross-examination, when asked what else he had done in the investigation regarding the grievant's conduct, he replied that he and Mr. Ferris made a VHSC tape of the two addresses at 8021 Titus and 8735 Trumbell. When asked if the video was a re-enactment at a wrong address, he replied, "No. Not a bit."

He was asked to refer to the documents on the use of the CGI and the reference to the use of "a proper filter" and agreed there was no information on it regarding what constituted a proper filter and material. He was also asked why he did not immediately confront the grievant when he saw him go into the first house without his CGI and his reply was - - "I don't know."

On redirect examination, Mr. Sisak agreed that his General Foreman had instructed him to stay out on the route with the grievant and it wasn't his decision on whether to stop the grievant after he came out of the first house. He was further asked about the CGI proper filters and said that they were on the attachments and the employees knew that.

Mr. Stephen Ferris, Foreman, was at the North District at the pertinent time and testified he supervises service technicians. He related what occurred on March 3, 2005, and his testimony was most similar to that given by Mr. Sisak.

On cross-examination, Mr. Ferris was questioned about the locations where the re-enactment video took place and he replied, "Went to 8021 Titus and 8735 Trumbell".

Regarding the distance they were away from the grievant on March 3, 2005, he replied - - "We were about the same distance on - - at both locations."

The Union's first witness was Mark Boyle, Union Shop Steward for the North District and Executive Board Member of the Union, who testified he has been with the Company for approximately 14 years in the Service Department. He said he was present at the 2nd Step Grievance Meeting when Mr. Williams "said it was a very, very warm day and Mr. Sisak said it was in the 60's and 70's...Mr. Sisak stated he was a hundred feet away at both addresses." However, Mr. Boyle was referred to a report on the weather on March 3, 2005, which showed that the temperature was 37.9° at 10:15 a.m., 41.0° at 11:51 a.m., 44.1° at 12:51 p.m.

Mr. Boyle also stated that he had been trained to use the CGI (Ranger) and did so without the attachments and that he had seen other technicians use the machine that way. With regard to a filter he said - - "this is what we use for leaks...there's another piece on this...this is a filter on the end of this. This pops off...That's a filter. And this pops off. Unscrew this. This is what we use to find leaks with...Put it back on, and I use it like this." When asked where the filter was, he replied, "Right here. It's got the little rubber piece. If the rubber piece is gone, you got to get a new one." Mr. Boyle was then asked if he had ever been given instructions that he was not to use the Ranger without the attachment and he replied, "No."

Concerning the video tape, he explained that he went to the two locations shown on the tape and the first address on Titus was correct. However, he stated the second address on the video at Trumbell was not; instead, it was 8677 Trumbell.

At this point the Company Counsel asked to reserve the right to ask for additional time at the end of the hearing because of this information and the Arbitrator replied, "No problem."

Mr. Boyle also asserted that the house on Trumbell, shown on that video was the wrong address in conflict with the testimony by Mr. Sisak and Mr. Ferris. He further testified he measured off "171-175" feet west of the driveway at 8735 Trumbell and took another picture and it showed there was the crest of a hill between that location and the house. He was then referred to the testimony by Mr. Sisak who had said he had not talked to Mr. Boyle about a particular memorandum, however, Mr. Boyle stated that Mr. Sisak had.

On cross-examination, Mr. Boyle reiterated his testimony on the CGI but said if he found it necessary to correctly check an area not readily available, he would go out to his truck and get a gooseneck.

On redirect examination, Mr. Boyle further testified that many times he had worked through his lunch hour without permission and then he left work an hour early. In addition, he said the bucket referred to in previous testimony was not available at this time - - "they told me they don't have them anymore."

Mr. Louis Jackson, grievant, testified he had been employed a little over 7 years before he was discharged and maintained he did carry the CGI equipment into the two pertinent locations on Titus and Trumbell. When referred to pictures of the CGI and asked if there was any difference, he replied, "I had the filter on the inlet."

Concerning his activity at the Titus address he said he arrived "and I pulled into the driveway, grabbed my Gas Ranger off the seat, threw it around my neck, went on into the house and did my gas safe inspection, checked my meter set and my point of entry and checked all the appliances. At that point, I went back upstairs, and the customer had asked me about a space heater...I questioned them on it, you know, where it was located...I located the space heater...it went into a false ceiling where you couldn't see where it went...I proceeded to call the meter desk...there was nothing on the file that mentioned a space heater at all...I called my foreman (Mr. Sisak)...they wanted it turned on...We walked around the back of the house...there was a crawl space...It was...under the crawl space."

When asked what he did with the CGI when he walked outside, he replied, "Just left it inside with the ticket." He said he then returned to his truck and called his boss...Mr. Sisak...to explain the situation and was told - - "You/ve been there an awfully long time" and his response was -- "I'll write my break in to make this job look better." He then completed his paper work and put the zero percent on the paperwork - - "That was the reading that I obtained."

The grievant was then referred to the Trumbell address and he stated he had made a zero percent reading on the paperwork - - "because that's the reading that I got with my Ranger." He also performed a "special SCI...It's required outside in the front of the house."

When asked if he carried a bucket of tools into the Titus and Trumbell locations, he replied, "No, I didn't feel having my tools with me would endanger the customer, and, I mean, I had my Ranger with me. The gas was already on. I didn't have to turn anything on or off. I basically went in there to check the appliances and make sure they turned on/turned off okay and to get a gas reading from inside the house. Normally, you don't need any tools for that."

The grievant also claimed he wore a coat and a green shirt on that day and it was - - "in the 20's that morning and was a cool day...It never really got much above the 40's, high 40's." He further denied loafing that day.

At this point in the hearing the parties adjourned to the hallway of the hotel and the grievant was some 130 feet away and demonstrated how he carried the CGI in his hand.

The grievant agreed that he had been suspended for 9.3 hours for loafing on the job on October 29, 2001 - - "I was loafing...I took a break after a job that wasn't legitimate, and my foreman caught me doing it and I basically took my medicine. I mean, I did wrong."

About his prior discharge by the Company, he said he was suspended in January, 2002, and discharged in February, 2002, and then reinstated without pay on April 24, 2002. He said that the witnesses had refused to testify. Consequently, "it could be two, three, four months...years...I had to get back to work. I was strapped for money...I mean, I actually was worried about losing what I did have." The grievant agreed he signed the settlement agreement but did not admit guilt of the charges - - "I wanted to get back to work...I needed a paycheck every week."

When asked how he carried the CGI, he denied carrying the CGI in front of him and said, "No. Not on my belly," but agreed he would do that - - "like while I was bar holding because normally we try to use both hands." About training on the CGI - - "You mean as far as did I take a class or anything...No. I never had any training as far as a representative of the Company that gave them to us."

The grievant further asserted that Mr. Sisak had previously asked him to sign a customer's name on the back of a form for customer comments - - "I filled all that out and put the customer's name on there." He also said he was asked by Mr. Sisak to sign "the back of those (two other employee evaluations)" and agreed that it was dishonest - - "You know, your boss asks you to do something, normally you're going to do it. If you cross him, you make him mad at you, then it's not going to benefit you. I mean, I didn't feel that it was going to hurt me by signing something, you know, that a customer should have signed."

The grievant also admitted that he had worked through lunch "without permission quite a few times...I mean, very seldom did I take lunch...Normally, I worked a lot of overtime. If it was available, I worked it, and if I had a foreman that said no, then you didn't. I mean, there was foremen that said don't work through lunch." When asked if Mr. Sisak ever talked to him about this, he said he heard the testimony by Mr. Sisak about his talking to him but he denied it - - "No. He didn't."

On cross-examination, the grievant agreed he had falsified and loafed on a previous occasion and received a 9.3 hours suspension; that he was dishonest when he signed the customer's name; that he was dishonest when he signed the two servicemen's names. He also agreed that there was a Company rule that he was to take the bucket of tools in with him but he did not on "TFTO's - - "No, I didn't take the tool bucket in...I felt I didn't need them to check for gas leaks." When asked if there was a gas leak found and he had his tools with him, would he be able to stop the leak, he replied, "I might." He concurred he would not be able to do that without his tools there. He was then asked:

Q. So it's a safety issue, and you substituted your own judgment for the Company's judgment on a safety issue, yes or no?

A. Yes.

After the grievant again asserted that he had received no training on the CGI, the grievant was shown an "Attendance Roster - 2005 Annual Training" and agreed his name was on the list and he had signed it. He was also referred to another - - "SAID - ANNUAL TRAINING 2005" document which showed he had also answered questions on the use of the CGI and he agreed he had signed the document on January 14, 2005. The comment from the grievant was - - "I guess I should have asked for more."

On redirect examination, the grievant said he did not understand the question on cross-examination about his training on the CGI - - "I thought she meant the training that everybody went through when I first received a Ranger." He further said he knew about the annual training meetings and was not talking about that training; rather, he was talking about - - "The training that the manufacturer gives when you receive the piece of equipment for the first time."

At this point in the hearing, the Company requested an extension of time to investigate several Union's photographs of the two houses introduced into evidence regarding the houses involved in this matter. The Arbitrator agreed to one week additional time..

The Company then recalled Mr. Reitz who testified that the re-enactment video was not considered by him when he made his recommendation that the grievant be discharged - - "No, I did not consider the video...I based my recommendation on the third step meeting, the second step meeting, as it was reported to me because I didn't attend it, and interviews with the employees, the supervisors before and after the third step meeting...We didn't feel it helped or hurt the case."

On cross-examination, Mr. Reitz was asked if he knew that the one location was the wrong house and he replied, "No. I had never been to the site...My point...is that they claimed they could clearly see him getting out of the vehicle without a CGI, and go in the house. They know the employee. They're familiar with the work. They had been there for 15 or 25 years of experience, and I would believe what they told us...They had no reason to lie."

After the hearing, the Arbitrator received two affidavits from the Company which were signed by Mr. Sisak and Mr. Ferris which basically said the same thing:

1. The video tape used by the Union in the Arbitration that purports to show 8735 Trumbell in fact shows 8677 Trumbell.

2. The measurement of 161 feet as the distance at which I viewed 8735 Trumbell is incorrect because that measurement was taken the day the video tape was made and that measurement reflects the distance from 8677 Trumbell to 8736 Trumbell where I sat while making the video tape.

COMPANY POSITION

A. Laclede Had Just Cause to Discharge Grievant for Failure to Perform Required Safety Inspections of Laclede's Facilities and for Falsification of Company Documents by Claiming that He Had Performed Such Inspections.

The Company maintains it had just cause to discharge the grievant because all the credible evidence showed that on March 3, 2003, he was in violation of Laclede's express policies; the grievant failed to perform required CGI safety tests at two homes on his route. In failing to perform the required safety tests the grievant potentially jeopardized public safety by failing to test for gas in the homes. Further, grievant falsified Company documents to indicate that he in fact performed the required safety tests. The Union's defense that grievant performed the required safety tests is contrary to all credible evidence and is not supported by any evidence other than grievant's self-serving, unsupported testimony. Grievant's conduct on the remainder of that day is inconsistent with his claim that he properly performed his work at the two homes in question.

The Company directs the Arbitrator to decisions by other arbitrators upholding the discharge penalty when an employee violates employer rules related to safety. Moreover, the Company points out that arbitrators consistently hold that an employer has just cause to terminate an employee for falsifying records and loafing where there are no safety implications.

The Company also argues that it had the right to discharge the grievant for his conduct on March 3, 2005, because the grievant had proper training on the CGI; the grievant was on notice that failure to perform the CGI test while on a customer's premises would be a violation of a safety procedure that subjected an employee to immediate discharge ; this also applies to falsification of safety related records. The Company's position is that the grievant

violated its required safety regulations and that his discharge should be upheld by the Arbitrator.

According to the Company, its two supervisors, Mr. Sisak and Mr. Ferris, were in a good position to see the grievant at both the 8021 Titus and 8735 Trumbell addresses. They testified unequivocally that grievant did not have his CGI as he entered either home and that they had a clear view of grievant as he performed some work at the homes. The grievant testified to the contrary.

The Company states it clearly had cause within the meaning of Article VIII, Section 15 of the Labor Agreement, to discharge grievant.

B. Grievant is Not a Credible Witness.

The Company argues the grievant is not credible in his testimony. The grievant's testimony is internally inconsistent and self-serving. The self-interest grievant has in the outcome of the arbitration clearly affects the credibility determination. Grievant's prior disciplinary record also indicates untrustworthiness and includes an admitted falsification and a prior discharge for theft of Company property and tampering with a gas meter. Finally, grievant's clear disregard for Company procedures (permission to work through lunch, requirement to take tool bucket into the home; performance of CGI test) for his own benefit and convenience is another indicia of his untrustworthiness and lack of credibility.

The Company argues that prior arbitration decisions uphold that a credibility determination is left to the common sense of the Arbitrator and cites cases in which arbitrators have detailed their considerations for their decision in such cases.

The reasons given for the Company's position on the credibility issue involved in this case are as follows: 1) Grievant has a personal interest in the outcome of the proceedings; 2) There was no animosity shown toward the grievant by Foreman Sisak and Ferris; 3) Grievant did not take the CGI in the first two homes but glaringly did so at two homes that he inspected at a later time that day; 4) Grievant has a bad disciplinary record, having a prior discharge changed into a 60 day suspension without pay. Also, he had a discipline for loafing and falsifying records in 2001. Clearly this goes to his honesty and credibility. Therefore, the Company claims that a combination of these things, plus his cavalier attitude towards tools and working through lunch periods without permission, demonstrates his disregard for the Company's rules and procedures with respect to safety and record keeping.

The Company asserts that the Union attempted to discredit Foreman Sisak because he improperly asked grievant to sign another employee's name to an evaluation of that employee. However, Mr. Sisak had previously admitted this when it was raised in the 3rd Step Grievance Meeting. Furthermore, Mr. Sisak admitted he knew this was wrong and did not submit it.

C. The Mistaken Videotape is Not Relevant to Any Material Issue and Does Not Go to the Credibility of Either Sisak or Ferris.

The Company points out that even though there was a mistake (wrong house) on the video, after investigation, Mr. Sisak and Mr. Ferris admitted making this mistake. The videotaping of the wrong house, according to the Company, is a peripheral matter and is not relevant to any material issue before the Arbitrator.

Even if the Arbitrator determines that the error on Trumbell is fatal as to Trumbell, the single event of failing to perform an inside CGI test at Titus supports discharge under the Donnelly/Jaudes letters. Furthermore, the videotape was not relied upon as a part of the investigation and was not relied upon by the Company in the presentation of its case. This mistake does not go to the credibility of Foremen Sisak and Ferris.

D. There was No Mitigating Factors in the Decision to Discharge Grievant.

The grievants past work record with the Company showed he was disciplined twice and needs to be considered by the Arbitrator. Clearly the grievant is not an employee whom the Company can trust to go out and do the work required while not being directly supervised.

The Company further argues the grievant knew the Company's rules and regulations about safety tests and that by not performing them could lead to his discharge. Grievants length of service, approximately seven (7) years, is neither mitigating nor aggravating. However, his prior record supports the discharge. The grievant had two prior disciplinary issues that involved dishonesty; theft of Company property and falsification and loafing. He also admitted to dishonesty when he signed other employees' names to evaluation forms. The Company has a significant history of discharging employees for safety violations, without the benefit of progressive discipline. Also, the Union presented no evidence of alleged disparate treatment in the discipline given other employees.

Therefore, the Company position is that there are no mitigating factors involved in this case for the Arbitrator to consider.

All of the credible evidence supports the Company's decision to discharge grievant for failure to perform required safety tests in violation of its procedures, falsification of Company documents and his overall work record.

CONCLUSION

For the foregoing reasons, Laclede respectfully submits that the discharge should be upheld and the grievance denied.

UNION POSITION

The Company Failed To Carry Their Burden of Proof.

The Union states the Company bears the burden of proof in a discipline case. The Company had accused the grievant of not taking safety readings at two houses. Also, Mr. Reitz testified he did not think the grievant was honest or that they could trust him. Consequently, these accusations involve that of moral turpitude and is considered a social stigma and the Union argues that the degree of proof should be based on "proof beyond a reasonable doubt."

The Company solely based their decision on what Supervisors Sisak and Ferris told them they had observed. There was no physical or other evidence to support the Supervisors allegations. Based on the fact that Mr. Sisak admitted to being dishonest in the past and that both were unbelievably at the wrong address on Trumbell, the Union feels that the grievant is more credible than Mr. Sisak and Mr. Ferris.

The Union asserts that discharge is the equivalent of "capital punishment" due to the severity of the consequences to the employee. It is devastating because of loss of job, etc., but also may stigmatize the affected employee.

The Union maintains that the grievant does not deserve the equivalent of capital punishment in this case because the Company failed to carry the necessary burden of proof. Therefore, the grievance should be sustained for the above and following reasons.

Laclede's Similar Cases.

The Union argues that this case is different from the prior cases between the parties which were submitted to the Arbitrator as a joint exhibit. The Union points out that the Company in those cases either had physical evidence which backed up the Company's allegations or they had talked to the customers involved and used the customer to confirm the Company's allegations. These things were not present in this case.

Co. 2, Settlement Agreement.

The Union addresses the previous settlement agreement returning the grievant to work and maintains it speaks for itself because it used "alleged" in its content. It does not say the grievant was guilty of the charges; furthermore, the grievant denied the allegations in the agreement and it was on this basis the Company and the Union settled that grievance. As the grievant testified, he could not wait to get his job back through the length of grievance procedures. He needed to return to work right away, therefore, he agreed to sign the document. In his own words - - he "had no choice."

The Company Failed to Provide Grievant with a Fair and Impartial Investigation as Required by Industrial Due Process.

The Union asserts the Company failed to contact the customers to confirm whether Mr. Sisak or Mr. Ferris were correct in their observations that the grievant did not have his CGI with him. Consequently, the Union position is that the grievant's right of due process was violated because there was no fair and impartial investigation. Also, the grievant's due process rights to a fair investigation were infringed upon by the one-sidedness of the Company's investigation.

In this case, the Company assumed that the grievant was lying and never tried to confirm with the customer that the grievant did or did not have his CGI with him when he was in their homes.

Mr. Sisak and Mr. Ferris Testimony.

The Union's position is that the testimony of the two foremen is not credible. Mr. Sisak admitted to dishonesty by admitting that he asked Mr. Jackson to falsify Company documents. In addition, it is also hard to believe anyone who says they witnessed something, remembers it very well one year later, but remarkably goes to the wrong house and address just three weeks after their observations were made but do not notice the obvious incorrect address. Furthermore, it is hard for the Union to believe that Mr. Sisak and Mr. Ferris could conceivably determine whether the grievant had his CGI with him from a distance of 170 feet because it was very difficult to see 130 feet when the grievant demonstrated carrying the CGI at the hearing. The Union submits that these two witnesses were not credible and therefore their testimony is not believable.

Jaudes/Donnelly Letters.

The Union argues that the grievant did not violate the two letters regarding safety checks as he did do the necessary safety checks inside both houses. Therefore, the Union's position is that these two letters are immaterial.

Penalty Too Severe.

The only thing that the Company can prove beyond a reasonable doubt is that the grievant did not carry his tool bucket into the houses and that he was not using the attachments with his CGI. The penalties for this, as admitted by Company witnesses, is far less than discharge.

CONCLUSION

Under any objective standard of proof the Company failed to meet its burden of proof and for all the above reasons, the Union respectfully requests that the grievance be sustained and the grievant be made whole in all respects.

DECISION

This being a discharge case, the Company has the burden of proving it had just cause to discipline the grievant. Consequently, the Arbitrator will give first consideration to this issue.

The Arbitrator takes note of "Stipulations" 10 and 11 which provide that the Company has safety rules and the designated discipline for failure of a employee to perform "required safety inspections or tests and other safety related conduct." Also, the rule for "falsification of...all required reports and other documents related to leak tests and safety inspections" is also subject to appropriate discipline. Therefore, the second issue to be addressed by the Arbitrator is whether the Company has proven that the grievant failed to perform the necessary safety tests as provided by "Stipulation 7" and also falsified Company records per "Stipulations 8 and 12."

Mr. Walter A. Reitz, Manager of Labor Relations, testified that he reached the decision to discharge the grievant because on March 3, 2005, the grievant failed to go into two homes on his service route with the required CGI (equipment) in order to perform the necessary safety related tests; and then falsified the documentation he submitted to the Company claiming that he performed those tests; plus his overall record.

The reason offered by the Company for having the grievant followed on March 3, 2005, was the concern by Foreman Sisak that the grievant had been working through his lunch period without his permission which resulted in overtime during a period of the year when there was to be no overtime. Consequently, General Foreman Williams authorized the

two foremen, Mr. Sisak and Mr Ferris, to follow the grievant on March 3, 2005. Therefore, the Arbitrator finds that there was a legitimate and good faith reason for their actions in doing that.

There is no dispute that it is a necessity for a Company serviceman to carry the CGI with them when going into a home in order to test for a possible gas leak. But, there is disputed testimony about whether it is necessary to have the gooseneck attachment with its built in filter attached to the CGI when taking a gas reading. The Company witnesses said to not to do so would cause possible damage to the CGI. However, both Union witnesses disagreed. Mr. Boyle testified he had used the CGI without an attachment when he was a serviceman. He stated he used another small filter instead. He further stated that he had seen other servicemen do the same thing. The grievant also testified - - "I had the filter on the inlet" when he entered the two pertinent houses and that it showed a zero reading at each location - - "That's the reading I got with my Ranger."

Nevertheless, the Arbitrator does not believe it is necessary to make any judgment on this issue because the big disagreement in this case is - - did the grievant take the CGI into the houses on Titus and/or Trumbell streets? Mr. Sisak and Mr. Ferris testified they observed the grievant enter the two houses with only his paperwork and his flashlight. The grievant testified he did carry his CGI with him into the houses and made the necessary gas readings.

This obvious difference in this testimony resulted in the Union attacking the credibility of the Company witnesses. Past events were raised concerning Mr. Miller and Mr. Sisak. Also, the re-enactment video prepared by Mr. Sisak and Mr. Ferris was brought forth because they had made one of the re-enactments at the wrong house. Nevertheless, the Arbitrator believes that the information contained below will reveal a much more serious credibility problem with the grievant's testimony.

The only argument by the Union on the credibility of Mr. Ferris is the video re-enactment at the one wrong address on Trumbell. However, even though Mr. Ferris was certain that they had viewed the correct houses, the Arbitrator finds that to be a careless mistake after the fact and does not seriously impinge on his credibility. Consequently, the Arbitrator decides to accept the testimony by Mr. Ferris on what he observed on March 3, 2005, regarding the events at the two houses on Ferris and Trumbell.

The Arbitrator is also impressed by the testimony of Mr. Ferris because it mirrors Mr, Sisak's testimony for consistency. The Arbitrator is very comfortable in the account of two individuals who agree, rather than a one-on-one situation.

In addition, the more significant importance to the Arbitrator is the following testimony given by the grievant on direct examination at the Arbitration Hearing. It speaks to the manner in which the grievant said he carried his CGI at the Titus house:

Q. When you first look at Titus Road, and tell us what you recall about the job?

A. 8021 Titus, the job was a TFTO, and I pulled into the driveway, grabbed my Gas Ranger off the seat, threw is around my neck, went into the house. (emphasis added.)

However, the grievant was also asked:

Q. I know you watched the (re-enactment) video many times and it showed the Company witnesses in the simulation carrying the piece of equipment (CGI) in front of them on their belly. Did you ever carry your piece of equipment like that?

A. No. Not on my belly... it's going to be uncomfortable. The only time it would sit on my belly would be like while I was bar holding because normally we try to use both hands instead of just doing it with just one.

The Arbitrator finds this differing testimony to be totally inconsistent and unexplained.

There is an additional fact regarding the grievant's conduct at the Titus and Trumbell addresses which is not in dispute. The grievant admitted he had not taken his tool bucket in with him at either house. He said, "No, I didn't feel having my tools with me would endanger the customer...The gas was already on." Also, when the greivant was questioned on cross-examination about the tool bucket, he again stated - - "I felt I didn't need them." The grievant was then asked, "So it's a safety issue, and you substituted your own judgment on a safety issue, yes or no?" He replied, "Yes."

The Arbitrator is of the opinion that this admission by the grievant speaks for itself. If the grievant was willing to violate a Company safety rule by not taking the tool bucket with him into the two houses, why should the Arbitrator be willing to accept the grievant's testimony that he did carry the CGI into the two houses. If he was willing to violate one safety rule, why wouldn't he be willing to violate two rules?

There is another inconsistency in the grievant's testimony regarding the location of the CGI in his truck. The grievant maintained he had his CGI in the cab of his truck and took it with him at Titus and Trumbell. However, the testimony by Mr. Sisak and Mr. Ferris was to the contrary. They both said he did not have his CGI when he entered both houses. However, they also concurred on the fact that after the grievant came out of the Trumbell address he went directly to his truck, removed the CGI equipment and the wand that is used with it and proceeded to performed gas leak tests at two places outside the house and one location across the street. Why would they both agree that they did not see the grievant carry the CGI equipment into the house but then saw him using it outside the house? They were still at the same location and distance from the truck.

Therefore, the Arbitrator can only conclude that the grievant did remove the CGI equipment after he left the house and returned to the truck because it was in the truck and was needed to perform the outside inspections.

In addition, there is also the fact that Mr. Sisak and Mr. Ferris returned to the office and told Mr. Miller about what they had seen of the grievant's actions at Titus and Trumbell. As a result, Mr. Miller instructed them to return and continue to follow the grievant. Mr. Sisak and Mr. Ferris explained that when they did that they found the grievant at 1948 Driftway, however, they both agreed that they observed the grievant with the CGI and its attachment and his bucket of tools when he went to that house. In fact, they related that the grievant promptly displayed those items as he went to that house. The grievant did the same thing at the next house when he made his inspection.

The Arbitrator finds it difficult to accept the grievant having the need for the CGI and its attachment, along with the tool bucket at the two later inspections and not at Titus and Trumbell. This is absolutely contrary to what he had done previously.

After giving consideration to all of the above, the Arbitrator is convinced the grievant violated a Company rule because he did not have the CGI equipment and his tool bucket when he entered the houses on Titus and Trumbell. Therefore, the Arbitrator also reaches the conclusion that the grievant further violated another Company rule by reporting having made the gas readings at the two locations and showed a zero reading on his report to the Company. In sum, the Arbitrator finds that the Company did have just cause to discipline the grievant for his misconduct on March 3, 2005.

In reaching this decision the Arbitrator has considered the arguments by the Union about the distance between Mr. Sisak and Mr. Ferris from the two locations. However, the totality of their testimony has convinced the Arbitrator that they did observe the grievant and were able to see the CGI when it was actually in the possession of the grievant.

Furthermore, the Union's argument of lack of due process, no further investigation by the Company and no interview of or testimony by the home owners, does not impress the Arbitrator. The Arbitrator is of the opinion that the burden of proof by an employer must be substantiated by the evidence presented. In this case, the Company had two foremen follow the grievant and report their findings. In addition, the Arbitrator has explained why the conclusion has been reached that discipline was properly imposed on the grievant. This Arbitrator has frequently held that an employer and union are free to present the necessary evidence as they see fit and the Arbitrator will determine its sufficiency of proof his been provided. In this case, the Company evidence was sufficient enough to convince the Arbitrator that the Company had met its necessary burden of proof.

Having reached the above conclusion, the Arbitrator must now give consideration to the issue of the severity of the discharge discipline imposed by the Company upon the grievant. Unfortunately for the grievant, his past record with the Company during his relatively short seven years of service with the Company is not very good, having been disciplined twice before, including his being previously discharged.

Frankly, the Arbitrator is not impressed by the Union's contention that the grievant did not admit guilt on the discharge occasion because of the fact that he needed a job and the money, thus, accepting the layoff without pay.

Regardless of the grievant's situation at that time, the fact remains that the Settlement Agreement reinstating the grievant clearly stated it would remain in the grievant's record "and may be used in further cases involving Louis L. Jackson." In addition, there was a further proviso - - "This Settlement Agreement constitutes a final warning to Louis Jackson that repetition of conduct similar or related to the alleged conduct that caused his disciplinary suspension will result in discharge."

The Arbitrator concludes that the grievant's actions on March 3, 2005, was "conduct similar" to the conduct causing his previous discharge and the disciplinary suspension for the stated reasons. The grievant was totally responsible for checking for gas leaks inside the houses at the Titus and Trumbell addresses. He failed to do that, thereby he was unfaithful to the Company and did not fulfill the Company's obligations to provide the necessary services to its customers. The grievant further eliminated the customer's right to be assured that they were living in a gas-free environment. Also, the grievant was less than honest when he reported zero gas readings on the Company's CIS form for the pertinent addresses. The Arbitrator also finds that the grievant was less than honest in his testimony at the Arbitration Hearing in the events of March 3, 2005.

While the Union also argues disparity of treatment on the extent of discipline in this case, the Arbitrator is not convinced that the facts of the grievant's situation are even closely similar to any other employees. In addition, the Arbitrator does not find any meaningful mitigating circumstances on behalf of the grievant.

Finally, the Arbitrator concludes that a public utility company should not be required to keep an employee on its payroll as a serviceman because there is too much at stake. A serviceman is primarily an employee the Company has to have trust in and who will perform each and every gas safety check without exception and unsupervised. Any failure to do so

could cause the Company to be cited as violating the law and subject to those consequences. More important to this Arbitrator is that the non-performance of a gas safety check could result in most serious damage to life and property to the Company's customers, substantial monetary plus damages. In sum, this Arbitrator will not take on the responsibility requiring the Company to employ someone who admittedly is willing to substitute his judgment for that of the Company on matters of safety checks.

For all of the foregoing reasons, the Arbitrator finds that the Company had just cause to discipline the grievant and impose the discharge penalty on the grievant.

The grievance is denied.

Signed in the County of St. Louis, State of Missouri, on the 8th day of JULY, 2006.

Joseph J. Nitka, Arbitrator