Now, therefore, as the duly designated Arbitrator, I hereby
Make the following

AWARD

The Employer *did not* have "just cause" to terminate the Grievant, [redacted]

The Union's grievance is sustained. The Grievant should be reinstated to his position with full back pay and benefits. That is my Award.

July 31, 2013
Mendon, New York

DOUGLAS J. BANTLE, ESQ.

STATE OF NEW YORK)
) SS.:
COUNTY OF MONROE)

I, DOUGLAS J. BANTLE, ESQ., do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is my Award.

July 31, 2013

A GRIEVANCE ARBITRATION CONDUCTED UNDER THE RULES OF THE AMERICAN ARBITRATION ASSOCIATION

In the Matter of the Arbitration Between the

AMALGAMATED TRANSIT UNION LOCAL 282,

"Union"

-and the- **OPINION AND**

REGIONAL TRANSIT SERVICE, INC. **AWARD**

"Company"

Grievance: [redacted] [redacted] (Termination of Employment)

BEFORE

Douglas J. Bantle, Esq., Arbitrator

APPEARANCES

For the Company:

Roy R. Galewski, Esq., Attorney
Lisa Berri Hella, Attorney, Rochester Genesee Regional Transit Authority
Daniel Howland, Labor Relations, Rochester Genesee Regional Transit Authority
Julie Anne Tennant, Medical Department Manager, Rochester Genesee Regional Transit Authority
Michael Capadano, Transit Operations Manager, Rochester Genesee Regional Transit Authority

For the Union:

Jules L. Smith, Esq., Attorney
Jacques Chapman, President, Business Agent
Dominick Zarcone, Vice President

Annette Manuel, Shop Steward
[redacted] [redacted] Grievant

PROCEDURE

One day of hearing was held in the above matter in Rochester, New York on July 11, 2012 in the meeting room of the Rochester Genesee Regional Transit Authority building at 1372 East Main Street before the undersigned who was selected mutually by the Parties to serve as Arbitrator. At that hearing, both parties were given full opportunity to present their evidence, testimony, and argument; to summon, examine, and cross-examine witnesses.

At the conclusion of the hearing, the Parties agreed to submit post-hearing briefs that were to be postmarked to the Arbitrator no later than August 14, 2012. The Arbitrator received the final post-hearing brief on August 15, 2012 and the record was closed on that day. Due to the hospitalization and unusually serious illness of the Arbitrator, the parties graciously extended the time limits for the rendering of the Opinion and Award.

THE ISSUE

At the arbitration hearing, the Parties were able to agree, in part, to an issue to be submitted to the Arbitrator.

1. Was the Grievant, [redacted] [redacted] ("[redacted] or "Mr. [redacted] discharged for "just cause?"

2. If so, what shall the remedy be?

The Amalgamated Transit Union, Local 282, also proposed another issue that the Company would not agree to stipulate to regarding the timeliness of the charges brought against the grievant. That issue is,

1. Did the Company timely file charges against grievant regarding the alleged infraction?

2. If not, what shall the remedy be?

As remedy, on page 23 of the Union's post-hearing brief, it states,

> For all of the reasons and authorities submitted forth above, it is respectfully submitted that the grievance must be sustained, grievant reinstated to his position with full back pay and benefits.

The Union also requested that the Arbitrator retain jurisdiction in regard to remedy should the Arbitrator sustain the grievance.

Before proceeding further, I believe that the issue proposed by the Union is an integral part of the "just cause" issue proposed by the Company. Therefore, I will discuss and answer both questions in my Discussion, Opinion and Award section.

RELEVANT CONTRACT LANGUAGE

The following contract language found in the collective bargaining agreement (Jt. Exh. #1) is relevant in this case.

6. DISCIPLINE/DISCHARGE

A. Charges must be filed within fourteen (14) calendar days from the date of the alleged infraction. This charge must be given in writing to the employee. Said employee shall be entitled, if he or she so desires, to have a Union representative appear with him or her at any time including the reading of the charges.

B. ...

C. ...

D. ...

E. ...

F. ...

G. If found not guilty of the allege offense, the employee will:
   1. Be reimbursed for all time last;

   2. Suffer no loss of seniority;

   3. Suffer no loss of benefits; (i.e. be made whole).

RELEVANT FACTUAL BACKGROUND

Mr. [redacted] began his employment with the Rochester Genesee Regional Transit Authority on October 9, 2000 when he completed all necessary paperwork including the Initial Medical Questionnaire (Emp. Exh. #1). On that questionnaire, Mr. [redacted] checked a "No" taking the position that *he* never filed a Workers' Compensation claim (See Emp. Exh. #7).[1] On September 19, 2006 and on January 26, 2009, Mr. [redacted] was involved in two (2) RTS bus accidents where he claimed to have sustained neck and back injuries. Workers' Compensation claims were filed regarding those injuries (Un. Exhs. #1 & #2).

As a result of the 2009 accident, Ms. Julie Tennant, Medical Department Manager for the Company, interviewed Mr. [redacted] about his 2009 claim to process his paperwork.[2] She testified, at that time, she asked Mr. [redacted] if "he had any prior back or neck problems" and that he stated, "aside from the 2006 RTS incident he had never had any prior treatment, injuries or conditions in only the back and neck." [Testimony of Tennant *per* the Arbitrator's notes].[3] As part of Ms. Tennant's processing of this claim, she decided to send Mr. [redacted] for an

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[1] The question asked is, "Have you ever filed a workers compensation claim?"

[2] Ms. Tennant was not involved in the handling of the Workers' Compensation claim for the accident occurring in 2006.

[3] One should note, on the October 9, 2000 "Initial Medical Questionnaire," question number 6 asks, "Have you ever had pain, swelling, or other problems with your back, hips, knees, ankles or feet?" Mr. [redacted] "checked" the "Yes" box response to that question. The question also tells the applicant "(If yes, circle as appropriate)". Mr. [redacted] circled both of the words "back" and "hips".

independent medical examination (IME) to determine the permanency of his ailments and the "apportionment" of the ailment with respect to these specific injuries. In addition she decided to run a search in the ISO ClaimSearch system to check for any prior insurance claims by Mr. [redacted] Ms. Tennant testified she first ran that check in July 2010.[4] In addition, Ms. Tennant testified that she obtained proper HIPPA releases from Mr. [redacted] so that she could obtain his medical records from each physician listed on the ISO ClaimSearch report. This information as well as medical information from Dr. Peter Capicotto, Mr. [redacted] personal physician, was shared with Dr. Arlen K. Snyder who performed the independent medical examination (IME) on July 21, 2010 (Emp. Exh. #4). Based on this examination and all the medical information he reviewed, Dr. Snyder wrote a report that outlined all treatments that Mr. [redacted] received for neck and back issues, some occurring before the 2006 accident at RTS (See pages 6-10, Emp. Exh. #4). Doctor Snyder found that Mr. [redacted] neck and back problems were related to injuries prior to the 2006 RTS motor vehicle accident (see pages 11-12, Emp. Exh. #4). Dr. Snyder's report caused Ms. Tennant to question Mr. [redacted] claims of no neck and back issues prior to 2006. This report prompted Ms. Tennant to notify attorneys for the Regional Transit Service who then submitted a Memorandum of Law to the Workers' Compensation Board arguing that Mr. [redacted] had committed "fraud by failing to disclose his prior injuries and preexisting conditions."[5] On April 22, 2011, the Workers' Compensation Board's Administrative Law Judge Lawlor issued the board's decisions related to Mr.

[4] This search was again run on May 4, 2011 (Emp. Exh. #3).

[5] See Un. Exh. #3, the Company Counsel's "Memorandum of Law," dated April 1, 2011.

[redacted] 2006 and 2009 injuries (Emp. Exhs. #5(a) & #5(b)). In part, his decision stated,

> ... These medical reports cannot be reconciled with the claimant's extensive pre-injury medical history including severe complaints of pain, emergency room visits, diagnostic testing and surgical consultations, none of which one would expect that the claimant to have forgotten.[6]

Based upon this report, on May 4, 2011, Deborah Griffith, the Chief Administrative Officer of the Rochester Genesee Regional Transit Authority, terminated Mr. [redacted] employment because, in part, she believed that he had committed Workers' Compensation fraud. In Ms. Griffith's May 4, 2011 letter, terminating the employment of Mr. [redacted] the following charges against Mr. [redacted] were set forth (Jt. Exh. #2):

1. A violation of the RTS Employee Manual of Rules and Regulation by falsification of the Regional Transit service records and accident reports making a material misrepresentation of the facts to Regional Transit Service claiming an on the job injury.

2. Conduct Unbecoming of a Regional Transit Service, Inc. Employee in violation of the RTS Employee Manual of Rules and Regulations by committing a violation detrimental to the higher moral standards established by law and detrimental to the reputation of RTS.

3. Violation of Workers' Compensation Law Fraud Section 114-a (I) related to the two decisions by Administrative Law Judge Lawlor regarding a violation of Workers' Compensation Law Section 114(a) for fraud.

...

4. Falsification of your initial medical questionnaire dated 10/09/00 in which you deny filing previous workers' compensation claims. This form you signed clearly states: "I am aware that any material

[6] However, the Workers' Compensation Board Judge also noted, "With regard to the apportionment it can be noted that the claimant's conditions before the work injuries of these files did not seriously impede his ability to pursue his employment as a bus driver." [See p. 2 of both decisions].

> omission or falsification is cause for my termination of employment, according to company policy, regardless of when the false statement is discovered". We have become aware that you have previous workers' compensation claims filed with your former employers Time Warner and National Ambulance.

In addition to these charges, the Regional Transit Service took the position that it would be referring the matter to the District Attorney requesting that criminal charges be brought against Mr. [redacted] (See, p. 1 of Jt. Exh. #2, Point #3).

A First Level Appeal Hearing regarding Mr. [redacted] termination of employment was held on June 30, 2011. On July 7, 2011, Michael Capadano, Transit Operations Manager, wrote Mr. [redacted] with his "Finding" from that hearing. He stated,

> Upon careful consideration, your remedy requested is denied and your Termination of Employment is upheld at the first level.

A Second Level or Level II Hearing was held on September 2, 2011. The answer or response to the evidence presented at this hearing was also written by Ms. Griffith. After reviewing the record of the hearing, Ms. Griffith again determined that the termination of Mr. [redacted] employment with the Company was proper (Jt. Exh. #4, dated September 16, 2011).

On April 21, 2012, the Arbitrator received a notice of his appointment to hear the case. Potential dates for the hearing were emailed to the parties that same day. The result was the hearing held on July 11, 2012 and ultimately this Opinion and Award.

CONTENTIONS OF THE UNION

I will now set forth the arguments regarding the issue as presented in the Parties' post-hearing briefs *in summary form.* The Union presented two (2) major lines of argument.

Point I: The grievance must be upheld and the grievant must be reinstated to his position because the charges were untimely.

Point II: The grievance must be granted and the grievant must be reinstated to his position because there was not just cause to terminate Mr. [redacted]

For these reasons, the grievance should be sustained and the grievant must be reinstated to his position with full back pay and benefits. In addition, the Union asks that the Arbitrator retain jurisdiction of this case regarding the wages and benefits that Mr. [redacted] is entitled.

CONTENTIONS OF THE COMPANY

In the Company's post-hearing brief, it also provided two (2) major lines of argument. However, its first line of argument contained five (5) parts. They are

Point I: RTS filed timely charges against [redacted] [redacted]

1) The Union's proffered interpretations.
2) The "suspicion" interpretation.
3) The "occurrence" interpretation.
4) RTS' suggested approach on the facts of this case.
5) The timeliness issue raised by the Union should not impact the discharge in this case.

Point II: [redacted] [redacted] was discharged for "just cause."

For all of these foregoing reasons, the Regional Transit Service respectfully requests that the grievance to be denied in its entirety.

DISCUSSION, OPINION, AND AWARD

This case involves the discipline of an employee and therefore, technically, the Company has the "burden of proof" that it terminated Mr. [redacted] for "just cause". It must prove by a "preponderance of evidence" standard that its views in this matter ought to be sustained.

Black's Law Dictionary defines the term "preponderance of evidence" as,

> "As standard of proof in civil cases, is evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is evidence which as a whole shows that the fact sought to be proved is more probable than not. Braud v. Kinchen, LaApp., 310 So.2d 657, 659. With respect to burden of proof in civil actions, means greater weight of evidence, or evidence which is more credible and convincing to the mind. That which best accords with reason and probability. The word "preponderance" means something more than "weight"; it denotes a superiority of weight, or outweighing..."[7]

The proof required by the definition above is perhaps made easier to understand if one pictures a set of balance scales. The task of the parties is to attempt to present sufficient competent evidence that will result in the balance tipping it its favor.

In deciding if an employer had "just cause" to discipline an employee, a series of questions developed by noted Arbitrator Carroll R. Daugherty are helpful in making a determination of whether "just cause" existed. These questions and notes include,

> **1. Did the company give to the employee forewarning or foreknowledge of the possible or probable disciplinary consequences of the employee's conduct?**

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[7] *Black's Law Dictionary*, Sixth Edition, (1990), p. 1182.

Note 1: Said forewarning or foreknowledge may properly have been given orally by management or in writing through the medium of typed or printed sheets or books of shop rules and, of penalties for violation thereof.

Note 2: There must have been actual oral or written communication of the rules and penalties to the employee.

Note 3: A finding of a lack of such communication does not in all cases require a "no" answer to Question No. 1. This is because certain offenses such as insubordination, coming to work intoxicated, drinking intoxicating beverages on the job, or theft of the property of the company or of fellow employees are so serious that any employee in the industrial society may properly be expected to know already that such conduct is offensive and heavily punishable.

Note 4: Absent any contractual prohibition or restriction, the company has the right unilaterally to promulgate reasonable rules and give reasonable orders; and same need not have been negotiated with the union.

2. Was the company's rule or managerial order reasonably related to (a) the orderly, efficient, and safe operation of the company's business and (b) the performance that the company might properly expect of the employee?

Note: If an employee believes that said rule or order is unreasonable, he must nevertheless obey same (in which case he may file a grievance thereover) unless he sincerely feels that to obey the rule or order would seriously and immediately jeopardize his personal safety and/or integrity. Given a firm finding to the latter effect, the employee may properly be said to have had justification for his disobedience.

3. Did the company, before administering discipline to an employee, make an effort to discover whether the employee did in fact violate or disobey a rule or order of management?

Note 1: This is the employee's "day in court" principle. An employee has the right to know with reasonable precision the offense with which he is being charged and to defend his behavior.

Note 2: The company's investigation must normally be made *before* its disciplinary decision is made. If the company fails

to do so, its failure may not normally be excused on the grounds that the employee will get his day in court through the grievance procedure after the exaction of discipline. By that time there usually has been too much hardening of positions. In a very real sense the company is obligated to conduct itself like a trial court.

Note 3: There may of course be circumstances under which management must react immediately to the employee's behavior. In such cases the normally proper action is to suspend the employee pending investigation, with the understanding that (a) the final disciplinary decision will be made after the investigation and (b) if the employee is found to be innocent after the investigation, he will be restored to his job with full pay for time lost.

Note 4: The company's investigation should include an inquiry into possible justification for the employee's alleged rule violation.

4. Was the company's investigation conducted fairly and objectively?

Note 1: At said investigation the management official may be both a "prosecutor" and "judge," but he may not also be a witness against the employee.

Note 2: It is essential for some higher, detached management official to assume and conscientiously perform the judicial role, giving the commonly accepted meaning to that term in his attitude and conduct.

Note 3: In some disputes between an employee and a management person there are not witnesses to an incident other than the two immediate participants. In such cases it is particularly important that the management "judge" question the management participant rigorously and thoroughly, just an actual third party would.

5. At the investigation did the "judge" obtain substantial evidence or proof that the employee was guilty as charged?

Note 1: It is not required that the evidence be conclusive or "beyond all reasonable doubt." But the evidence must be truly substantial and not flimsy.

Note 2: The management "judge" should actively search out witnesses and evidence, not just passively take what participants or "volunteer" witnesses tell him.

Note 3: When the testimony of opposing witnesses at the arbitration hearing is irreconcilably in conflict, an arbitrator seldom has any means for resolving the contradictions. His task is then to determine whether the management "judge" originally had reasonable grounds for believing the evidence presented to him by his own people.

6. Has the company applied its rules, orders, and penalties evenhandedly and without discrimination to all employees?

Note 1: A "no" answer to this question requires a finding of discrimination and warrants negation or modification of the discipline imposed.

Note 2: If the company has been lax in enforcing its rules and orders and decides henceforth to apply them rigorously, the company may avoid a finding of discrimination by telling all employees beforehand of its intent to enforce hereafter all rules as written.

7. Was the degree of discipline administered by the company in a particular case reasonably related to (a) the seriousness of the employee's proven offense and (b) the record of the employee in his service with the company?

Note 1: A trivial proven offense does not merit harsh discipline unless the employee has properly been found guilty of the same or other offenses a number of times in the past. (There is no rule as to what number of previous offenses constitutes a "good," a "fair," or a "bad" record. Reasonable judgment thereon must be used.)

Note 2: An employee's record of previous offenses may never be used to discover whether he was guilty of the immediate or latest one. The only proper use of his record is to help determine the severity of discipline once he has properly been found guilty of the immediate offense.

Note 3: Given the same proven offense for two or more employees, their respective records provide the only proper basis for "discriminating" among them in the administration of discipline for said offense. Thus, if employee A's record is

> significantly better than those of employees b, c and D, the company may properly give A lighter punishment than it gives the others for the same offense; and this does not constitute true discrimination.
>
> Note 4: Suppose that the record of the arbitration hearing establishes firm "Yes answer to all the first six questions. Suppose further that the proven offense of the accused employee was a serious one, such as drunkenness on the job; but the employee's record had been previously unblemished over a long, continuous period of employment with the company. Should the company be held arbitrary and unreasonable if it decided to discharge such an employee? The answer depends of course on all the circumstances. But, as one of the country's oldest arbitration agencies, the National Railroad Adjustment Board, has pointed out repeatedly in innumerable decisions on discharge cases, leniency is the prerogative of the employer rather than that of the arbitrator; and the latter is not supposed to substitute his judgment in this area for that of the company unless there is compelling evidence that the company abused its discretion. This is the rule, even though an arbitrator may be said in an important sense to act as an appellate tribunal whose function is to discover whether the decision of the trial tribunal (the employer) was within the bounds of reasonableness above set forth. In general, the penalty of dismissal for a really serious first offense does not itself warrant a finding of company unreasonableness.

On pages 362-363, Arbitrator Daugherty states.

> A "no" answer to any one or more of the following questions normally signifies that just and proper cause did not exist. In other words, such "no" means that the employer's disciplinary decision contained one or more arbitrary, capricious, unreasonable, or discriminatory action to such an extent that said decision constituted an abuse of managerial discretion warranting the arbitrator to substitute his judgment for that of the employer.[8]

I will use some of these "tests" in examining the facts of this case starting with Arbitrator Daugherty's first question.

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[8] Enterprise Wire Co., 46 LA 359 (Daugherty, 1966).

Did the company give to the employee forewarning or foreknowledge of the possible or probable disciplinary consequences of the employee's conduct?

This first question requires a company to have clear rules and regulations and that the employee have knowledge of the rules and the disciplinary consequences of violating the company's rules. Notes 1 and 2 explain what the Employer must provide to an employee in order for that an employee to have the proper knowledge of the rules and disciplinary consequences. While the Union, in its post-hearing brief, has not made any arguments that the Grievant lacked specific knowledge of rules/regulations or disciplinary consequences, it argues that because the contractual time notification requirements of Article VI A were not met, the Grievant did not have proper notice. To answer this question of proper notice, it is important to review the specific charges that led to Mr. [redacted] termination. He was charged with:

1. A violation of the RTS Employee Manual of Rules and Regulations by falsification of the Regional Transit Service records and accident reports making misrepresentation of the facts to Regional Transit Services claiming an on the job injury.

2. Conduct Unbecoming of a Regional Transit Service, Inc. Employee in violation of the RTS Employee Manual of Rules and Regulations by committing a violation detrimental to the higher moral standards established by law and detrimental to the reputation of RTS.

3. Violation of Workers; Compensation Law Fraud Section 114-a(l) related to the two decisions by Administrative Law Judge Lawlor regarding a violation of Workers' Compensation Law Section 114(a) for

fraud.[9]

The Company bases its charges on three (3) items: 1) Mr. [redacted] answers given on his employment application on October 9, 2000, (2) his answers to Ms. Tennant during an interview about a 2009 Workmen's Compensation Claim and 3) subsequent information the Company discovered between the time of the interview and April 22, 2011. What the totality of the hearing record makes clear is that the Company was aware at least by July 2010 that there were discrepancies concerning Mr. [redacted] alleged claim of no prior injuries to his back and neck, based upon its ISO ClaimSearch and more importantly Dr. Snyder's report (Emp. Exh. #4). However, there was no disciplinary action taken by the Company at this point. There may be many reasons for the lack of any Company action but in order for an employee to have proper notice, the Company needed to make Mr. [redacted] aware that his claim of no prior injuries to his back and neck raised questions of his veracity based on the first ISO ClaimSearch and Dr. Snyder's report.

It is unclear from the hearing record whether a discipline based on the information obtained prior to the end of July 2010 would have met the notice requirement of the Collective Bargaining Agreement as it is arguably not "within fourteen (14) calendar days of the alleged incident." However, if the Company had taken some action at that point, it would have at least provided "a notice" to Mr. [redacted] regarding the Company's expectations and definition of "prior injuries." Without such notice, Mr. [redacted] did not necessarily have a clear

[9] Jt. Exh. # 2.

understanding about what the Company considered pertinent "prior injuries." Again, when Ms. Tennant summarized the findings of Dr. Arlene Snyder's report in July 2010, she did not make it known to Mr. [redacted] that there was any issue with the information he had given to her. Therefore, Mr. [redacted] continued to maintain his definition of what he considered to be significant prior injuries that the Company needed to be aware of in any of its documentation including the employment application.

The explicit language found in of Article VI A of the parties agreed upon Collective Bargaining Agreement (CBA) requires the Company to notify the employee within a specific time period of any infractions. This requirement of timely notification of infractions is also part of the forewarning or foreknowledge required by Arbitrator Daugherty's first question. If timely notification is not done, the employee does not have knowledge that the Company believes a specific behavior has risen to the level of misconduct. This issue presents multiple complications for the Company in this case.

In their respective post-hearing briefs, both the Union and the Company, argue that the language Article VI A. of the "CBA" provides for the notification parameters for discipline charges against an employee. Specifically, this language states,

> A. Charges must be filed within fourteen (14) calendar days from the date of the alleged infraction. This charge must be given in writing to the employee. Said employee shall be entitled, if he or she so desires, to have a Union representative appear with him or her at any time including the reading of the charges.

It is this language that requires that an employee be notified of charges within fourteen (14) calendar days of the alleged *infraction*. The Company did not make Mr. [redacted] aware that any of these alleged infractions were considered infractions until well after the *fourteen (14) days of the alleged infraction*. However, the quoted sentence of the Collective Bargaining Agreement language requiring that these charges are *filed* within fourteen (14) days of the alleged infraction presents a problem for the Company. When was Mr. [redacted] notified that he violated Company rules?

The letter of termination issued on May 4, 2011, for "alleged infractions" includes, Charge 1: violation of the RTS Employee Manual, Charge 2: unbecoming conduct, and Charge 3: violation of Workers' Compensation Law occurring when the Company received the ClaimSearch, ISO report on July 2010[10] or May 4, 2011[11]. These alleged infractions occurred in either 2006 and/or 2009. It is obvious that Mr. [redacted] was not notified by the Company of alleged infractions in 2006 and/or 2009 until May 4, 2011. This delayed notification does not meet the requirements for prompt notification of within fourteen (14) days of the alleged infraction required by the Collective Bargaining Agreement language. For the fourth charge of falsification of the initial medical questionnaire, Mr. [redacted] completed this form on October 9, 2000. Again, the Company did not notify Mr. [redacted] until May 4, 2011 of its belief that he had committed an infraction. Therefore, the lack of notification, of Mr. [redacted] regarding these discrepancies, in a timely manner, in accordance with the parties duly negotiated

[10] Testimony of Ms. Tennant
[11] Emp. Exh. # 3.

Collective Bargaining Agreement, is a failure of what in contract law is termed a "condition precedent." The "condition precedent" is explicit and it is clear.

The Company, in its post-hearing brief makes several arguments regarding this issue. First, it argues that the disciplinary charges were filed in a timely manner. The words of critical importance are, "must be filed within fourteen (14) days of the date of the alleged infraction." Certainly, a *reasonable person* would not conclude that that the a ruling of a Workers' Compensation Board constituted the "alleged infraction." The ruling of the Board is in response to a prior "alleged infraction that is bound by the prompt notification language of the Collective Bargaining Agreement. The Company did not meet its notification requirement.

The second argument found in the Company's post-hearing brief addresses the Union's alleged changing views regarding when the Company should have brought forth the charges to meet the fourteen (14) day requirement. Counsel for the Company correctly points out that the arguments of the Union, over the course of the grievance procedure, as well as at the arbitration hearing did change. However, in my view that is irrelevant as the language itself, given usual English meanings of the words, is clear.

The Company's final argument, found in its post-hearing brief, is that the timeliness issue itself should not impact the termination of the employment of Mr. [redacted] The basic argument is that the parties would not have intended for the wording of this section's language to be "fatal to disciplinary decisions in all cases. (Emp. Brief, p. 21)" I disagree.

While I accept another Company argument that the strict interpretation of the language conceivably can make the handling of disciplinary matters, to be charitable, even more difficult for the Union and the Company, I do not believe that is a proper ground for an arbitrator to make a ruling. In fact, the Arbitrator and the two (2) attorneys briefly discussed those possibilities, at the beginning of the hearing, and both parties met with their respective Counsel to consider the ramifications of the possible outcomes of this case. Nonetheless, both parties chose to proceed with the hearing.

The role of an arbitrator is not to substitute his judgment as to the intent of the parties when there is clear contract language. That is a basic underlying tenet of contract law, be it for sales contracts or collective bargaining agreements. When parties agree to clear language, they must be willing to be bound by that language even when it does not work in their "favor." This is one of those cases, at least from the point of the Company. If the parties want to change the clear wording, they certainly have the power to do so in at least two (2) places: the resolving of pertinent grievances and at the collective bargaining table.

Given this finding, I do not need to address any other of the traditional "just cause" tests. The Employer did not have "just cause" to terminate the Grievant. The grievance must be sustained and the grievant should be reinstated to his position with full back pay and benefits. That is my Award.

July 31, 2013
Mendon, New York

DOUGLAS J. BANTLE, ESQ.
Arbitrator