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Paul D. Roose
Arbitrator / Mediator
Golden Gate Dispute Resolution
510-466-6323
paul.roose@ggdr.net
www.ggdr.net
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OPINION AND AWARD
IN ARBITRATION PROCEEDINGS
PURSUANT TO A
COLLECTIVE BARGAINING AGREEMENT

In the Matter of a Dispute Between	)	
County of Sacramento	)	
Employer	)	
and	)	Grievance of [Grievant] – Two-Day Suspension
Teamsters Local 150	)	
Union	)	

APPEARANCES:

For the Employer: Timothy D. Weinland
Deputy County Counsel
700 H St. Suite 2650
Sacramento, CA 95814

For the Union: John Provost, Attorney
Beeson, Tayer & Bodine
520 Capitol Mall, Suite 300
Sacramento, CA 95814

PROCEDURAL BACKGROUND

The above-referenced matter was processed through the grievance procedure contained in the collective bargaining agreement (CBA) between the parties. Remaining unresolved, it was submitted to final and binding arbitration. The undersigned was selected as the arbitrator by mutual agreement of the parties. The matter was heard on April 3, 2013 in Sacramento, California. The parties stipulated that the matter was properly before the arbitrator and that all steps of the grievance procedure had been met or waived. The parties also stipulated that the arbitrator retains jurisdiction for the purposes of the implementation of the remedy in the event that the arbitrator grants in whole or in part the remedy sought by the union.

Both parties were afforded full opportunity to present documentary evidence and to examine and cross-examine witnesses. At the conclusion of the hearing, the parties chose to conclude their presentations by making oral argument and the matter was submitted for decision.

ISSUE

The parties stipulated to the following issue:

Was the suspension of [Grievant] for good cause? If not, what is the proper remedy? It is also stipulated that the arbitrator shall not modify the action imposed by the appointing authority unless the arbitrator determines that the discipline imposed by the appointing authority constitutes an abuse of discretion.

RELEVANT CONTRACT PROVISIONS

AGREEMENT BETWEEN COUNTY OF SACRAMENTO AND THE TEAMSTERS, LOCAL 150 COVERING ALL EMPLOYEES IN THE GENERAL SUPERVISORY UNIT

ARTICLE XIV DISCIPLINE AND DISCHARGE

14.5 CAUSE FOR DISCIPLINARY ACTION

No disciplinary action shall be taken against a permanent employee without good cause. "Good cause**"** is defined as any facts which, based on relevant circumstances, may be reasonably relied on by the appointing authority in the exercise of reasonable discretion as a basis for disciplinary action. "Good cause" includes, but is not limited to:

c. Inefficiency

d. Inexcusable neglect of duty

14.15 DECISION

b. If good cause for discipline is found, the arbitrator shall not modify the action imposed by the appointing authority unless the arbitrator determines that the discipline imposed by the appointing authority constitutes an abuse of discretion.

FACTS

The Grievant is a waste management operations supervisor. He has held that position for five years. He has over eight years total service with the County's waste management operation.

At the County's Kiefer Landfill, the County owns and operates several Polaris Rangers, utility vehicles capable of hauling small loads in the open flatbed portion of the vehicle. The Grievant is responsible for keeping the Polaris vehicles in working order.

In late May or early June 2012[1] the Grievant received a two-way radio call from the maintenance shop senior equipment mechanic, [Employee A]. [Employee A] testified that one of the landfill operators had brought in a Polaris with a flat tire. [Employee A] noticed that one of the U-joints was missing or defective, and called the Grievant. The Grievant told [Employee A] that the vehicle was under a five-year warranty. He said to leave it there, and someone would pick it up. Several days later, the Grievant received a call from the shop asking him to come pick up the vehicle.

The Grievant then went to the shop in a pickup truck with operational supervisor [Employee B]. The Grievant testified that he took a picture with his cell phone of the Polaris' U-joint (Un. Exh. 1) while the vehicle was still parked in front of the shop. The photo depicts a U-joint with a cap cracked off at the end of the yoke. The Grievant wanted to have a picture to send to the dealer to determine if the damage would be covered under warranty. If it was, then the vehicle would be repaired at the dealer. If it was not, then the vehicle would be repaired in the Employer's shop. The Grievant emailed the photo to the service person at the dealer, California Custom Trailers and Power Sports, and learned that the damage was indeed covered under warranty. So he proceeded to make a plan to have the vehicle taken to the dealer.

The Grievant got behind the wheel of the Polaris, and [Employee B] towed the Polaris behind the pickup truck over to the administration building. He then parked the Polaris in the lot in front of the administration building.

[1] The chronology of dates leading up to the June 13 incident for which the Grievant was disciplined is not clear in the record. The Grievant believed that there were a few weeks between the time he was initially notified about a problem with the Polaris and when he attempted to load it onto a truck. Witness recollections of the exact time frames vary. None of these time frames leading up to the June 13 incident are material to a determination of this matter, so the facts will indicate the most likely chronology.

The Grievant decided to attempt to place the Polaris on a trailer and transport it to the dealer for repair. However, he determined that the trailer was not properly licensed or registered for use on public roads. He worked with the DMV and "the people who take care of our vehicles" (TR 106) to get the trailer registered and equipped with license plates so that it could be used off site. This process took a few weeks.

In the meantime, the Grievant went through the industrial supplier Grainger to order ramps to load the Polaris onto the trailer and straps to tie it down.

Once the trailer was properly registered and the necessary equipment had arrived, the Grievant determined that the truck used by associate waste management specialist [Employee C] would be used to tow the trailer, since it was properly wired for towing.

On June 13, 2012, the Grievant instructed [Employee C] to secure the trailer to his truck and bring it over to the administration building. The Grievant also asked landfill equipment operator [Employee D] to assist the operation. [Employee D] assembled the ramps and placed one end of the ramps on the back of the trailer and the other end on the ground. The Grievant decided that the Polaris could be driven up the ramp onto the trailer, since it had been drivable several weeks before when it was driven to the shop with a flat tire.

With [Employee C] and [Employee D] standing next to the trailer to make sure the Polaris was properly aligned with the ramps, the Grievant began to drive the Polaris up the ramps. They determined that the ramps were placed improperly, so the Grievant backed it up. The ramps were re-positioned and the Grievant attempted again to drive the Polaris up the ramps onto the trailer. Due to the wide wheel base of the Polaris and the slope of the ramp, the Polaris "high-centered." In other words, the wheels lost contact with the ramp and/or the trailer, and the Polaris was stuck resting on its frame on the end of the trailer.

Accounts vary as to whether there were audible noises during this procedure indicating breaking vehicle parts. [Employee D] testified that he could "hear metal breaking." (TR 56) The Grievant testified that he "really couldn't hear anything over the diesel engine." (TR 109)

Both [Employee C] and [Employee D] recalled that [Employee D] and / or [Employee C] suggested to the Grievant that they move the operation to a sloped area nearby on the property to reduce the angle of the ramps in order to avoid the high-centering. The Grievant does not recall either of his two subordinates making this suggestion.

The Grievant looked under the Polaris and noted that, as a result of the high-centering incident, the U-joint had now "failed completely." (TR 110)

The Grievant then asked [Employee C] to get a forklift to use to move the now-stuck Polaris. [Employee C] brought the forklift over, and the Grievant took over the forklift controls. Under cross-examination, there was the following exchange between the Union's counsel and [Employee C]: (TR 27)

> Q: So he --- he then went and got a forklift, correct?
>
> A: Yeah.
>
> Q: All right. And you were there while he was ---
>
> A: I think I drove the forklift over to him, actually.
>
> Q: You drove ---
>
> A: I'm usually the guy who does the forklift.
>
> Q: Okay. And who positioned the forklift --- the forks of the forklift underneath the Polaris?
>
> A: [Grievant] did it.
>
> Q: Were you helping him or were you just standing there?
>
> A: I think we were kind of holding it because we were --- it was barely sitting under the Polaris onto the rails.
>
> Q: Okay.
>
> A: And ideally I would have had some forklift extensions, but we don't. And so I think, if I recall right, we were kind of like --- as he's lifting, before he could get it --- tilted it back so it would rest up against the cage so you can move it onto the trailer, I think me and [Employee D] were helping him hold the --- make sure the Polaris didn't tip.

[Employee D] recalled that he suggested to the Grievant he use another forklift from the shop that had longer forks. The Grievant, according to [Employee D], already had the Polaris up in the air and was loading it, so did not follow the suggestion. [Employee D] testified as follows: (TR 59)

> The forks aren't quite long enough to go to the other end and the first attempt you could see it was teetering. So we brought it back down, reshifted, and he was able to roll it back to where it went. And that's when I heard a pop noise, and that's when one of the forks went through the floorboard of the forklift --- or the Polaris.

The Grievant testified that he used the forklift initially to lift the back of the Polaris up and roll the vehicle back down the ramp using its front tires. He then placed the forks under the Polaris, lifted it up, and placed it on the trailer. Because of the design of the Polaris, he believed that it would not be harmed by the use of the forklift. He does not recall any pops or loud noises during this procedure.

The Grievant and the two employees then strapped the Polaris down and drove it to the dealership. There, it was removed from the trailer by use of the dealer's forklift, and the County employees returned to the landfill site.

When asked whether he reported anything to his superiors about what had happened, the Grievant responded as follows: (TR 113)

> No. I mean it was going to the dealership for a failed drive shaft and that's what happened. It was damaged when it came from the shop and it had just completely failed when we were trying to load it. So as far as I was concerned, it was one and the same issue.

[Employee C] was also asked if he himself reported this incident to anyone. He said he did not, because "[Grievant] is the supervisor and I figured if there needed to be any paperwork done, [Grievant] would take care of it." (TR 31)

[Employee B] observed the loading of the Polaris onto the trailer as he was walking in and out of the administration building that day. He testified that he saw "smoke coming off the rear wheel because it was losing traction" as the Grievant drove it up the ramp and it was high-centering. He also testified that he walked over toward the vehicle after this high-centering and noticed that the Polaris looked as if it had been damaged. (TR 97)

> It looked like it was maybe frame damage or it was like --- I called it tweaked, like the frame was tweaked or something. It didn't look like it was sitting on all fours equally.

[Employee D] also observed new damage to the Polaris. (TR 57)

> You could see where the shaft was twisted one way and the yoke was going another way. You could see that there was visible damage to…the rear end, the transmission, the yoke, the drive shaft.

[Employee E] is the operations manager at the Kiefer Landfill, and the Grievant's supervisor. [Employee E]'s supervisor came to her sometime after June 13, 2012 and asked her to investigate a vehicle now at the dealership that had allegedly been damaged by a County employee. She began her investigation by interviewing the Grievant.

In a statement written at the request of [Employee E], the Grievant acknowledged that there appeared to be new damage and that he should have reported the incident at the time: (Er. Exh. 3)

> In hindsight, I would have reported it because it was not a simple loading of the Ranger onto the trailer. As I was backing the Polaris off the trailer the second time, the engine stopped and when I checked the drive shaft it was at an angle against the transmission…

The Grievant elaborated on this same point in his testimony. (TR 123)

> When [Employee E] interviewed me I said, you know, when it came from the shop, the U-joint had failed and as we were loading it, it completely failed.

[Employee E] then proceeded to interview [Employee B], [Employee D], [Employee A], and senior landfill equipment operator [Employee F]. In addition, other representatives for the employer obtained information from [Employee C].

As part of her investigation, [Employee E] went to the dealership with [Employee A] to look at the broken parts. She took photographs of the parts. She also did her own measurements of the trailer, ramps, and Polaris.

[Employee A] testified that, at the dealership, he observed damage to the Polaris parts that exceeded the damage he recalled seeing when the vehicle was at his shop prior to the Grievant towing it away.

From her investigation, [Employee E] concluded that the Grievant was responsible for causing additional damage to the Polaris, and that he should have reported it. She also testified that she relied on two prior disciplinary actions taken against the Grievant in determining the appropriate penalty: a counseling memo for an accident, and a letter of reprimand for damaging a door. Both were dated March 12, 2012.

The counseling memo concerned the Grievant backing his truck into a bollard[2] on February 28, 2012. The letter of reprimand was for damaging his office door by attempting to force it open when the door handle was not operating properly[3].

The letter of reprimand charges the Grievant, in relevant part, as follows: (Er. Exh. 14)

[2] A bollard is a cement-filled pipe positioned to protect more fragile equipment at the landfill site.
[3] According to the reprimand, this incident took place on March 25, 2011. When questioned about the apparent discrepancy between this date and the issue date of the letter, [Employee E] had no ready explanation.

> …you damaged County property when you forced open your office door. Upon arrival to work @ 5 a.m., you were unable to gain access to your office at the Kiefer Landfill because the door handle was not operating properly. Instead of waiting for your manager or the County carpenter to arrive, you used excessive force to open the door. The impact to the door from you forcing it open resulted in a solid core door cracking on two sides…
>
> As a Waste Management Operations Supervisor, you should be resolving problems, demonstrating appropriate behavior, and conducting yourself in a professional manner. Your actions as described above demonstrate the opposite; instead, you were destructive, discredited yourself as an employee and supervisor.

There was no evidence that either prior disciplinary action was grieved by the Union.

As a result of her investigation, [Employee E] recommended a two-day suspension. On October 17, 2012, a two-day suspension notice was issued to the Grievant, the suspension without pay to be served on October 30 and 31, 2012. The Union filed a timely grievance, and that is the matter now before the arbitrator.

EMPLOYER'S POSITION

The County asserts that the Grievant was both negligent in causing the damage to the vehicle, but also in failing to report the damage. Even if one credits the photograph allegedly taken by the Grievant, that photograph does not show the extent of the damage that the investigation uncovered later at the dealer.

The County contends that the testimony of [Employee D] should be credited – he has no reason to lie, and it is difficult to testify against one's supervisor. [Employee D] heard and saw the damage caused by the Grievant's actions. Moreover, [Employee D] and [Employee C] both testified that it was suggested to the Grievant that he move the operation to an incline.

The Grievant had two prior disciplinary actions for damaging County property, the employer argues. If the charges are sustained, then the level of discipline, a two-day suspension, is certainly not an abuse of discretion on the part of management.

Therefore, the County asks that the grievance be denied.

UNION'S POSITION

The Union contends that, while the Grievant may have caused some damage, it was based on a simple miscalculation. The evidence does not show that the Grievant had seen the damage, failed to report something he was aware of, or ignored suggestions from other employees.

The testimony of [Employee D], argues the Union, is contrary to evidence from the investigation at the dealer. It also lacks credibility on the point about getting a different forklift, since this was not contained in his written statement at the time of the investigation. Both [Employee D] and [Employee C] were unclear on exactly how and where they allegedly made the suggestion to the Grievant to move the loading operation.

[Employee B]'s testimony is also contradicted by the physical evidence, the Union asserts. There was no evidence that the frame was twisted in the manner described by [Employee B].

The Union contends that the Grievant is guilty of a mere misjudgment. He did not recklessly or deliberately cause damage, nor did he ignore warnings from his co-workers.

The Union asks that the grievance be sustained and the Grievant be made whole for the two-day suspension.

DISCUSSION

When the Grievant first learned of the U-joint problem with the Polaris, he took deliberate, measured and responsible steps to get it repaired. First, he went to the shop and took a photo of the damage. He emailed that photo to the service representative at the dealer to determine whether the damage was covered under warranty. Once he learned that it was in fact covered by warranty, he went about systematically formulating a plan to get the Polaris to the dealer.

That plan began with the assumption that the vehicle could not be driven to the dealer. He concluded that it would have to be placed on a County trailer and transported to the dealer. He determined that the available and suitable trailer was not road-legal. So he went about the process of getting it registered and licensed. He then determined that the Employer did not have all of the equipment necessary to getting the Polaris on to the trailer and secured. So the Grievant ordered the necessary equipment.

When the straps and ramps arrived, the Grievant was ready to execute his carefully-devised plan. He assembled a small team of his employees to assist him, and began the operation on June 13, 2012. This is when things started to go wrong.

When the Grievant began to drive the Polaris up the ramp, it became apparent that the angles were off. This is where he made his first misjudgment. At this point he should have backed off and modified the plan. He either needed longer ramps or he needed a way to flatten the angle of ascent so that the vehicle would not hit bottom after the front wheels passed the edge of the trailer bed.

The testimony of [Employee C] and [Employee D] is credible on this issue. At some point in this process, a suggestion was made to the Grievant that he relocate the operation to an inclined area. Whether this advice was given before or after the Polaris high-centered is not clear. And whether or not the Grievant heard the suggestion over the noise of the diesel engine is also not certain. Regardless of whether he heard the suggestion, a reasonable person who had gone to some lengths to develop a plan of action should have stopped before damage was done. He should not necessarily have relied on the other employees to make this suggestion to him, but it would have been prudent to listen to and consider their ideas.

Instead of backing off and modifying the plan, the Grievant continued up the ramp and high-centered the vehicle. The impact of this contact between the Polaris frame and the tail end of the trailer caused additional damage to the already-damaged Polaris. The vehicle was now stuck, and the rear wheels were locked. This was, as later acknowledged by the Grievant and his representative, a result of a misjudgment by the Grievant.

At this point, the Grievant decided to improvise, since the original plan to load the Polaris onto the trailer clearly was not working. He chose to use a forklift to roll the Polaris back onto the ground, and then to place it directly onto the trailer bed. He instructed [Employee C] to get his forklift and drive it over to the loading site.

While on first impression this may seem like a reasonable course of action, it turned out that it compounded the problem. The lift's forks were somewhat too short for the job, and the use of this forklift apparently caused further damage to the Polaris as it was lifted off the ramp and onto the trailer. The testimony of [Employee D] that he suggested getting a forklift with longer forks has the ring of veracity to it, even though [Employee D] did not mention it in his written statement. Whether or not the Grievant heard the suggestion, or whether it was delivered in a timely manner, are unanswered questions.

Even if one assumes that the Grievant did not hear the suggestion about using a different forklift, this does not excuse the Grievant's conduct at this juncture. He was in charge of the operation. He should have taken the time to assess the situation and construct a more deliberate and thoughtful "plan B."

Once the Grievant got the Polaris onto the trailer, he secured it and delivered it to the dealer without further problems. But he did not report the incident to his superiors. The Grievant should have done so, as he acknowledged at a later date. The Employer should not have to first find out about damage that exceeds that which was initially reported to the dealer by receiving a phone call from the dealer.

The disciplinary notice at question here charges the Grievant with "inefficiency" and "inexcusable neglect of duty." The preponderance of the evidence is that his conduct on June 13, 2012 displayed both these characteristics. In sum, there was good cause for the discipline of the Grievant.

The next question before the arbitrator is that of the appropriateness of the penalty. It is telling that merely three months prior to this incident, the Grievant received a written reprimand for conduct that shares many of the same aspects as that demonstrated on June 13, 2012. In that prior incident, the Grievant apparently became impatient with a mechanical problem and took matters into his own hands rather than wait for help. Damage resulted. As a result of that door-opening incident, he was explicitly warned to avoid future such incidents.

Because of this prior letter of reprimand, the progressively higher penalty of a two-day suspension for the June 13, 2012 incident is appropriate.

The Grievant clearly has strong supervisory and problem-solving skills. The methodical and creative way he went about devising an initial plan to get the Polaris repaired is a testament to that. But on June 13, 2012, when faced with setbacks that rendered his plan inoperable, he failed to make the necessary adjustment to deal with the new circumstances. Hopefully, going through this disciplinary and arbitration process will have encouraged the Grievant to become more aware of ways to maximize his strengths as a valuable County supervisory employee.

AWARD

The grievance is denied.

Paul D. Roose, Arbitrator

Date: May 20, 2013