

IN THE MATTER OF ARBITRATION ) GRIEVANCE ARBITRATION  
 )  
 between )  
 )  
 SYSCO Minnesota ) Rogerio Espitia -  
 ) Discharge Grievance  
 )  
 -and- )  
 )  
 International Brotherhood ) FMCS Case No. 11-53079-3;  
 of Teamsters Local Union ) Grievance No. 09-8829  
 )  
 No. 120 ) August 23, 2011  
 )))))))

**APPEARANCES**

**For SYSCO Minnesota**

Richard J. Dryg, Senior Consultant, Labor and Employee Relations,  
Trusight, Plymouth, Minnesota  
John Madison, Director, Transportation  
Patrick Cavanaugh, Manager, Transportation  
Bryan Beaulieu, Driver

**For International Brotherhood of Teamsters Local Union No. 120**

Martin J. Costello, Attorney  
Don Gruetzmacher, Steward  
Rogerio Espitia, Grievant

**JURISDICTION OF ARBITRATOR**

Article 22, Grievance Procedure, Section 22.1(E), Step Five  
of the 2010-2013 Collective Bargaining Agreement (Employer  
Exhibit #1; Union Exhibit #1) between SYSCO Minnesota  
(hereinafter "SYSCO", "Employer", or "Company") and International  
Brotherhood of Teamsters Local Union No. 120 (hereinafter  
"Union") provides for an appeal to arbitration of disputes that  
are properly processed through the grievance procedure.

The Arbitrator, Richard John Miller, was selected by the Employer and Union (collectively referred to as the "Parties") from a panel submitted by the Federal Mediation and Conciliation Service. A hearing in the matter convened on May 20, 2011, at 9:30 a.m. at Trusight's Offices, 9805 - 45th Avenue North, Plymouth, Minnesota. The hearing was tape recorded with the Arbitrator retaining the tapes for his personal records. The Parties were afforded full and ample opportunity to present evidence and arguments in support of their respective positions.

The Parties elected to file post hearing briefs with an agreed-upon submission date of June 17, 2011. The post hearing briefs were submitted in accordance with those timelines, and received by the Arbitrator by e-mail attachment. The Arbitrator then exchanged the briefs by e-mail attachment on June 20, 2011, to the respective representatives.

The Parties agreed to keep the record open for Arbitrator Jeffrey Jacobs' decision in the one-day suspension dealing with Rogerio Espitia, the same employee involved in this discharge matter. On June 22, 2011, Arbitrator Jacobs rendered his decision which sustained the one day suspension of Mr. Espitia. The Arbitrator allowed the Parties to respond to Arbitrator Jacobs' decision no later than July 8, 2011, with the caveat that no additional or new arguments which did not appear in either

representative's original post hearing briefs would be considered. The Employer responded by e-mail on July 8, 2011. The Arbitrator did not receive a response from the Union, after which the record was considered closed.

The Parties agreed that the grievance is a decorous matter within the purview of the Arbitrator, and made no procedural or substantive arbitrability claims.

**ISSUE AS STIPULATED TO BY THE PARTIES**

Did the Employer have just cause to discharge the Grievant? If not, what is the appropriate remedy?

**STATEMENT OF THE FACTS**

SYSCO is a food warehousing and distribution Company, with its principal place of business in Mounds View, Minnesota. (Union Exhibit #2). The Union is affiliated with the International Brotherhood of Teamsters, with principal offices located in Blaine, Minnesota. The Employer and Union are subject to a Collective Bargaining Agreement ("CBA" or "Contract"), effective August 8, 2010, to August 10, 2013. (Union Exhibit #1; Employer Exhibit #1). The Union represents the drivers and warehouse workers on the seniority list at SYSCO under the CBA. (Union Exhibit #3).

The Parties' relationship is governed under the terms of the CBA. Article 21, Discipline, Sections 21.1 and 21.4 of the

Contract addresses when an employer may discharge an employee and the existence of work rules, respectively. Sections 21.1 and 21.4 state in relevant part:

21.1 Discipline: Disciplinary actions, including warning letters, suspensions and/or discharges, shall be for just cause only and will be subject to the grievance procedure.

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21.4 Employees shall comply with all reasonable Work Rules, which the Employer shall have the right to implement and to make changes in those rules; Employee may be disciplined for violations thereof under the terms of this Agreement, but only for just cause. In any dispute of the propriety of any disciplinary action taken against an employee, or the reasonableness of any Rule, it shall be subject to the provisions of the grievance procedure and arbitration, as well as the application or enforcement of any such Rule.

(Union Exhibit #1; Employer Exhibit #1).

The Employer has utilized its contractual right to establish Work Rules that regulate the conduct of the SYSCO workers.

(Union Exhibit #4). The Work Rules, effective August 7, 2005, state in relevant part:

#### **VEHICLE ACCIDENTS**

With any accident a driver's accident record will be reviewed. The following guidelines will be used in determining discipline:

- First Occurrence = Warning Letter
- Second Occurrence = Suspension
- Third Occurrence = Termination

In each instance, the daily event will determine the 12 month period being used for discipline, in accordance with the Bargaining Unit Agreement.

Upon review some weight will be given for extenuating circumstances such as length of time between occurrences, type, damage, and whether it was preventable. In all cases, if a pattern of abuse is noted; stricter discipline may be applied at any time.

Definition of Accident: Any improper contact between our vehicle and any other object, whether or not damage is caused.

(Union Exhibit #4; Employer Exhibit #2).

The definition of an "accident" under SYSCO's Vehicle Accident Work Rule is, "Any improper contact between our vehicle and any other object, whether or not damage is caused." In order to qualify for disciplinary action under SYSCO's Work Rules, the accident must also have been deemed to have been preventable. In contrast, a non-preventable accident is one which occurs due to reasons totally out of his/her control. Some example of unpreventable accidents is being outside of one's vehicle when hit by another vehicle, or when the driver has the vehicle parked, is not in it, and someone collides with the truck.

The Grievant, Rogerio Espitia, has been employed by SYSCO since June 14, 2001. (Union Exhibit #3). He was first employed as a warehouse worker and became classified as a delivery driver in 2008. The Grievant is a Permanent Resident of the United States with a valid Green Card. (Union Exhibit #7). The Grievant is also a fully qualified, licensed Minnesota commercial

driver, with a valid Medical Examiner's Certificate. (Union Exhibits #7, #8).

Under SYSCO's Vehicle Accident Work Rule, a first preventable vehicle accident during a twelve month period results in a written warning. On Saturday, October 9, 2010, the Grievant was involved in a preventable accident while driving a SYSCO delivery truck, for which he received a warning letter on October 11, 2010. (Employer Exhibit #3b). While backing into a dock at the customer location in Burnsville, Minnesota, the Grievant struck an electrical/panel box. The box was damaged and electric power loss also occurred, which resulted in the Grievant's receipt of a warning letter. This accident was witnessed by a co-worker, whose statement became part of the Vehicle Incident Report. (Employer Exhibit #3a).

The Prevention Suggestion contained within the Vehicle Incident Report resulting from this accident was "GOAL", or "get out and look" when a driver is not sure of distances between the driver's vehicle and prospective obstructions. (Employer Exhibit #3a).

The warning letter informed the Grievant "that future vehicle accidents would result in further disciplinary action including suspension and termination of employment." In addition, the warning letter contains an offer by the Company

for "help or training" that may be desired by the Grievant.  
(Employer Exhibit #3b).

On Wednesday, November 24, 2010, the Grievant, while traveling in a SYSCO vehicle at approximately 3-5 mph in a parking lot of a SYSCO customer, lost control of his vehicle while attempting to make a left turn into a parking lot behind a strip mall in Wayzata, and his truck slid about 6 to 8 feet and hit a snow and ice pile. This accident caused property damage to the vehicle, but no personal injury. There were no eyewitnesses to the accident other than the Grievant.

An investigation of this accident was conducted by the Employer. The supervisor's written Vehicle Incident Report showed the accident to be preventable and suggested the Grievant drive slower in parking lots during winter conditions. (Employer Exhibit #4a). John Madison, Transportation Director, also personally investigated this accident and determined the parking lot on which the accident occurred was on flat ground without any hidden obstacles or barriers. He testified that in excess of two thousand trips are typically driven by SYSCO drivers during the five "winter driving months" of November-March, which was also the case for the winter of 2010-2011. Mr. Madison's further research has indicated that during this same winter driving period for 2010-2011, the Grievant was the only driver out of 125

drivers to have had a preventable accident while driving due to road conditions.

As a result of this accident being deemed preventable, the Employer issued a suspension letter dated December 1, 2010, indicating that the Grievant was being suspended for one day for being involved in a second preventable accident within a twelve month period pursuant to SYSCO's Vehicle Accident Work Rule. (Employer Exhibit #4b). The Grievant's suspension was served on December 2, 2010, and he resumed his regular work duties on December 3, 2010.

In that suspension letter, the Employer stated that the one day suspension "is intended to be corrective in nature", and once again, offered any "help or training" that may be desired by the Grievant. (Employer Exhibit #4b).

The Union grieved the one day suspension to arbitration. (Union Exhibit #6). The arbitration was conducted by Arbitrator Jeffrey Jacobs on May 10, 2011. He rendered his decision on June 22, 2011, which was after the arbitration hearing in this case. The Arbitrator, however, agreed to hold open the record, with the consent of the Parties, in order to receive Arbitrator Jacobs' award and offer the Parties the opportunity to comment on that decision. The Arbitrator received a response from the Employer on the deadline date of July 8, 2011, but never received a

response from the Union. In any event, Arbitrator Jacobs ruled that the Employer had just cause to suspend the Grievant for one day involving the preventable accident that was caused by the Grievant on November 24, 2010. Thus, the grievance was denied and the Grievant now has on record two preventable accidents in a twelve month period.

On December 1, 2010, only seven days following the second preventable accident, the Grievant was involved in a third accident when he pulled out of a delivery area in a customer's parking lot in St. Cloud, Minnesota. He turned right too tight and scraped the passenger side of his trailer along a parked Bix truck. At the time of the accident, approximately 7:50 a.m., the Bix driver was inside the Granite City restaurant completing his delivery.

Bryan Beaulieu, a co-worker who also drives for SYSCO, witnessed the Grievant pulling out of the delivery area at the Granite City restaurant. He had been called to assist the Grievant in making deliveries. As is customary in a support role, Mr. Beaulieu was parked a safe distance or approximately 100-125 feet from the Bix truck; however, he was close enough to see the Bix truck "wobble side to side" from the apparent contact with the Grievant's truck. Subsequent inspection of the Bix truck by Mr. Beaulieu reaffirmed damage to the Bix truck. At

this point, Mr. Beaulieu notified the Bix driver of the incident, and then both reported in to their respective supervisors regarding the Grievant's accident.

Knowing the next delivery stop for the Grievant would be at Papa Murphy's, Mr. Beaulieu drove to that location, located the SYSCO truck assigned to the Grievant, and according to standard operating procedure, noted what had happened via an accident report and made photographs of the damage to the SYSCO truck.

The Vehicle Incident Report, dated December 1, 2010, was completed by Supervisor Tom Southbloom with written statements from both the Grievant and Mr. Beaulieu which corroborates the testimony of Mr. Beaulieu. (Employer Exhibit #5a).

The Grievant was notified on December 3, 2010, that the Transportation Department was conducting an investigation into the accident to determine whether it was preventable or not. (Union Exhibit #5). Following an investigation by Transportation Department management and review by Executive management consistent with SYSCO internal procedures, the Grievant's employment was terminated on December 15, 2010, since the Employer concluded that the collision (accident) was preventable, and this was his third preventable accident within a twelve month period, which is grounds for discharge under SYSCO's Vehicle Accident Work Rule. (Employer Exhibit #5b; Union Exhibit #5).

On December 15, 2010, the Union filed a written grievance protesting the Grievant's termination. (Union Exhibit #6). The grievance was denied by the Company throughout the steps contained in the contractual grievance procedure. The Union ultimately appealed the grievance to final and binding arbitration pursuant to the contractual grievance procedure.

#### **UNION POSITION**

While SYSCO determined that the December 1, 2010 collision was a "preventable" accident, they did not present any evidence of causation, conduct any investigation other than reading with Grievant's self-report of the accident and a witness's statement, or even inspect the location prior to coming to this conclusion. SYSCO presented no accident reconstruction or even diagrams of the scene showing the movement and positioning of the vehicles involved. Neither did SYSCO prove that the other truck was lawfully and safely parked or rule out any other possible fault or contributory fault by the other driver.

SYSCO did not specify in the discharge letter who had "ruled" that the accident was "preventable" or upon what basis that ruling was made or according to what standards the accident was evaluated. Neither did SYSCO present any evidence at the arbitration hearing in support of this conclusion. Only the conclusion itself was asserted. Clearly, there is insufficient

proof that the Grievant committed the violation with which he was charged.

Also, from the beginning of the Grievant's troubles driving Company trucks, SYSCO did not conduct any additional safe driving training for the Grievant since his first accident. Thus, the Employer did not properly use progressive discipline such as a reprimand or warning, accompanied with providing a rehabilitation opportunity, such as safe-driving training, to the Grievant.

This grievance is about an employee who, while not a perfect driver, is a good worker, who did his job on December 1, 2010, at the instruction of his Employer. The Grievant was duly bound to continue making deliveries to customers on his route on that day. He was exercising caution; no witness said the Grievant was driving carelessly. The Grievant admits that his truck scraped the side on a trailer parked along side. The Grievant duly reported his accident; but, SYSCO conducted no investigation.

SYSCO has presented a single theory: "preventable accident." But that alone, even if true, is not enough evidence under SYSCO's own driving rules. The Company must also consider extenuating circumstances such as length of time between occurrences, type, and damage.

SYSCO has presented no evidence, because none exists, that Grievant, while traveling at less than 3 mph, could have

"reasonably anticipated" a sideway slide into a snow bank. Even if the Grievant's less than 3 mph rate could be considered excessive speed (any less speed would have brought the truck to a halt and stopped deliveries) speeding alone would not prove SYSCO's case, either.

SYSCO discharged the Grievant due to a "preventable" accident, but SYSCO presented no evidence as to how the Grievant could have avoided the accident, only that an accident occurred. Minnesota law is absolutely clear that the mere occurrence of an accident does not prove negligence, fault, or that it was "preventable." Because SYSCO has the burden of proof, it should lose.

The Grievant is ready, willing, and able to return to his driver position with the Company. There is evidence that Grievant's skills and competency will be utilized if reabsorbed into the work force and that his quality of work will be satisfactory. SYSCO presented no evidence that any co-worker, customer, or other person actually objects to the Grievant being returned to work.

The Grievant has been employed by SYSCO since June 14, 2001, first as a warehouse worker and for approximately the last two years as a delivery driver. A workplace policy violation, especially when it was at worst negligence, is insufficient

reason to ignore the tenure, loyalty, and other good work of the Grievant.

The well-established principle of just cause is expressly incorporated into the Contract and SYSCO's work rules. When the evidence is reviewed to determine just cause in this case, it is clear that there was no just cause to discharge the Grievant. The Company has proven neither violation of common law reasonable driving standards nor statutory prohibitions. The mere occurrence of an accident, without more, is insufficient evidence to satisfy SYSCO's burden of proof that the accident was preventable. In fact, it was unpreventable. The Grievant's discharge should therefore be rescinded. Alternatively, should some measure of fault be attributed to the Grievant, an appropriate modification of the penalty should be ordered by the Arbitrator.

#### **SYSCO POSITION**

The facts of this case regarding the Grievant's termination for violating SYSCO's Vehicle Accident Work Rule are straightforward. It has been established that the Grievant underwent a rigorous training program utilized when non driving SYSCO warehouse employees become drivers. It has also been established that the Grievant was aware of the Employer's Work Rules, including the Vehicle Accident Work Rule. Further, it

has been established that due to the serious nature and responsibility of driving a large sized company vehicle, the progressive discipline steps under SYSCO's Vehicle Accident Work Rule have been consistently administered as written in this Work Rule. There was no exception in the instant situation, where a third preventable accident within a twelve month period required the termination of the Grievant.

The Grievant acknowledged operating vehicles when all accidents occurred, all involving stationary objects. These accidents were simple in nature due to the fact that no other moving vehicles were involved. Two of the three accidents occurring during the twelve month period (actually a 53-day period) were witnessed by fellow employees.

With such an unacceptable driving record, SYSCO has an obligation to the public to ensure that unsafe and incompetent drivers such as the Grievant are taken off the road. Therefore, the Arbitrator should uphold the termination, and thus deny the grievance.

#### **ANALYSIS OF THE EVIDENCE**

Termination from employment is, to use a common expression, "capital punishment" for an employee, as it involves his/her livelihood, reputation, employee rights, and future job opportunities.

It is undisputed that Section 21.1 requires just cause to discharge the Grievant. Even in cases of alleged violation of Work Rules (which is the situation here), Section 21.4 requires just cause to discipline.

While every discharge must be viewed as a failure in personal and economic terms, the Employer is entitled to insist that drivers respect the Employer's property and to protect that property from abuse. Every employee's job is potentially threatened when drivers damage Company vehicles by engaging in preventable accidents.

An employer seeking to discharge an employee assumes the burden of proof in two areas: (1) whether the employee committed a dischargeable offense; and (2) whether the act, if proven, justifies termination. Thus, in this case the Arbitrator must make a determination, based on the record, as to whether the Grievant is guilty of a "preventable" accident on December 1, 2010, and, if so, was this the type serious enough to justify his discharge.

The Union alleges that the Grievant was treated unfairly by the Company since SYSCO did not present any evidence of causation, conduct any investigation other than reading the Grievant's self-report of the accident and a witness's statement, or even inspect the accident location prior to discharging him.

To the contrary, the evidence proves that the Employer did conduct a fair investigation by allowing the Grievant to present his side of the story, including the submission of a written statement. In addition, Mr. Beaulieu, who was an eyewitness to the Grievant's accident on December 1, 2010, submitted a detailed statement of what he witnessed and did after the accident occurred. Both of these statements constitute an admission and proof that the Grievant was the driver involved in the accident on December 1, 2010, when the Grievant pulled out of a delivery area in a customer's parking lot (Granite City Restaurant) in St. Cloud, Minnesota by turning right too tight and scraped the passenger side of his trailer along a parked Bix truck. There was substantial damage to both trucks as a result of the Grievant's action.

In addition, Supervisor Southbloom prepared a Vehicle Incident Report, dated December 1, 2010, outlining the facts and details of the accident, as established by his investigation of the accident. A further investigation was conducted by the Transportation Department managers and review by Executive management to determine whether the accident was preventable or not. The Company concluded from their total investigation that the accident was preventable. This resulted in the Grievant being terminated on December 15, 2010, since this was his third

preventable accident within a twelve month period, which is grounds for discharge under SYSCO's Vehicle Accident Work Rule.

Most certainly, the Grievant's due process rights to a fair and thorough investigation were not violated by the Company. The Company conducted a fair and thorough investigation before declaring that the Grievant's accident on December 1, 2010, was preventable. The investigation proved that the Grievant committed the accident as eyewitnessed by a fellow employee.

Minnesota law is clear that the mere occurrence of an automobile accident does not prove fault, negligence, or that it was preventable:

A motor vehicle driver is required to satisfy both duties [of keeping a proper lookout and of keeping his or her vehicle under control] in the exercise of reasonable care. Van Tassel v. Hillerns, 311 Minn. 252, 255, 248 N.W.2d 313, 315 (1976). But proof of the mere occurrence of a motor vehicle accident does not establish negligence. Lenz v. Johnson, 265 Minn. 421, 424, 122 N.W.2d 96, 99 (1963). Rather, the greater weight of the evidence must support the conclusion that a party has failed to exercise reasonable care. Carpenter v. Nelson, 257 Minn. 424, 426-27, 101 N.W.2d 918, 921 (1960).

Even v. Salzwedel, No. CO-98-1376, 1999 WL 242703, at \*1 (Minn. App. Apr. 27, 1999). Hardson v. Void, No. A09-2356, 2010 WL 3306936, at \*2 (Minn. App. Aug. 24, 2010) (stating rule that "negligence is not proved by the 'mere occurrence of an accident'"). In a negligence action, it is the plaintiff--SYSCO's position in this case--that "bears the burden of proving

the link between the defendant's action and the injuries suffered." Rowe v. Munye, 674 N.W.2d 761, 768 (Minn. App. 2004), aff'd, 702 N.W.2d 729 (Minn. 2005). In Rowe, the court quoted the early supreme court case of Hagsten v. Simberg, 232 Minn. 160, 163-65, 44 N.W.2d 611,613 (1950), which noted that "[n]egligence, and its causal relation to the injuries upon which the right to recover rests must be proved by that degree of proof ... [required] by law and ... mere proof of the happening of the accident ... without proof of negligence or its causal relation to the result complained of, is not sufficient." The Minnesota Supreme Court's decision in Bisher v. Homart Dev. Co., 328 N.W.2d 731, 733 (Minn. 1983) provides both wisdom and instruction, stating that "[t]he duty is to guard, not against all possible consequences, but only against those which are reasonably to be anticipated ....".

The argument advanced by the Union is whether the accident was preventable or not. The Union claims that the accident was "unpreventable" and SYSCO has failed to meet its burden of proof that the accident was preventable. There is no evidence to support the Union's contention that the Bix truck was illegally or not safely parked, and the Bix driver was at possible fault or contributory fault for the accident. It must be remembered that the Bix truck was parked next to the Grievant's truck and the

driver of the Bix truck was making deliveries when the accident occurred.

Most certainly, the evidence establishes that the Grievant, and not the Bix driver, was at fault for the accident since the Company produced evidence that the Grievant pulled out of the customer's delivery area and turned right too tight and scraped the passenger side of his truck, which caused damage to both trucks. As a result, the evidence proves that the Grievant was negligent, he was totally at fault for the accident, and the accident was preventable. The Grievant could have avoided the accident by making a "straighter" turn, or if that was not possible, could have asked the Bix driver to move his vehicle so that the Grievant could make the necessary turn to get out of the customer's parking lot.

The Union claims that the Company made no effort to retrain the Grievant, such as safe-driving training, after his first two accidents. This argument has no merit for several reasons. First, the warning letter that resulted from the Grievant's first accident, and the one-day suspension letter that resulted from the Grievant's second accident contained an offer by the Company for "re-training" if so desired by the Grievant. The Grievant never availed himself of that offer by seeking additional training. Second, drivers at SYSCO undergo a rigorous training

period and are taught to drive according to existing conditions. The Grievant was no exception as evidenced by his training in the "Warehouse to Driver-Training Program." (Employer Exhibit #7). The Transportation Manager, Pat Cavanaugh, testified as part of driver training, trainees actually ride with trainers selected for their acknowledged driving expertise; such was the case when the Grievant rode with Dick Gillespie, a trainer with a nationally known reputation for driving the type and size of vehicles driven by drivers. There is no record of the Grievant's dissatisfaction with any aspect of his training before the arbitration hearing. Clearly, the Grievant was fully trained to be a driver in all weather conditions and locations serviced by the drivers.

The Arbitrator's role is to ascertain whether the discharge meted out by the Company to the Grievant is reasonable and appropriate under the Contract, which requires that discipline must be for just cause. Inasmuch as the Arbitrator has found that the Grievant's conduct involving the preventable accident on December 1, 2010, was unacceptable and cannot be condoned as it involves a serious breach of SYSCO's Vehicle Accident Work Rule, the Company had the right to take disciplinary action accordingly. The Arbitrator must thus fashion an award which he believes is appropriate and reasonable in light of the evidence

and in keeping with the just cause requirement of the Collective Bargaining Agreement.

It is proper to give some consideration to the past record of any disciplined employee. An offense might be partly mitigated by a good past record and it might be aggravated by a poor one. The employee's past record may be a major factor in the determination of an appropriate penalty for the proven offense. This is not to say that an employee can never be disciplined with a long and good work record. It is simply to indicate that in those cases the scale must be balanced very carefully and the quantum of proof necessary is more than for a newer employee or one with an already poor record.

Under SYSCO's Vehicle Accident Work Rule, "preventable" accident is only a part of the proper analysis when considering discipline of a driver involved in accidents.

Upon review some weight will be given for extenuating circumstances such as length of time between occurrences, type, damage, and whether it was preventable. In all cases, if a pattern of abuse is noted; stricter discipline may be applied at any time.

Thus, the Employer, in addition to considering a preventable accident, must also consider length of time between accident occurrences, type, damage, and if a pattern of abuse is noted.

In this case, while the Grievant was first employed by the Company on June 14, 2001, as a warehouse worker, he has only been

classified as a delivery driver since 2008. This is a very short employment period as a driver. During this short period, the Grievant has been the driver involved in three preventable accidents, which caused vehicle damage, within a twelve month period, which under SYSCO's Vehicle Accident Work Rule, is grounds to terminate him.

While the Grievant has been employed for a short period of time as a driver, three preventable accidents within twelve months is also a short period of time when considering vehicle accident frequency. In fact, only a small number of drivers have actually been terminated under SYSCO's Vehicle Accident Work Rule. The evidence in the Driver Auto Liability Incident Report discloses that the Grievant caused three of the total seven preventable accidents involving drivers between October 1 and December 1, 2010. (Employer Exhibit #8). Thus, the Grievant caused approximately half of the 2010 preventable accidents among the 125 drivers employed by SYSCO. Moreover, during the five "winter driving months" of November 2010-March 2011, the Grievant was the only driver out of 125 drivers to have had a preventable accident while driving due road conditions.

Clearly, in applying the required disciplinary analysis found in SYSCO's Vehicle Accident Work Rule with respect to a preventable accident, in addition to length of time between

accident occurrences, type, damage, and if a pattern of abuse is noted, there is nothing in the Grievant's short driver work history that mitigates the imposed discharge penalty. To the contrary, the Grievant's work history does not support his reinstatement.

The Grievant has been given a full and fair opportunity to correct his deficiencies and improve his job performance. He has done neither. The Grievant's obvious disregard for violating SYSCO's Vehicle Accident Work Rule involving the preventable December 1, 2010 accident, and the two prior preventable accidents within a twelve month period justify his termination for just cause under Sections 21.1 and 21.4 of the Contract. The Grievant's discharge was fair and reasonable under the circumstances and the grievance must be denied.

**AWARD**

Based upon the foregoing and the entire record, the Employer had just cause to terminate the Grievant's employment. As a result, the grievance is denied.



Richard John Miller

Dated August 23, 2011, at Maple Grove, Minnesota.