IN THE MATTER OF AN ARBITRATION

BETWEEN

BELL TECHNICAL SOLUTIONS

("EMPLOYER")

- AND -

UNIFOR

("UNION")

IN THE MATTER OF THE DISCHARGE GRIEVANCE OF FRANK MONTAUTI

BEFORE: GEORGE S. MONTEITH, ARBITRATOR

APPEARANCES:

FOR THE EMPLOYER – Evan VanDyk – Counsel and others

FOR THE UNION – Melissa Kronick – Counsel and others

HEARING HELD ON MAY 5, JULY 3, 2015, JANUARY 14 AND MARCH 4, 2016 AT TORONTO, ONTARIO

AWARD

[1] This is a discharge grievance. The Union grieves that the Grievor, Frank Montauti was dismissed without just cause and seeks, as a remedy, reinstatement with full compensation and without loss of seniority.

[2] The Grievor was dismissed (November 29, 2013) following an investigation into his behaviour on November 27, 2013 when, allegedly, he acted "in a way that was threatening and posed a risk of violence in the work place". The Employer's position is that the grievance ought to be dismissed because it had just cause to dismiss the Grievor in all the circumstances. Alternatively, the Employer takes the position that reinstatement is not an appropriate remedy in this case.

[3] At the time of his dismissal the Grievor had about four (4) years of service with the Employer as a Technician installing internet and satellite television devices for the customers of the Employer. There is no dispute that the Grievor has a disciplinary record consisting of some minor discipline in 2010 and 2011. In addition, the Grievor agreed to a ten (10) day suspension pursuant to the Agreement between the parties (July 3, 2012) settling the grievance of the Grievor regarding his dismissal for an alleged "road rage" incident with a member of the public. Under the terms of the Agreement, the Grievor committed to enrolling in Anger Management Classes which he successfully completed in 2012. The Union and the Grievor also agreed that, for a period of eighteen (18) months from June 8, 2012, if the Grievor engaged in conduct similar in nature to the reasons for his suspension, such conduct would constitute further discipline up to and including dismissal. There is no dispute that the events concerning the Grievor's dismissal occurred within the eighteen (18) month period.

[4] I have reviewed all the evidence of the witnesses and the exhibits filed by the parties. The evidence of the Employer was provided by Tony Shweihat, ("Shweihat"), Operations Manager, Marcello Diluzio, Operations Manager ("Diluzio") and Greg Woodford, Regional Manager ("Woodford'). They testified about the circumstances that gave rise to the decision to dismiss the Grievor. Their evidence is summarized below.

[5] Shweihat testified about the events of November 27, 2013. The Grievor was contacted by former duty Operations Manager, J. G. who asked the Grievor to deliver a modem to a Technician at another location. Following this conversation, Shweihat asked J.G. if the Grievor was going to deliver the modem. J.G. responded he did not think so and said the Grievor was being an "asshole". Shweihat decided to call the Grievor to make sure the Grievor was going to complete the task of delivering the modem to the other Technician. Upon answering his call, the Grievor said "I'm going to snap Tony, he's going to call me an asshole". Shweihat testified the Grievor was referring to J.G. He told the Grievor to relax. He realized J.G. had not hung up the phone properly and the Grievor had overheard J.G. telling him that the Grievor was being an "asshole". The Grievor asked him if he (meaning J.G) was at the shop to which Shweihat responded in the affirmative. The Grievor then stated "good, because he's going to need some backup" and hung up the phone. Shweihat was firm that the Grievor's statement that "he's going to need some backup" was not a reference to himself but to J.G. At that time, Shweihat did not know where the Grievor was, what he was doing or whether or not he was driving. He tried to call the Grievor back but the call went to voice mail.

[6] At this point, Shweihat believed the Grievor had not delivered the modem and that it would be a good idea for J.G. to leave the office and deliver the modem himself. Shortly thereafter, Shweihat heard banging on the door that leads to the management office. He believed it was the Grievor, given their recent telephone conversation, so he opened the door about a foot to prevent the Grievor from coming in the office. Shweihat described the Grievor's demeanour as very angry and aggressive. The Grievor was trying to look around him to see if J.G. was in the office. His eyes were wide and his face was red. The Grievor asked "where's J.". Shweihat asked the Grievor to back off and he did. Shweihat felt uncomfortable at the door but did not feel he was in danger. The Grievor stepped back into the hallway. The Grievor was still loud and showing signs of aggression. Shweihat decided, given the Grievor's state of mind, that he should end his shift and call it a night. Over the course of about an hour, Shweihat talked with the Grievor in an effort to calm him down and diffuse the situation. Also, Shweihat was concerned about whether the Grievor was in a proper state of mind to drive home safely. When they went outside, Shweihat asked for the work vehicle's keys and noticed that the vehicle had been left at the front entrance to the Technician's area instead of being parked in its assigned spot. The Grievor seemed to respond to their conversation and, although still upset, he was not acting

aggressively and had calmed down, dramatically, so Shweihat felt the Grievor could safely leave the premises and drive his vehicle home.

[7] Shweihat attended a fact finding meeting with the Grievor, Lloyd Bishop, Chief Steward, and Marcello Diluzio, on November 29, 2013. His evidence is that during the meeting, the Grievor said he told J.G. he would deliver the modem to the location which was far away from where he was but he would not be able to finish other work that had just been assigned to him before the end of his shift. The Grievor said he heard J.G.'s "asshole" comment and when he spoke to Shweihat he was very upset and told Shweihat he was coming to the shop to "confront J. man to man". The Grievor also said that, when he arrived at the office, he knocked on the door to the management office. Shweihat told him J.G. had left and he needed to calm down. Further, the Grievor admitted his actions were wrong.

[8] Diluzio was the Grievor's direct Operations Manager. The Grievor called him later in the evening after leaving the premises. The Grievor told him about the situation with J.G. The Grievor said J.G. called him an "asshole" and told Diluzio that "anyone who calls me an asshole better be able to stand up to me face to face". The Grievor told Diluzio that he drove to the office. Diluzio was disappointed the Grievor did that, asked him why he would not just make a complaint and told him that they will deal with it when the Grievor returns to work. Upon the Grievor's return to work on November 29, 2013, Diluzio arranged a meeting with J.G and the Grievor to discuss and resolve the matter informally but later, he was requested by Woodford not to go ahead with the meeting. Instead, the meeting referred to above occurred. Diluzio testified the Grievor admitted what he did was wrong and that he "fucked up". He said he was sorry but Diluzio felt the Grievor said it in a non-remorseful way because he did not sound apologetic.

[9] Woodford testified about his decision to dismiss the Grievor. He met with Shweihat and Diluzio after the meeting to discuss the circumstances and the Grievor's answers to the questions asked of him in the meeting. They concluded that the facts supported a finding that the Grievor had engaged in serious misconduct by threatening a physical altercation with a manager contrary to the health and safety policies of the Employer (Exhibit 5). In Woodford's view, dismissal was warranted, given the seriousness of the Grievor's conduct, the prior ten day suspension for similar behaviour and the apparent failure of anger management classes to assist the Grievor control himself during work. Diluzio then delivered the dismissal letter to the Grievor.

[10] The Union's evidence was given by the Grievor who provided his explanation about the events of November 27, 2013. He reviewed the discussions he had with J.G. about work assignments at the end of which he heard J.G say "fucking asshole" and realized the phone was still on. The Grievor decided to go to the shop about fifteen (15) to twenty (20) minutes away to ask J.G. about why he called him a "fucking asshole". The Grievor said he did so because he was hurt and upset and not in the right state of mind to service customers. The Grievor received the call from Shweihat about the delivery of the modem and told Shweihat he was upset about what he heard and he was coming back to the station to talk to J. "face to face". Further, he testified he told Shweihat to stay there to hear J.'s reasoning. The Grievor admits he did make the "man to man" comment to Shweihat during their conversation. He testified he does not remember making the "back-up" comment or the exact words he uttered during his conversation on the phone with Shweihat, only that Shweihat should be there to listen. In cross-examination, the Grievor, however, conceded he did say the word "back-up" in his conversation with Shweihat but maintains he did not say "J needs back-up". The Grievor says he thought there should be a "back-up" because J.G. may be angry and he thought there should be a back-up or witness during his conversation with J.G. about his comment.

[11] Before arriving at the shop, he tried, unsuccessfully, to call Diluzio to advise him about what he heard J.G. say. He left a voice message or text but did not hear back from Diluzio before he arrived at the shop. When he arrived at the shop, he said he was not as upset. The Grievor testified that he knocked on the door. He denies banging on the door. Shweihat opened the door and told him to step back. He was upset, possibly red faced but denied being loud and aggressive. He asked where J. was and was told he was not there. The Grievor says he started to walk away. He talked with Shweihat for about an hour and was told he could go home because he had calmed down. He then parked the company vehicle and left the premises. Later, Diluzio called him and they discussed the matter and next steps.

[12] The Grievor agreed with the statements attributed to him in the meeting of November, 29, 2013 (Exhibit 3) including the "man to man" comment, knocking on the door "to confront J." and the discussion with Shweihat "to calm down the situation". The Grievor, also, agreed he said that his actions were wrong (Exhibit 4) but he did not accept responsibility for his actions. He said he realizes he should have gone to the Union instead but he just wanted "to shake his

(J.G.'s) hand and get an explanation". The Grievor testified that he feels sorry for what happened, has no ill-feeling towards anyone, and if reinstated, he would accept a requirement to participate in anger management classes.

[13] In addition to the evidence concerning the events of November 27, 2013, the Employer called two bargaining unit employees to testify about two post-discharge interactions they had with the Grievor. In an Award (August 28, 2015), I determined that the post-discharge evidence was admissible in regards to the alternate position of the Employer that reinstatement was not appropriate remedy in this case in any event. I have reviewed the evidence of the two bargaining unit employees and the Grievor's evidence about these interactions. I shall not summarize the evidence in any great detail. Suffice it to say, the two bargaining unit employees testified about their contact with the Grievor that makes them feel uncomfortable and concerned about retaliation or harassment from the Grievor, if he is reinstated. One testified about comments directed at him and a trainee by the Grievor who was working with another employer at the time. The other testified about a "road rage" incident while driving home where the Grievor, who was driving another employer's van, was behind him flicking his high beams on and off and honking his horn; and at a stop light came up beside him and began yelling at him. The Grievor did not recall the first incident, denied the second one occurred and did not believe he would have any issue working with them again, if he is reinstated.

Position of the Parties

[14] Counsel for the Employer contends that the Grievor's threatening conduct towards a supervisor on November 27, 2013, alone warrants the penalty of discharge and certainly is justifiable, given his disciplinary record and efforts made to assist the Grievor to cope with his anger issues. Counsel concedes the comment of J.G. is indefensible and wrong but submits it is the disproportionate reaction of the Grievor that warrants discipline. Counsel canvassed the evidence and, in particular, referenced the statements of the Grievor made to Shweihat during their telephone conversation including the "going to snap" and needing "back-up" comments. Counsel contends that the Grievor's statements, his angry state of mind, his decision to leave his work location to drive back to the shop to confront J.G, objectively, can only be interpreted as threatening behaviour and an act of workplace violence under ss. 20.2 of Part XX of the *Canada Occupational Health and Safety Regulations ("SOR/86-304")*, designed to instill fear that

something will happen to J.G. when he got back to the shop. Counsel submits that the Grievor's desire to confront J.G. about his comment is confirmed by Shweihat's evidence about the banging on the door, his aggressive demeanour and his demand to know "where's J". In addition, the Grievor's admission in the meeting that his actions were wrong and he "fucked up" supports the conclusion that he had engaged in culpable misconduct. Alternatively, counsel contends that, if I were inclined to exercise my discretion to grant relief from the penalty of discharge and reinstate the Grievor, reinstatement is not an appropriate remedy in this case. Counsel reviewed the evidence of the two bargaining unit employees who testified about their post-discharge experiences with the Grievor and their concerns about working again with the Grievor to support the Employer's position that the Grievor poses an ongoing risk to other employees in the workplace. Counsel referred to the following cases: *Northwest Waste System Inc. v. Transport, Construction & General Employees' Assn., Local 66*, 164 L.A.C. (4th) 311(R.B. Blasina Member), *Walker Exhausts v. U.S.W., Local 2894*, 222 L.A.C. (4th) 141 (Gray), *Kingston (City) v. C.U.P.E., Local 109*, 210 L.A.C. (4th) 205 (Elaine Newman) *("Kingston"), North Bay (City) v. C.U.P.E., Local 122*, 151 L.A.C. (4th) 236 (Slotnick) and *Toronto Transit Commission and ATU, Local 113 (M.(E.)), Re*, 239 L.A.C. (4th) 130 (Davie).

[15] Counsel for the Union submits that the grievance be allowed because the evidence does not support the conclusion that the Grievor was insubordinate or engaged in workplace violence towards J.G. Counsel contends his actions were provoked by J.G's personal insult he overheard which renders his actions inculpable or alternatively, is a mitigating factor that justifies a reduction in the penalty and reinstatement. Counsel points to Shweihat's evidence that he was not afraid and, even though he knew the Grievor was upset, he did not take any steps to stop him from coming to the shop. The Employer took no steps to apologize for J.G.'s comment or to de-escalate the situation before his return to the shop nor did the Employer, if it believed the Grievor a potential threat in the work place, prevent him from returning to work on his next scheduled shift. Counsel submits that it makes no sense that the Grievor could have meant by the "back-up" comment that he was requesting witnesses to be present for a physical assault or a threat contrary to the occupational health and safety legislation. Rather, the evidence, in context, supports the Grievor's explanation that, although upset, he only wanted to talk to J.G. about his comment and, unlike the alleged circumstances pertaining to his ten (10) day suspension, there was no similar conduct here that could be characterized as workplace violence. Counsel accepts the Grievor's

comments were inappropriate for which he apologized but they did not rise to the level of a real threat of violence directed towards J.G. With respect to the post-discharge evidence, counsel submits the evidence does not in any way establish that the Grievor is a continuing risk to others in the workplace or cannot be trusted to work safely. Counsel canvassed and compared the factual and contextual differences in the cases referred to by counsel for the Employer and the circumstances pertaining here. Counsel also referred to the following cases during her submissions: *Howe Sound Pulp and Paper Corp. and CEP, Local 1119 (Wildsten) Re*, 230 L.A.C. (4th) 1(Holden) *("Howe Sound")*, [2013] B.C.W.L.D. 2737 (K.Saunders V-Chair), *Georgia Pacific Canada Inc. v. C.E.P., Local 192*, 206 L.A.C. (4th) 399 (Luborsky) *("Georgia Pacific"), Bell Technical Solutions and CEP (Facebook Postings) Re*, 280 L.A.C. (4th) 287 (Chauvin) and *Sauder Industries Ltd. v. I.W.A.-Canada, Local 1-217*, 47 L.A.C. (4th) 417 (Kelleher).

[16] In reply, Counsel for the Employer submits that, contrary to the submissions of Counsel for the Union, Shweihat did try to contact the Grievor again after he hung up on him and, there being no response to his call, he dealt with the difficult situation in the only way he could by getting J.G out of the office before the Grievor arrived. Further, Counsel contends the offence here is not whether the Grievor was actually going to physically assault J.G. Rather, it is whether his intent, at least, was to bully J.G. and having a witness present serves that purpose. The Grievor's words including the "man to man" comment are workplace violence because they are intended to make J.G. feel intimidated and threatened. In addition, Counsel submits the Grievor's behaviour in response to J.G.'s offensive comment was unreasonable and disproportionate. Provocation, therefore, is neither an excuse for his behaviour nor a proper basis to reduce the penalty. Lastly Counsel submits that the Grievor did not give a sincere apology for his conduct in the meeting or in his testimony nor did he take responsibility for his conduct.

Decision

[17] The first question to be determined in a discharge case is whether the Grievor engaged in conduct that warrants discipline. If the answer is yes, the second question concerns whether the penalty of discharge is warranted in all the circumstances. If not, the third question concerns the substitution of an appropriate penalty in lieu of discharge.

[18] The conduct complained of in this case concerns threatening behaviour in the workplace. It is clear from the arbitral jurisprudence that violence, threats of violence or harm, harassment or bullying in the workplace directed at fellow employees or supervisors is always a serious matter that warrants a disciplinary response. There is, indeed, a heightened awareness by arbitrators and all stakeholders today of the seriousness of such conduct and the harm it can cause in the workplace. This is made clear by the enactment of occupational health and safety laws that impose on employers, as a matter of public policy, duties and responsibilities to promulgate policies and to take other measures to prevent such conduct, to promote a healthy and safe workplace and to uphold the right of all employees to respect and dignity in the workplace. The arbitral opinion respecting workplace violence in all its forms is succinctly summarized by Arbitrator Luborsky in *Georgia Pacific* at para.50 of the decision.

> Violence in all of its forms, bullying, and threats of harm in the workplace, whether directed at management or among bargaining unit employees, is never acceptable, and any tolerance that there may have been for such conduct among employees in the past has distinctly hardened in recent years. See, for example, Arbitrator Abramsky's comment at para. 34 in *Biltrite Rubber (1984) Inc. v. U.S.W.A. (Turner Grievance)* that, "Violence in the workplace is a very serious matter for all of the workplace parties – the Employer, the Union and the employees. The Employer has a responsibility under the collective agreement and the law to provide employees with a safe and healthy environment", and Arbitrator Elaine Newman in *Dynatech Corp., supra*, who in upholding the discharge of an employee for spitting in the face of a co-worker in the context of an ongoing pattern of harassment by the employee stated at p. 11 that, "A strict response is mandatory, in the interests of all people who share that workplace, and who have an interest in the maintenance of a safe environment…there is no such thing as a "trivial" violent act in the workplace – all eruptions of uncontrolled anger warrant the same degree of scrutiny".

[19] As I referred to above, occupational health and safety legislation has been enacted at the federal and provincial levels addressing workplace violence. The Employer referred to and relies upon the definition of "work place violence" in SOR/86-304 that has been adopted by the Employer in its "Violence and Harassment in the Workplace" policy to support its position that the Grievor engaged in a form of workplace violence in reaction to overhearing J.G.'s personal insult. Under ss. 20.2 of SOR/86-304 "work place violence" is broadly defined as "any action, conduct, threat or gesture of a person towards an employee in their work place that can reasonably be expected to cause harm, injury, illness to that employee."

[20] I turn, then, to the first question. Does the evidence support the conclusion that the Grievor engaged in a form of workplace violence? Upon review of the evidence and submissions of counsel, I have concluded that the Grievor, for the following reasons, did engage in culpable threatening and bullying behaviour of the kind that falls well within the broad umbrella of conduct that constitutes workplace violence.

[21] The conduct complained of occurred after the Grievor overheard J.G.'s offensive insult due to the failure of the telephone to disconnect following their conversation about work assignments. The Employer, quite rightly, accepts that J.G.'s insult was unacceptable and indefensible. It is, certainly, understandable that the Grievor would feel upset, hurt, and offended by J.G.'s pejorative insult. It is, however, the Grievor's reaction to hearing himself called an "asshole" by a supervisor that is most concerning in this case. Instead of exercising a modicum of self-control or making a complaint about J.G., the evidence demonstrates that the Grievor was unable to control his feelings or anger and he impulsively reacted by leaving his work location to return to the shop to engage in a self-help confrontation with J.G. about the insult. The Grievor told Shweihat he was going to "snap", and after being told to calm down, made the "back-up" statement and hung up. The Grievor admitted during the meeting he told Shweihat he was coming to the shop to confront J.G. "man to man" and that his actions were wrong. The Grievor drove for about fifteen (15) to twenty (20) minutes back to the shop, more than enough time it would seem to calm down and to re-think his course of action. When the Grievor arrived at the shop, it is clear he had not calmed down. He parked the van in front of the office instead of taking the time to park it properly, which supports the conclusion he was still very angry and in a hurry to confront J.G. Shweihat's evidence about the Grievor banging on the door, his angry, aggressive demeanour, being told to back-off and that he took about an hour to calm the Grievor down before allowing him to leave the shop confirms that the Grievor's intention was, at the very least, to engage in an angry, threatening and intimidating confrontation with J.G. In my view, the evidence, viewed objectively and as a whole, points to no other conclusion than the Grievor engaged in a form of workplace violence by his threatening and insubordinate behaviour that, reasonably, would have caused J.G. to fear for his personal well-being.

[22] The Union's position is that the evidence put in its proper context does not support the conclusion that the Grievor's intention was to threaten or to engage in physical violence against J.G. and he was justifiably provoked by J.G.'s insult. In his evidence, the Grievor sought to put his statements to Shweihat, his actions and his admissions during the fact finding meeting in an innocent context, that is, he decided to come back to the shop because he was upset and felt he could not service customers and only wanted to have a civil discussion with J.G. in Shweihat's presence to understand why he called him an asshole, to resolve the issue and to shake J.G.'s hand. I do not accept that the Grievor's intentions were innocent in all the circumstances. His explanation is not credible and is rather self-serving. It is inconsistent with the credible evidence of Shweihat that was not disputed or undermined in any meaningful way. It is, also, inconsistent with the angry tone of the Grievor's statements, his aggressive demeanour at the shop and his prior statements and admissions of wrongdoing during the fact finding meeting. All of the evidence and the absence of any credible explanation leads to no other conclusion than the Grievor's intentions were anything but innocuous.

[23] Further, I do not accept Counsel's suggestion that it makes no sense that the Grievor would ask for a witness if his intention was to cause physical harm to J.G. At the time, he was hardly acting rationally so his intention respecting actual violence will never be known. It may be that his intention in the end was not to assault or physically harm J.G. However, at the very least, his words and actions reveal an implied threat of violence and an intention to vent his anger and to confront J.G. in a bullying and intimidating manner. Having someone there to witness the confrontation which he, apparently, believed would be justified by J.G.'s insult, serves that purpose. Counsel also, suggests that there could not have been any serious concern about whether J.G. was a safety risk or whether the Grievor's angry state of mind was such that he ought not to be driving the work van because no-one tried to stop the Grievor from driving the van back to the shop. Also, the Grievor was also allowed to return to work for his next shift two (2) days later. I do not agree. Shweihat tried to phone the Grievor back and got no response. He was obviously concerned, quite rightly, about the Grievor's intentions and acted, accordingly, by asking J.G. to leave the shop for his own safety before the Grievor's return. I do not know what more he could reasonably be expected to do in the circumstances. Further, the fact that the Grievor returned to work two (2) days later at which time his conduct was addressed is irrelevant to whether the Grievor posed a risk to the safety of J.G. at the relevant time.

[24] In respect of the Union's position that the Grievor's conduct is, nevertheless, rendered non-culpable because he was provoked by J.G.'s insult, I am unable to accept this position. Provocation is usually raised as a mitigating factor in the assessment of the reasonableness of the penalty imposed by the Employer, although in appropriate cases, some arbitrators have accepted that provocation can be a complete defense nullifying any discipline (see *Howe Sound* at para. 50). Provocation requires a finding that there was "some act or series of acts that reasonably could be seen as provocative; and that there was a proportionate response to the provocation from the grievor" (*Howe Sound*, above at para. 22). As I discussed above, the Grievor was understandably upset by J.G.'s indefensible insult but his conduct in response thereto was unreasonable and disproportionate to the offense. He had a process available to him to address a complaint about J.G. Instead, he impulsively reacted by uttering threatening words and driving fifteen (15) to twenty (20) minutes to the shop in an angry state to confront J.G. "man to man". He had more than enough time to come to his senses about the course of action he had chosen for himself. In an apparent moment of clarity, he tried to contact Diluzio, presumably for some advice, and instead of stopping and waiting to hear back from him or calling Shweihat back, he continued driving back to the shop, anger unabated, to search out and confront J.G. The Grievor's conduct in response to the insult is not, in my view, excusable on the basis of provocation.

[25] Having answered the first question in the affirmative, is the penalty of discharge warranted in all the circumstances? This case involves serious misconduct in the workplace. It is clear that workplace violence in all its forms requires a strict response and in many cases, is so egregious as to alone justify discharge. This does not mean that arbitrators take a zero tolerance approach to workplace violence. The discretion of an arbitrator in appropriate circumstances to grant relief against the penalty of discharge continues to apply in workplace violence cases but, in weighing the mitigating and aggravating factors, considerable weight must be given to the seriousness of the misconduct and the risk to workplace safety (see *Kingston* at para. 260). In addition to weighing the well-known factors, a review of the reasonableness of the penalty of discharge in a workplace safety case requires consideration of whether the employee will pose a continuing safety risk to others (*Kingston* at para. 262).

[26] The Grievor has short service and a disciplinary record, including his acceptance of a ten (10) day suspension for conduct that is broadly similar to this case. He did not take responsibility for his actions and indeed, before me, tried to downplay the seriousness of his conduct. More importantly, this suggests that the Grievor lacks insight into his behaviour and is unable or unwilling to acknowledge the seriousness of his conduct. He offered no sincere apology or expression of real remorse for his conduct at the time or during his testimony. As I discussed above, his reaction to J.G.'s insult was unreasonable and disproportionate and accordingly, I give little, if any, weight to provocation as a mitigating factor.

[27] The Employer has followed a progressive disciplinary approach to correct his behaviour and provided him with benefit of an anger management program in an effort to rehabilitate the Grievor into a productive employee who can be trusted to service its customers and work with other employees in a safe and respectful manner. Notwithstanding the successful completion of anger management classes where, presumably, he learned coping techniques to assist him with impulse control and anger, his anger over the insult so overwhelmed him that he engaged in threatening conduct against another employee. The Employer has tried both a disciplinary and non-disciplinary approach to correct and help the Grievor overcome his anger issues but, it appears to no avail. Thus, I am not satisfied that the Grievor, if returned to work, could be trusted to work safely with other employees or the Employer's customers. No employee's health and safety, whether a supervisor or co-worker, ought to be put at risk by the potential for the Grievor to engage again in any form of workplace violence; and the Employer, given the statutory duties placed upon it to provide a safe and healthy workplace, ought not to be required to tolerate any longer the Grievor in its employ and the potential risk of harm to its employees and customers.

[28] Accordingly, I decline to exercise my discretion to interfere with the penalty of discharge because there are no compelling mitigating factors that outweigh the many aggravating factors to warrant the conclusion that the penalty is unreasonable in all the circumstances. For greater clarity, the post-discharge evidence was not taken into account in the substitution of penalty question.

[29] In the result, for all of the above reasons, the grievance is dismissed.

DATED AT MARKHAM THIS 27TH DAY OF FEBRUARY, 2017

Arbitrator