

AMERICAN ARBITRATION ASSOCIATION
AAA Case No. 01-23-0001-0102

In the Matter of the Arbitration :
: :
Between: :
: :
SAG-AFTRA :
: :
and :

II. The Issues.

The issues for determination, as stipulated by the parties, are as follows:

1. Did the Employer have just cause to discharge Grievant, Jad Sleiman?
2. If not, what shall be the remedy?

III. Pertinent Contractual Provisions.

The Collective Bargaining Agreement between the parties provides in pertinent part:

PREAMBLE

The parties agree that it is of paramount importance that WHY Y continues to provide excellent service to the community it serves and that to achieve this ongoing goal it is essential that all employees and managers, extend their best efforts at all times, and that the parties agree to a mutual goal of having a workplace that is fair and beneficial to and for all employees.

Article 2, Section 4(e) (Management Rights)

Except as modified or restricted by a specific provision of this Agreement, in order to operate its business, WHY Y retains the exclusive right to manage the business, to direct and control the workforce, and to make any and all decisions affecting the business, whether or not specifically mentioned herein and whether or not heretofore exercised, including but not limited to the following: the right to hire, promote, demote, lay off and assign, transfer employees from one job classification to another, suspend, discharge and discipline employees for just cause, and schedule employees, as well as determine hours of work and schedules, if any, determine the number of employees necessary to perform specific duties, if any; determine or alter the nature of the business; discontinue assignments, podcasts, blogs, or other projects, programs, and series, in whole or in part, at any time; determine the methods, procedures, materials and operations to be utilized or to discontinue the utilization; increase or decrease the number of work shifts, start and end times; promulgate and enforce rules and regulations; change, combine or abolish job classifications; determine job content and qualifications; set standards and methods of job performance and performance evaluation; discontinue, reorganize or combine any department or area of WHY Y with any consequent increase or reduction or other changes in the workforce; introduce new or improved methods; and in all respects to carry out, in addition, the ordinary and customary functions of management, except as specifically abridged, altered or modified by the terms of this Agreement.

Article 2, Section 6(b)(i) (Grievance and Arbitration)

The jurisdiction and authority of the arbitrator and his/her opinion and award shall be confined exclusively to the interpretation and/or application of the express provisions of this Agreement. The arbitrator shall have no authority to add to, subtract from, or modify in any way the terms of this Agreement or, in the case of contracts in excess of the minimum standards, the contract.

Article 3, Section 3 (Non-Discrimination)

WHYY is an equal opportunity employer. WHYY and SAG-AFTRA shall not discriminate on the basis of age, race, color, religion, gender identity, national origin, physical or mental disability, sexual orientation, genetic information, military service, or because of marital, parental, veteran status, or any other characteristic protected by federal, state, or local law.

Article 3, Section 6(a)(b)(c) (Discipline & Discharge)

- (a) Except as provided in Paragraph (b) below, the Employer may discharge, suspend or otherwise discipline any employee only for just cause. It is understood that, while discipline will usually be progressive and corrective, there may be circumstances where the offense or conduct of the employee may be so egregious that it warrants immediate discharge without prior warning or notice.
- (b) Except as provided in Section (a) above, employees will be provided progressive discipline before discharge in accordance with WHYY's corrective discipline policy as it may, from time to time, be modified. A copy of the policy will be provided to unit employees and the Union.
- (c) If the Employer wishes to have an investigative meeting with an employee which the Employer reasonably anticipates may lead to the discipline or discharge of the employee, the Employer will advise the employee of his/her right to have a steward present and will not deny the employee's request for Union representation at the meeting. The Employer will not be required to unreasonably delay the meeting in order to provide a specific Union representative. If there is good reason to proceed, the employee may select another representative who is available.

Article 4, Section 3(a)(b) Diversity, Equity & Inclusion

- (a) Commitment. WHYY, SAG-AFTRA, and the employ

diversity, equity and inclusion. The parties hereto reaffirm their commitment: (i) to a policy of non-discrimination as set forth in the Non-Discrimination article of this Agreement, and (ii) to continue the active promotion of social justice, diversity, equity and inclusion.

(b) **Social Responsibility Program.** In furtherance of the mutual commitments expressed in this Article, the WHY Y Social Responsibility Program (“Program”) shall be responsible for, among other things, addressing and promoting the goal of a diverse and inclusive workforce.

(e) Employees will be guided by WHY Y's policy on social media. A copy of the social media policy will be provided to the Union. WHY Y will give the Union no less than thirty (30) days' notice of any changes to the policy with the

- Undertaking your responsibilities with special regard for others, recognizing that actions which bring discredit upon WHY Y or reflect unfavorably upon WHY Y's ability to serve the community could have a damaging influence upon the support provided by the community for our operations.

* * * *

- Following all established WHY Y policies, rules, and procedures . . . ;
- Avoiding engagement in any conduct which is, or could be perceived as, a conflict of interest; and
- Ensuring that conduct, personal appearance, and oral communication are consistent with high standards of professionalism and propriety.

Grievant testified credibly, and without contradiction, that he had no significant name recognition as a result of his work as a reporter for The Pulse, which was a growing show, but not in the same league as a nationally known show like Fresh Air.

D. Grievant's moonlighting as a standup comic.

After Grievant was diagnosed with multiple sclerosis in 2021, he began performing as a stand-up comic. According to Grievant, multiple sclerosis (MS") is a neurological disease which causes one's immune system to sporadically attack one's brain and spinal cord, which can interfere with one's ability to walk and otherwise function. He testified that he never knew when an attack would hit him, when an attack would subside, what part of the body would be attacked, or if the disability would become permanent.

During the height of Covid-19, Grievant obtained permission to work primarily from

are welcome...to start treating their women a little better.” Wait, it is true that like women are treated a little better in the west for a while. After like 35, 40 it gets pretty brutal, does it? There’s no retirement age for looking hot in the west. That’s why you see American grandmas wearing makeup and shit. American women have to be as fuckable as possible until they’re dead, which I don’t think is fair. Y’all I want to start a rescue charity that helps women of a certain age move to Saudi Arabia. They’re gonna be like, “What, I don’t gotta to do botox or dye my hair?” I’m like, “Lady, you don’t even gotta drive. In fact, yeah, they prefer you didn’t.”

2. Pussy Transplant

Do y’all remember how at the start of my set I was like, “The hell, was she born without a pussy?” As I was writing that, I Googled: “Can you be born without a pussy?” And, obviously, yes. Women can also be born without pussies it turns out. The treatment for it is like reconstructive surgery or the donor method. The donor method has been performed once. It was a success and the donor was the girl’s mom. Science should be illegal dude, the fucking hell. Ok that means there’s someone out there walking around with their mom’s pussy. Alright second off, y’all this means, y’all know this means pussy can be passed down the generations. Yo that pussy is a family heirloom. In fact, that pussy is the most family heirloom and then it creates more family. Dude it works alright. That girl got fucked in the pussy. Let me start that again, that girl got fucked in her mom’s pussy and had a kid, dude.

4. Went to Chinese Whore House

I was in Iraq, cause I was filming these European volunteers that had gone there to fight ISIS. My first night in Iraq, they treated me to a night at a Chinese whorehouse, which I mean, how thoughtful. I saw such horrific things in there that I walked out and was like maybe ISIS has a point. You stray too far from Allah, dude, you end up getting a lap dance from a fifty year old Chinese woman. I didn't ask for this lap dance, this is a whorehouse, it's a place that sells fucking and like they had mozzarella sticks and shit, but mostly fucking. So they like a lap dance, that's like waters for the table, you know, everyone, just bring 'em out. The vibe in a Chinese whore house in Iraq is exactly like the vibe in like a strip club, which is if it's your first time your boys want to get you a dance. I already had a dance, so what my boys wanted to get me was a Chinese whore. And I'm not, I'm not calling her a sex worker for a reason, dude, because it's not like she was a bored NYU slut. This is a sex trafficked person. I was like I don't care if you paid for it, I'm not banging out a slave. I'm not half of the founding fathers.

5. Asian Manpower

Grievant: Who wants to hear my phone call with the leading provider of Asian manpower?

Playing recording on phone:

Staffing Agency: Hello
Grievant: What are you guys?
Staffing Agency: Oh we are staffing agency.
Grievant: So, if I wanted five Chinese guys, if I had an emergency right?

Staffing Agency: Yeah that would be possible.
Grievant: Now is there a cost difference? I'm not going to say which one of these guys I expect to be more expensive.

Staffing Agency: The Japanese.
Grievant: And which one to be cheaper?
Staffing Agency: Philippines.

Staffing Agency: Oh, no.

French. "My name is Jean Pierre," your name is Abdul. Shh.

End of standup.

Y'all, the fucking media is spreading hateful rumors about me, talking about squid destroyed my

Knicely also mentioned that there could be some “foul” content in the stand-up performances.

Laszewski thought about his conversation with Knicely for a few weeks, and then in November reported it to Ruth Clauser, Vice President of Administrative Services, his boss. He informed Clauser that he had become aware that Grievant was doing stand-up comedy, which seemed inconsistent with his doctor’s note. According to Clauser, she told Laszewski that it was a medical issue and it was being handled as with any other exemption. At that point, Clauser did not investigate the content of Grievant’s stand-up routines. She merely directed a subordinate in the HR Department, Amber Bowen, to ensure that Maiken Scott, Grievant’s immediate supervisor, was aware of the status of Grievant’s medical exemption.

Meanwhile, Scott and Grievant followed each other on Instagram. Scott testified credibly that, as she was going to sleep at night, she periodically scrolled through her Instagram account with the sound off, and briefly viewed the content of some of Grievant’s “stories,” video clips of some of his stand-up routines, at the top of her smartphone screen, which automatically were erased after 24-48 hours. Without scrutinizing the “stories,” she periodically clicked that she “liked” them. Her impression of the routines was that they contained foul language and sexual content, and were not to her taste, but did not cause “alarm bells” to go off.

In November, Laszewski also informed Bill Marrazzo, CEO, of his concern that Grievant was performing stand-up comedy routines while he had a doctor’s note requiring him to work mostly from home to manage stress. Laszewski, who had not at that point viewed any of Grievant’s video posts, also told Marrazzo of a concern that Grievant’s comedy routine might adversely affect WHYY’s reputation, without detailing why.

On or about November 17, Scott and Grievant discussed his FY2022 performance evaluation. Overall, his evaluation was “Fully Successful.” Scott’s comments included:

Creativity - Jad is a very strong writer and reporter who is always looking for interesting angles in every story VWi txc0ur is alwaud HW`es while heö¶-æp

Diversity

Jad reaches out to diverse communities and finds story ideas that are pertinent to them. He goes into his reporting with an open mind and allows the reporting to guide him into the stories.

During her discussion of the performance review with Grievant, Scott suggested that Grievant focus on his reporting rather than his stand-up comedy routines:

I believe that he [Grievant] was a uniquely talented reporter. And that there are only so many things we can do with our whole heart and I would advise him to choose journalism over stand-up comedy, because I felt like it was splitting his attention. And that you can only be so passionate about so many things. And I said, “If you have to pick one, please pick journalism.”

In mid-November, Amber Bowen asked Scott why advise hCÂÆ]F‡ •

In January 2023, Bowen learned about the content of some social media posts regarding Grievant's stand-up comedy routines, which she described to Clauser. At that point, Clauser searched online for Grievant's posts on social media about his stand-up routines, and, together with Ruth Glover, Vice President for News and Civic Dialogue, found and reviewed nine video clips of the routines that had been posted online. According to Clauser, she found the clips to be in "in direct violation of appropriate and balanced reputational management," were "egregious" in content, and had "sexual connotations, racial connotations, and misogynistic information."

On January 11, 2023, Clauser saw McGrath walking by

including whether: (1) Grievant had notice of the policies he was alleged to have violated; (2) WHY Y conducted a proper investigation; and (3) WHY Y complied with its own procedure for discharging an employee. I will address each in turn.

1. Notice.

Grievant claims he was unaware of the policies he was alleged to have breached. However, as a member of the barg

begins: “If the Employer wishes to have an investigative meeting with an employee . . .” Thus, WHY Y contends that Section 6(c) stands for the proposition that an investigatory meeting is up to the discretion of WHY Y. I disagree. Section 6(c), when the first sentence is read in its entirety, makes clear that it is intended to afford employees the right to Union representation during an investigation that could lead to discipline or discharge, as required by the United States Supreme Court’s decision in *NLRB v. J. Weingarten, Inc.*, 420 U.S. 251 (1975):

Section 6(c).

If the Employer wishes to have an investigative meeting with an employee which the Employer reasonably anticipates may lead to the discipline or discharge of the employee, the Employer will advise the employee of his/her right to have a steward present and will not deny the employee’s request for Union representation at the meeting. . .

Thus, the thrust of the provision is to ensure an employee’s right to Union representation in accordance with the “Weingarten Rule” if WHY Y opts to conduct an investigative meeting with an employee who is subject to possible discipline or discharge. The purpose of the provision is hardly to give the Employer the option to disregard due process and not conduct a thorough investigation when an employee has been accused of misconduct that might lead to discipline or discharge. Accordingly, I find WHY Y’s Section 6(c) argument to be unpersuasive, and I conclude that management’s failure to interview Grievant before finalizing the decision tording

knew Grievant the best, was not included in the decision to terminate Grievant's employment.

According to the last sentence of the quotation from the Discipline & Discharge policy, the reason for requiring that the division vice president, representatives of Human Resources and Legal, and the employee's manager all "review and approve" a decision to immediately discharge an employee without prior warning or notice was to "to ensure fairness and consistency." For whatever reason, Scott was excluded from the review and approval process. Perhaps upper management anticipated that Scott would express her disagreement with the decision to summarily discharge Grievant, as she did after the termination decision was made. In any event, by excluding Scott from the decision-making process, management disregarded the language that guaranteed that Scott would review and approve the decision.

Anticipating this issue, WHY Y argues that the Discipline & Discharge policy does not require an employee's direct manager independently approve every discipline decision, which would take away a higher level manager's authority to override a lower level manager's view. I agree. But the Discipline & Discipline policy, as I read it, provides for an employee's manager, along with three other management representatives, to review and approve every decision to summarily dismiss an employee without prior warning or notice. Accordingly, I conclude that, because management did not give Scott, Grievant's manager, the opportunity to review and approve the termination decision before it was implemented, WHY Y breached its obligation to do so in violation of the plain dictates of its Discipline & Discharge policy.

B. The Merits.

WHY Y asserts that Grievant violated the Code of Conduct, the Social Responsibility Program at WHY Y and the Social Media Policy. I will address each in turn.

1. Code of Conduct.

The heading above the Code of Conduct, and the introduction thereto, make clear that the Code applies to workplace conduct, rather than off-duty conduct, such as Grievant's social media postings of his off-duty comedy routines.

Workplace Conduct

Code of Conduct

When working at WHY Y, you are expected to maintain certain standards that help to maintain WHY Y's reputation in the community. These standards relate to workplace conduct, job performance and business practices that impact the organization both internally and externally. Such standards include, but are not limited to:

- Undertaking your responsibilities with special regard for others, recognizing that actions which bring discredit upon WHY Y or reflect unfavorably upon WHY Y's ability to serve the community could have a

damaging influence upon the support provided by the community for our operations . . .

The heading “Workplace Conduct” above the Code of Conduct in the Employee

advancement, commitments to promoting equity through community interaction, programming and coverage of the stories and to discuss ideas and opportunities to further the parties' mutual commitment to the principles of social justice, diversity, equity and inclusion.

The Program shall include SAG-AFTRA-covered employees as well as WHY Y managers and other employees, who shall meet on a semi-annual basis or as necessary. Workgroups may be created for specific issues, and these Workgroups may meet on a more regular basis.

I find that the thrust of Article 4, Sections (a) and (b) is the promotion of diversity and fairness in the workplace and in WHY Y's programming and news coverage. Section (a) refers to the non-discrimination policy, which bars discrimination on the basis of race, gender, etc. in WHY Y employment. Section (a) also refers to "the active promotion of social justice, diversity, equity and inclusion," which I

is fair. Y'all I want to start a rescue charity that helps women of a certain age move to Saudi Arabia. They're gonna be like, "What, I don't gotta do botox or dye my hair?" I'm like, "Lady, you don't even gotta drive. In fact, yeah, they prefer you didn't."

The first half is hardly inflammatory, suggesting that Americans encourage Muslim refugees to treat their women better, and that women in the west are generally treated better than in Muslim countries, at least for a while. Grievant then opines that after a woman in the U.S. becomes 35 or 40, it gets "pretty brutal," which is provocative but cannot be interpreted as inflammatory. He then states that older women in America are expected to continue looking "hot," resulting in American grandmothers wearing "fçF^ in&6aring" "fçF^ in&6aring" "fçF^ in&6aring"

“fucked” in her mother’s pussy, the routine could be interpreted as inflammatory simply because of the vulgar language used.

c. USMC Boot Camp

Anytime we stood in line in boot camp, your toes had to touch the heels of the boy in front of you. They call this standing nut to butt. If the nuts are touching the butts, where’s the dicks go? Come on, I feel like they didn’t think this one through, dude. Like when I was in the Marines, they still didn’t like let gay people in. It was called “Don’t ask, don’t tell.” I feel like nut to butt is an excellent way to tell, dude. You learn some shit about yourself standing nut to butt dog. I’m straight as hell, dude, but I was getting half a pump off these boy butts. It’s like, what if you was gay right and you had to hide it, what would you do? What do gay dudes think about when they don’t want to get boners? And I was like oh obviously vaginas, dude. Vaginas are so gross straight dudes can think of vaginas to not get a boner, dude. I was eating this pussy, Saturday, and homegirl reached down and opened up and I was like, Yo, chill. What the hell, you gotta get my consent before some freak shit like that.

This clip has two general messages. The first message is about marine recruits lining up in boot camp, “nut to butt,” and how difficult it must have been for a gay man, under the “Don’t Ask, Don’t Tell” regime, to keep from getting an erection. As I read this message, I do not believe that it could be interpreted to be inflammatory for straight or gay people.

The second message is how a gay man could refrain from getting an erection standing “nut to butt:” think about a vagina, which, according to Grievant, is gross for gay and straight men like him to think about and would immediately suppress an erection. I find Grievant’s view to be insulting to some women and therefore could be interpreted as inflammatory. Likewise, I find Grievant’s description of his “eating pussy” and being disgusted by his homegirl “opening up” her vagina could be interpreted to be inflammatory.

d. Went to Chinese Whore House

I was in Iraq, cause I was filming these European volunteers that had gone there to fight ISIS. My first night in Iraq, they treated me to a night at a Chinese whorehouse, which I mean, how thoughtful. I saw such horrific things in there that I walked out and was like maybe ISIS has a point. You stray too far from Allah, dude, you end up getting a lap dance from a fifty year old Chinese woman. I didn’t ask for this lap dance, this is a whorehouse, it’s a place that sells fucking and like they had mozzarella sticks and shit, but mostly fucking. So they like a lap dance, that’s like waters for the table, you know, everyone, just bring em out. The vibe in a Chinese whore house in Iraq is exactly like the vibe in like a strip club, which is if it’s your first time your boys want to get you a dance. I already had a dance, so what my boys wanted to get me was a Chinese whore. And I’m not, I’m not calling her a sex worker for a reason, dude, because it’s not like she was a

bored NYU slut. This is a sex trafficked person. I was like I don't care if you paid for it, I'm not banging out a slave. I'm not half of the founding fathers.

This clip shows the irony that the European volunteer soldiers in Iraq, fighting ISIS in part because of its inhuman treatment of women, took Grievant to a Chinese whorehouse where sex-trafficked women were being rented out as sex partners. Grievant made clear that he walked out after seeing "horrific things" there. At the end of the clip, Grievant says that he is "not banging out a slave" unlike half of the founding fathers of the USA.

Contrary to WHYY management, who found that Grievant called women whores and sluts, I find the commentary to be insightful, principled and serious, but not very funny. More important, I find that the message of the clip, if one is open to receiving it, cannot be interpreted to be inflammatory. On the other hand, mere mention of a whorehouse, whores and a slut, can be interpreted as inflammatory, as can his reference to those of our founding fathers who owned and slept with slaves.

e. Asian Manpower

Grievant: Who wants to hear my phone call with the leading provider of Asian manpower?

Playing recording on phone:

Staffing Agency: Hello.

Grievant: What are you guys?

Staffing Agency: Oh we are staffing agency.

Grievant: So, if I wanted five Chinese guys, if I had an emergency right?

Staffing Agency: Yeah that would be possible.

Grievant: Now is there a cost difference? I'm not going to say which one of these guys I expect to be more expensive.

Staffing Agency: The Japanese.

Grievant: And which one to be cheaper?

Staffing Agency: Philippines.

Grievant: But a Korean gentleman verses a Laotian gentleman. Which one am I getting a better deal on? Which one is more affordable?

Staffing Agency: Oh they all they all the same price.

Grievant: Now did you ever as a joke sneak in a black dude? Like, like someone says "Listen I need I need 11 Chinese guys but one of them is just obviously a black guy."

Staffing Agency: Oh no.
Grievant: Who wants to hear my phone call with the leading provider of Asian manpower?

Adjacent to the clip on the social media platform is a caption that states:

Asian dudes from the neighborhood warn btw don't ever work for these guys like this they look for undocumented and fuck you over.

At the arbitration hearing, Grievant gave context to the above dialogue consistent with the caption: staffing agencies use undocumented aliens from Asia and other parts of the world, and rent them out, often in horrific conditions. According to Grievant, he was trying to ridicule the staff agency by exposing their pricing system and arbitrary valuation of human beings from different countries.

Although Grievant makes clear in his caption and clip that he disdains the approach of the manpower agency, including its classifications of Japanese workers being more valuable than Philippine workers, Vice President McGrath found that Grievant was supportive of the agency's approach:

. . . Mr. Sleiman is taking an entire ethnic group and say

my boss, she's like "Yo, does Jad consider himself a person of color?" Uh, because she was making a list of us. Fucking hell? Sick alright. I get to be on in this lady's brown dude pokedex, hell yeah. Here's the thing. It's weird being an Arab right now. America is so focused on race right now, but we don't fall in the big ones. Like we're not black and we're not really white. You know what I'm saying. Like, I'll put it this way, after 9/11 we definitely weren't white and now that it sucks to be white, we're kinda slipping back into it, the hell, dude. Does Jad consider himself a person of color? I'm like, "I get a choice now, dude?" After 9/11 I didn't get to pick. Remember? You said you'd never forget what my people had done.

This clip pokes fun at the extent to which many American employers classify people by the color of their skin, with individuals of Arab descent like Grievant now having the option of selecting what skin color they prefer to be identified with. Grievant points out the arbitrary nature of these skin classifications, remembering that immediately after 9/11 Arabs no longer had the option of choosing their color. Grievant passionately opposed the division of individuals into color categories, preferring even to be designated as a "raghead terrorist," a categorization he abhorred, to being labeled a "person of color."

Grievant's testimony about the Kind of Racist clip at the arbitration hearing underscored his views on categorizing individuals by the color of their skin rather than their merit as human beings. In addition, he compared the overt racism he experienced growing up in West Virginia, to the corporatized racial consciousness that attempts to make employees less racist:

And this [clip] is taking aim at corporatized racial consciousness that's really popular. It's kind of like the DEI stuff, diversity equity stuff that kind of took over a lot of corporations and academia and stuff --- where somebody comes in and teaches you how to - - tries to make you less racist in a way. And it's my own squeamishness with it where it's like, this doesn't feel that much better than just people being racist --- because it still makes me feel different than other people. And my personal thing is when I think about myself, I don't think about my race first and foremost. I think that's what racists do. I think about myself as like a person, not like an Arab or something. And I feel like a lot of the corporatized

contrary to the stated policies of WHYY, which was required by law to categorize employees by race, national origin, gender, etc.

I find that the Kind of Racist clip to be a powerful condemnation, in a funny way, of what Grievant calls corporatized racial consciousness that makes him, a person of color, feel

claimed that Grievant's statement that "People say Muslims hate Jews" is racist, even though Grievant disagreed with that statement immediately thereafter in the clip.

All in all, I find that much of the clip is somewhat amusing, but his suggestion that Israel attacked nearby Arab countries because Jews had been persecuted by Europeans could be seen as inflammatory because Israel's attack in June 1967, for example, was in retaliation for a concerted military attack by some of the Arab countries in the region.

h. We Had Slaves

I lived in a lot of *inaudible*

It's like in the Arab world, we had slaves but a lot of them were white. You can't talk about having white slaves without it sounding like a brag. Oh, these guys, yeah they're from Europe, very expensive. Uh, yeah, we had one of them speaks French. "My name is Jean Pierre," your name is Abdul. Shh.

End of standup.

Y'all, the fucking media is spreading hateful rumors about me, talking about squid destroyed my penis with their fucking beaks. False, those bigot cowards only managed to damage it severely. I gotta go back up to New York to set the record straight at the Nest in Brooklyn, Thursday September 22nd. \$10 cover charge. We got killers on there and, fucking, there's no Tom but Tom. Death to the New Jersey Civil Air Patrol.

According to McGrath, many people would find it inflammatory to hear Grievant joking about slavery, with a higher value placed on white, and especially white French speaking, slaves. At the hearing, Grievant explained the context of We Had Slaves, stating that as a member of an Arab immigrant family, he had no responsibility for the evil of slavery in the United States, but was acknowledging that Arabs had slaves, including white slaves, showing that many countries are equally wicked. He noted that a quirk of Arab slavery was that some of the slaves were whites from Europe. I find that the clip achieves its objective of showing that whites, like blacks, have been enslaved, and that the curse of American slavery is not unique among the peoples of the world. But given the very low standard for "inflammatory" (could be interpreted as inflammatory), I also find that the clip, which addresses the sensitive issue of slavery, could be interpreted by some as inflammatory.

i. Diesel Mohammed

You know black Muslims weren't getting jumped after 9/11. I love thinking about that. Imagine, like a couple of racist dudes they're like "Yo, we're going to fuck up the next Muslim we see." And who rounds the corner but fucking Diesel

Because I have found that Grievant's posting on social media of each of the nine clips could be interpreted to be inflammatory, as that term is used in Article 12, Section 4(b), I shall require him to remove all of the posts forthwith, if they remain on any of the social media platforms. Moreover, in lieu of his summary discharge, a written warning should be issued to Grievant, advising him that additional posts that breach the Social Media Policy may result in additional discipline, up to and including discharge.

Because I have concluded that WHY Y did not have just cause to summarily discharge Grievant, I shall require WHY Y to forthwith: (1) reinstate him to his former position with full seniority; and (2) make him whole.

Citing arbitral authority, WHY Y argues that Grievant's post-discharge misconduct is relevant both to the merits of the case and to whether reinstatement is appropriate. According to WHY Y, after Grievant was discharged, he posted on social media platforms certain derogatory statements about WHY Y and its outside counsel, including: (1) Sarah Glover, Vice President of Human Resources, would go to Muslim hell for lying about Grievant at the unemployment compensation hearing where WHY Y was opposing his claim for unemployment compensation; (2) Grievant referred to Italian-Americans as "Wops" and "stupid" (outside counsel and Marrazzo, CEO of WHY Y, are Italian-Americans); and (3) Grievant took the position that his Trump vs Muslims vs Jews clip could not be racist, as charged, because Jews are not a race, a mistake that Hitler made, suggesting, according to WHY Y, that Grievant was equating WHY Y management to Hitler.

I will not consider Grievant's post-discharge conduct in connection with the merits of this case because the parties stipulated at the beginning of the hearing that the issue before me is whether WHY Y had just cause to discharge Grievant. At the time of the discharge, WHY Y & I He discha×v† •

him of due process by failing to get his side of the story before discharging him, and by failing to

Lawrence S. Colburn