Before
PETER R. MEYERS
Arbitrator

In the Matter of the Arbitration between:

UNITED STEEL WORKERS OF AMERICA, LOCAL 1011, AFL-CIO,

Union,

And

INTERNATIONAL STEEL GROUP, INC.,

Employer.

Grievant: **Raymond L. Aud**

DECISION AND AWARD

Appearances on behalf of the Union

Loren Hanson—USWA Local 1011 President
Rick Bucher—Staff Representative
Bill Kelley—Grievance Committee Chair
Raymond L. Aud—Grievant
Larry Witt—Assistant Griever
Yolanda Bowen—Committee Person
Jesse Potter—Griever
Mike Millsap—USWA representative

Appearances on behalf of the Company

Thomas Wood—Corporate Manager, Labor Relations
Bill Hawkins—Mech Planner
Sally Buckner—Labor Contract Administrator

This matter came to be heard before Arbitrator Peter R. Meyers on July 31, 2003, at the Courtyard by Marriott at I-94 and Kennedy Avenue, in Hammond, Indiana. Mr. Thomas Wood presented on behalf of the Company. Mr. Rick Bucher presented on behalf of the Union and the Grievant.

Introduction

On February 25, 2003, the Company discharged Grievant Ray Aud on charges that he allegedly had engaged in sexual harassment and created a hostile environment for a Ms. X. The Grievant was charged with unwanted touching of a female co-worker, despite this employee's telling the Grievant not to do so. In addition, the Grievant was charged with sending unwanted e-mail to this same employee, making phone calls to her home, and waiting for her outside her locker area.

The Union immediately filed a grievance challenging the Grievant's discharge. The parties were unable to resolve the matter through the contractual grievance procedure, and this matter came to be heard before Neutral Arbitrator Peter R. Meyers on August 31, 2003 in Hammond, Indiana.

Statement of the Issue

Was the discharge of the Grievant, Ray Aud, for just and proper cause? If not, what should be the appropriate remedy?

Applicable Contractual Provisions

ARTICLE FIVE – WORKPLACE PROCEDURES

Section I. Adjustment of Grievances

1. Purpose

Should any differences arise between the Company and the Union as to the interpretation or application of, or compliance with, the provisions of this or any other Agreement between the Company and the Union, prompt and earnest efforts shall be made to settle them under the following provisions.

. . .

8. Rules for Hearings

. . .

c. The Company agrees that it shall not, in an arbitration proceeding or subpoena, call as a witness any bargaining unit Employee or retiree. The Union agrees not to subpoena or call as a witness in such proceedings any non-bargaining unit employee or retiree.

9. Suspension and Discharge Cases

. . .

e. Should the arbitrator determine that an Employee has been suspended or discharged without just cause, the arbitrator shall have the authority to modify the discipline and fashion a remedy warranted by the facts.

. . .

Section J. Management Rights

The management of the plants and the direction of the working forces, including the right to hire, transfer and suspend or discharge for proper cause, and the right to relieve employees from duty, is vested exclusively in the Company.

In the exercise of its prerogatives as set forth above, the Company shall not deprive an Employee of any rights under any agreement with the Union.

Applicable Company Rule

Any employee engaging in sexual harassment or other forms of harassment of another employee or found displaying material of a sexual nature or of a harassing and demeaning nature on Company property shall be subject to discipline, including suspension and discharge.

Testimony

The Company's Witnesses

As its first witness, the Company called Sally Buckner, its labor contract administrator. Ms. Buckner identified the Company's Policy Statement on Harassment, its Equal Employment Opportunity Policy, and the Company Rule against sexual harassment. Ms Buckner also introduced the Acknowledgement of Receipt that had been signed by the Grievant.

Ms Buckner testified that on February 18, 2003, Division Manager Robert Matthews told her that a female employee, Ms. X, had reported that the Grievant had given her an unwanted hug. Buckner instructed Matthews to speak to the Grievant and get his side of the story; Buckner further instructed Matthews to tell the Grievant to stay away from Ms. X. Matthews later reported back to Buckner about his conversation with the Grievant. Matthews told Buckner that the Grievant had admitted to hugging Ms. X, but the Grievant also had stated that he did not know that she had objected and that he now would stay away from her. Matthews told Buckner that he thought that Ms. X would be "okay" with that.

Buckner testified that on the next day, February 19, 2003, Bill Kelley, the chairman of the grievance committee, told her that Ms. X was not satisfied. Kelley asked Buckner if she would put something in writing about the incident, and he indicated that this might satisfy the employee. The report never got written. Buckner testified that she instead decided to investigate further. Buckner spoke with Ms. X, who told Buckner that the Grievant had been sending her letters

and had even attempted to kiss her. Buckner said that Matthews had never reported anything other than the "unwanted hug." Buckner went on to testify that Ms. X was crying and claimed that the Grievant had been "stalking" her.

After taking a statement from Ms. X, as well as from Matthews and Bill Hawkins, Buckner confronted the Grievant with the charges. Buckner testified that the Grievant admitted to hugging Ms. X, and he stated that they had hugged many times in the past. The Grievant told Buckner that he had no "romantic" or sexual interest in Ms. X, but they had been good friends, he had written her letters, and he had sent her cards and Valentines. The Grievant admitted to Buckner that he had put his arms around Ms. X and that she may have told him to stop, but their friendship and the hugging had continued because she was so nice.

Ms. Buckner testified that she decided to suspend the Grievant for five days pending discharge because he had engaged in sexual harassment that was unwelcome and pervasive. Moreover, the Grievant continued in this conduct after being asked to stop.

On cross-examination, Ms. Buckner admitted that prior to February 18, 2003, Ms. X never had come forward with any of her complaints. Buckner also admitted that this employee was upset because she had been a clerk and a reduction-in-force had forced her into a less desirable job. Ms. X also was upset because she had wanted a letter relating to the incident at issue, but the Company did not provide her with one.

As its second witness, the Company called Mr. William Hawkins, who works as a planner for the Company. Hawkins testified that on the morning of February 18, he observed the Grievant put his arms around Ms. X in the parking lot as she exited her vehicle. Ms. X later told Hawkins that the Grievant had been stalking her and that she was afraid. Hawkins suggested that Ms. X speak with Buckner.

The Union's Witness

As its only witness, the Union called the Grievant, Mr. Raymond Aud. The Grievant testified that he has worked for the Company and its predecessors for thirty-six years. The Grievant testified that he knows Ms. X, and he described her as "overly friendly." The Grievant maintained that he and Ms. X have had a relationship that he described as "casual" and "friendly"; they even have kissed a few times and said "I love you" to each other.

The Grievant testified that in January and February 2003, his relationship with Ms. X started to go sour. Ms. X had become engaged, and she had indicated that she did not want to spend time with the Grievant anymore. The Grievant stated that Ms. X thanked him for the Valentine and the money he had sent her, and she did not object when he put his arms around her shoulders. The Grievant testified that Ms. X never told him to stop such conduct before February 18. The Grievant emphasized that once he realized that was what she wanted, he did stop.

On cross-examination, the Grievant admitted that he is familiar with the Company's policy on sexual harassment, but he stated that he did not believe that

he had engaged in sexual harassment. The Grievant testified that he did not stalk Ms. X, nor did he touch her in ways that she did not want. The Grievant stated that they had hugged and kissed in the past, but when Ms. X told him to stop on February 18th, he did so. The Grievant did admit that he tried to call Ms. X at her home on three occasions, but he said he never reached her.

The parties stipulated that Ms. X is a member of the USWA bargaining unit. They also stipulated that she had filed a charge against the Company at the EEOC.

Position of the Company

The Company argues that laws have been created to protect the victims of sexual harassment. The Company emphasizes that it has a responsibility to create a safe work environment for its employees. The Company believed that the Grievant had engaged in a pattern of sexual harassment against Ms. X, and it asserted that there is no excuse for the Grievant's conduct.

The Company contends that the Grievant knew about the policy against sexual harassment, and the Company had to deal with this situation swiftly and severely. The Company maintains that the Grievant's conduct clearly was unwelcome, and the Company had to consider the effect of this conduct on the victim and ensure that the situation did not get worse. The Grievant had created an unsafe work environment, in violation of the rules, so the Company had no choice but to discharge him from his employment. The Company contends that the grievance should be denied in its entirety.

Position of the Union

The Union contends that the Company has failed to meet its burden of proof in connection with the charges that the Grievant engaged in sexual harassment or any other behavior that warranted his discharge. The Union argues that from June 2002 to February 2003, the Grievant and Ms. X had a non-sexual relationship that involved kissing, hugging, and conversations about intimate family matters. The Union points out that this was more than a normal friendship. When Ms. X became engaged, however, she decided to end this relationship with the Grievant, and the Grievant thought that they could part as friends. The Grievant apparently was wrong, but his actions did not rise to the level of sexual harassment.

The Union asserts that on February 18th, the Grievant hugged Ms. X in a Company parking lot, where they were observed by Matthews. Ms. X complained about this incident, and the Company tried to resolve it through discussions with both the Grievant and Ms. X, but she was not satisfied. The Company took immediate action to discharge the Grievant, despite the fact that the Grievant immediately assured everyone that he would have nothing to do with Ms. X after that point.

The Union argues that the Company has not proven that the Grievant was guilty of sexual harassment. At most, the Grievant was guilty of trying to salvage a friendship. The Union ultimately contends that the grievance should be sustained.

Decision

This Arbitrator has carefully reviewed all of the evidence and testimony in the record. The Company bears the burden of proof in this dispute over whether it acted with just cause in discharging the Grievant from his employment. In order to establish that the Grievant's discharge is supported by just cause, the Company must establish not only that the Grievant violated its established rules and policies, but also that the proven violation was serious enough to justify the ultimate penalty of discharge, and that the decision to discharge the Grievant was not arbitrary, capricious, discriminatory, or too harsh under all of the relevant circumstances.

Sexual harassment undoubtedly is a problem that every employer must take seriously. The Company certainly has the managerial right, and the obligation, to implement rules and policies to prohibit sexual harassment in the workplace. Moreover, when a possible instance of sexual harassment occurs, the Company must take appropriate steps in response, to ensure that the situation does not escalate and cause harm to any of its employees.

The first step in meeting the Company's burden of proof here is a showing that the Grievant did, in fact, engage in prohibited sexual harassment. To make this showing, the Company must submit evidence demonstrating the presence of all the elements that define this type of misconduct. One key element of sexual harassment is that the conduct must be "unwelcome." In the instant case, I find that the Company failed to present sufficient evidence to make a showing that the

Grievant's conduct actually was unwelcome. An important factor in this is that the language of the contractual grievance procedure expressly prohibits the Company from calling any bargaining unit employee as a witness in an arbitration proceeding. Although this contractual provision certainly complicates the Company's task in an arbitration proceeding that deals with the assessment of discipline, it does not relieve the Company of the responsibility for proving that an employee who is discharged on charges of sexual harassment actually engaged in wrongful "unwelcome" activity.

The evidentiary record in this matter contains Hawkins' testimony that he observed a hug between the Grievant and Ms. X in the Company parking lot. The record additionally includes Buckner's testimony that the Grievant admitted to occasionally hugging, and even kissing, Ms. X prior to the time that she first complained about the Grievant's conduct. The Grievant also admitted that he did make efforts to get in touch with Ms. X at her home. The pre-discharge record, however, does not contain sufficient evidence that the Grievant continued to engage in a pattern of sexually harassing behavior toward his close friend, Ms. X, after he was made aware that his behavior was unwelcome to her. Absent any evidence that the Grievant continued to subject Ms. X to some form of unwelcome contact after he was told that contact was unwelcome to her, I find that the Company cannot prove that the Grievant violated its policy against sexual harassment. The evidence in the record indicates that the contact between the Grievant and Ms. X occurred prior to her complaint to the Company about the

Grievant's conduct, and the evidence also suggests that this contact was not unwelcome to Ms. X at the time it occurred. The record instead shows that Ms. X experienced a change in her personal life that prompted her to wish to change the nature of her relationship with the Grievant. As soon as the Grievant was made aware that Ms. X no longer wanted to have contact with him, the Grievant agreed to stop engaging in the conduct that had marked their earlier friendship. The Grievant was discharged, however, before he could even change his behavior.

The Company nevertheless should be commended for recognizing the existence of a potential problem and immediately addressing it. Moreover, the Company hardly can be blamed for the fact that a potentially dangerous situation could have developed as a result of the events at issue. The Company took immediate action once it was made aware of a looming problem; it investigated the situation and then made a hurried effort to resolve it.

The flaw in the Company's response to the instant situation is not the fact that it took action, but that it failed to allow the Grievant a fair opportunity to correct his conduct after he was told, in no uncertain terms, that his hugs and attempts to talk with Ms. X no longer were welcome to her. It is unrebutted that after he met with Buckner and other supervisors on February 18th, the Grievant promised that he would leave Ms. X alone. This promise initially satisfied the Company. It was not until Ms. X expressed her own dissatisfaction with the situation that the Company decided to discharge the Grievant, despite his thirty-six years of seniority. It is of particular importance that there is no evidence that the

Grievant broke his promise to leave Ms. X alone, or that at any time after February 18th, he attempted to continue the type of contact with Ms. X that apparently was not unwelcome to her prior to the February 2003 change in her view of the relationship. All of the incidents of contact between the Grievant and Ms. X that are documented in the record, even the ones that played no role in the Company's decision to terminate the Grievant's employment, occurred prior to Ms. X's complaint on February 18th.

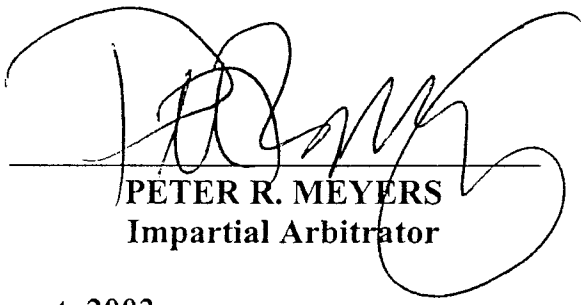
In light of all of these considerations, I must find that the Company's decision to discharge the Grievant from his employment must be deemed unsupported by just and proper cause. The Company simply was unable to show, with sufficient evidence, that the Grievant ever subjected Ms. X to unwanted contact or engaged in contact that may be called sexual harassment. Accordingly, the Company's decision to discharge the Grievant must be overturned.

The question of how to modify the Company's decision is all that remains. The collective bargaining agreement expressly grants an arbitrator the authority to modify discipline and fashion a remedy upon a finding that an employee has been discharged without just cause. Without any evidence in the record that proves that the Grievant committed a violation of the Company's rules and policies, I am required to find that there is no basis for any disciplinary action against the Grievant. I order that the Company must immediately reinstate the Grievant to his employment. Moreover, this reinstatement shall be with full back pay and benefits for the entire period from the date of his discharge to the date upon which the

Grievant is reinstated, and all mention of this matter shall be removed from the Grievant's record.

Decision

The grievance at issue is sustained. The Company's discharge of the Grievant hereby is overturned. The Company shall immediately reinstate the Grievant to his employment, with full back pay, benefits, and seniority for the entire time period from the date of his discharge to the date of his reinstatement. Moreover, the Company shall remove all references to this matter from the Grievant's record. This Arbitrator shall retain jurisdiction over this matter for a period of ninety days to resolve any matters that arise in connection with this make-whole remedy.



PETER R. MEYERS
Impartial Arbitrator

Dated this 4th day of August, 2003
At Chicago, Illinois.