In the Matter of Arbitration

Grievance No. CR03-0019
Grievant: Johnnie Rivera

United Steel Workers of America
Local No. 1011

vs

International Steel Group
East Chicago, Indiana

Award Issued: August 20, 2004

Suntrup Arbitration Services

In the Matter of Arbitration

International Steel Group (ISG) East Chicago, Indiana	)	
	)	Grievance No. CR03-0019
vs	)	Grievant: Johnnie Rivera
	)	Issue: Discharge
United Steel Workers of America (USWA) Local No. 1011	)	

Appearances

For the Union

Rick Bucher	-	USWA Staff Rep., Dist. 7, Sub-Dist. 5
Johnnie Rivera	-	Grievant
Loren Hanson	-	President, Local No. 1011
Phyllis J. O'Keefe	-	Executive Board Member, Local No. 1011
Bill Kelley	-	Chairman of Grievers
Gary Mullens	-	Grievers' Committee Member

For the Employer

Rody P. Biggert	-	Attorney for ISG
Sally Buckner	-	Labor Contract Administrator
David Niccolai	-	Section Manager, Cold Roll Mill, ISG

Introduction

An arbitration hearing on the instant grievance was held in accordance with Article V, Section I seq. of the parties' labor Agreement.[1] Joint exhibits and exhibits of interest were proffered by the parties at the hearing. Witnesses were sworn and cross examination

[1]Joint Exhibit 1: Agreement between International Steel Group, Inc. and the United Steel Workers of America, AFL-CIO-CLC. (December 15, 2002). It is clear from different versions of Article V in the arbitrator's file that this Article went through a number of iterations before it became part of the December 15, 2002 Agreement. The version used here will be Article V found in the Agreement draft provided to the arbitrator at the hearing.

was permitted. Objections raised at the hearing were ruled on by the arbitrator. There was no stenographic record of the proceedings kept. In lieu of closing arguments the representatives for the grievant and the company provided the arbitrator with post-hearing Briefs. Upon their receipt the arbitrator exchanged the Briefs with the parties and advised them that the arbitration hearing in the instant matter was formally closed.

Issue for Arbitration

The parties frame the grievance in somewhat different language in their Briefs and at the hearing but they are not in disagreement over the substance of the narrow issue that is before the arbitrator in this case. That issue can be stated as follows:

> Did ISG's management violate the labor Agreement at Article V, Section J when it discharged the grievant, Johnnie Rivera on March 5, 2003? If not, what should the remedy be?

Applicable Labor Agreement Provisions and Company Policy

According to the company the following ISG policy applies to this case. The policy is found in a Notice issued to the company's employees under date of September 3, 2002 by the ISG Indiana Harbor Vice President and General Manager. The pertinent section of that Notice is cited here for the record.

> Notice
>
> .....
>
> - Any employee, who applies for and collects state unemployment compensation, supplementary unemployment benefits, sickness and accident benefits, or any other benefit payment for the same period of time he/she works for ISG and receives wages, will be subject to immediate suspension and discharge. Filing false claims for unemployment

compensation benefits or Worker's Compensation benefits is considered an offense against the Company, as well as the state, and will subject an employee to immediate suspension and discharge.[2]

The labor Agreement provisions applicable here are the following which are also cited in pertinent part for the record.

Article V

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.

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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.

2. **Definitions**

a. Grievance shall mean a complaint by the union which involves the interpretation or application of, or compliance with, the provision of this or any other Agreement between the company and the union.

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3. **Grievance Procedure**

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[2]Union Exhibit 2.

An employee may informally discuss a complaint with his/her supervisor, with or without his/her Grievance Committeeman (Griever) being present. However, if the employee wishes to use this grievance procedure, sh/he shall report the matter to his/her Griever, who must refer it to Step 1 of the grievance procedure by completing a grievance form and submitting it to the Employee's supervisor within thirty (30) days of the date on which the Employee first knew or should have known of the fact which gave rise to the grievance.

The grievance form shall be signed by the Griever and the Employee. The supervisor shall sign and date the grievance form and return a completed copy to the Griever.

(Whereupon the Steps of the grievance procedure are outlined in provisions 3. (a) through (c) of the Agreement.

.....

6. **Board of Arbitration**

.....

(b) The member of the Board (arbitrator)...shall have authority to hear and decide any grievance appealed in accordance with the provisions of the grievance procedure as well as disputes concerning the Insurance Agreement. The arbitrator shall not have jurisdiction or authority to add to, detract from or alter in any way the provisions of this Agreement or the Insurance Agreement.

.....

(d) The decision of an arbitrator shall be final and binding upon the company, the union and all employee concerned.

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9. **Suspension and Discharge Cases**

a. No Peremptory Discharge

(1) Before imposing a discharge (which must be in accordance with Paragraph 9(b) below) the company shall give written notice of its intent to be affected employee and the grievance chair.

(2) Where the union files a grievance protesting such intended

discharge within five (5) days of receipt of the notice, the company may impose a suspension (which must be in accordance with Paragraph 9(b) below) on such employee prior to completing the procedure referred to in Paragraph 3.

(3) The grievance protesting the intended discharge shall be filed at Step 2 of the grievance procedure and the Step 2 Answer shall be given prior the company converting the suspension to a discharge. At the Step 2 meeting the company shall provide a written statement fully detailing all of the facts and circumstances supporting its disciplinary action.

(4) In the event the Company does convert the suspension to a discharge, the action shall be treated as a denial of the grievance at Step 2 and the union may thereupon move the case through the balance of the grievance procedure.

.....

(c) Any case involving a suspension or discharge may be filed at Step 2 of the grievance procedure.

.....

(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.

Background

The employer in this case is International Steel Group, Inc. (ISG) which is headquartered in Cleveland, Ohio. The company was formed in 2002 from the merged assets of former steel companies: LTV, Acme Steel and Bethlehem Steel. In December of 2002 the new company and the United Steel Workers of America (USWA) successfully negotiated and ratified a labor Agreement to cover employees represented by the USWA. The 2002 labor Agreement covers ISG steel plants located in the states of Maryland, New

York, Pennsylvania, Ohio, Indiana and Illinois. The instant case deals with an employee at the company's Indiana Harbor plant.

(A) The Grievant's Work History at ISG

The grievant, Johnnie Rivera, formerly worked for LTV Steel which was in bankruptcy prior to the purchase of its assets by ISG. Mr. Rivera was laid off by LTV in December of 2001. As a result of a mutual agreement between the USWA and ISG the latter agreed to hire production and maintenance employees from the laid-off LTV workers in the USWA bargaining unit. The grievant to this case was one of those workers. He was hired by ISG on August 5, 2002 and he was assigned to the pickle line in the cold rolling division at the Indiana Harbor plant. About ten days after his date of hire the grievant requested to switch to the finishing end of the cold rolling division at Indiana Harbor but was told that there was no work there at that time. The grievant signed a waiver form stating that if there was no work on the finishing end he could be laid off until called at some later point.[3] Absent work on the finishing end Rivera was laid off. There is undisputed information in the record that the grievant did not mind being laid off since he wanted to help his son move. Supervision at ISG shortly thereafter, however, attempted to contact Rivera with instructions to return to work in the finishing end. Mr. Rivera could not be reached by phone. On September 5, 2002 David Niccolai who was the section manager of ISG's cold roll mill at Indiana Harbor sent a letter to

[3]Union Exhibit 5.

Rivera advising him to contact the company immediately regarding his "...call back/employment status..." in order not to jeopardize his "...future employment opportunities at ISG...".[4] The grievant was advised by this letter to contact the company within five (5) working days in order to safeguard his employment at his new employer. According to the record the grievant did call supervision at ISG on September 6, 2002. Rivera was told to report to work on September 7, 2003. He did not report to work on that day. Nor did he mark off. Supervision again attempted to contact Rivera without success during the rest of the month of September and all of October of 2002. Subsequently his department contacted ISG's labor contract administrator for assistance in trying to reach Rivera. The labor contract administrator, Sally Buckner, sent a western union telegram to the grievant's last known address on November 8, 2002. She advised Rivera to report to work or provide a compelling reason for his absence. The grievant was told in this first telegram that "...if the company does not hear from you by 11/15/02 your continuous service will be broken and your employment (at ISG would) be terminated...".[5]

As a result of this telegram the grievant stopped by the office of the labor contract administrator on November 12, 2002. He gave her a one page medical slip written on the letterhead of the Department of Veterans' Affairs of the VA Chicago Health Care System. The grievant told the administrator that he had a serious health condition which is why he had not reported for work after receipt of his return to work notice dated

[4]Company Exhibit 2.

[5]Company Exhibit 4.

September 5, 2002. The VA slip that the grievant gave to the administrator stated that the grievant "...was seen on 10/21/2002 for medical problems including complained of right arm pain...". The slip added the one sentence: "...May work without any medical restrictions...".[6] This note was signed by a MD working for Veterans' Affairs in Chicago.

The labor contract administrator told the grievant when he stopped by her office on November 12, 2002 that the short VA note was insufficient to explain and justify his absence since August of 2002 and that he had to have a federal certification of health care provider form filled out by a physician stating that his health condition prevented him from coming to work from September 6, 2002 and thereafter. This latter federal certification had to be provided in accordance with the Federal Family and Medical Leave Act (FMLA). The grievant was advised that information on the latter form would determine if he would have been eligible for a medical leave of absence under federal law during the time he was absent from his new job after September 5, 2002. On November 14, 2002 Ms. Buckner, the labor contract administrator sent a second telegram to the grievant confirming her November 12, 2002 conversation with him when he stopped by her office. This second telegram stated the following:

> "This is to confirm our conversation of November 12, 2002. You have until the end of the business day, November 27, 2002 to return the completed FMLA packet (which I provided to you on 11/12/02) filled out and signed by your health care provider. This information must establish that you had a serious health condition as defined by FMLA, were under a doctor's care, and were unable to work from September 5, 2002 until November 12, 2002. If you are unable to provide the

[6]Company Exhibit 5.

required documentation by November 27, 2002, you will be subject to suspension and discharge...".[7]

The grievant subsequently returned the U.S. Department of Labor form to Ms. Buckner which was signed by the same VA physician on November 22, 2002 who had signed the earlier VA note that the grievant gave to the company's contract administrator on November 12, 2002. The FMLA form stated that the grievant "...has diabetes, uncontrolled high blood pressure, history of stroke and was being treated for arm pain...". The approximate dates of duration of the condition was, according to the physician signing the certification form, from 9/5/02 to 11/12/02.[8]

Upon receipt of this completed form the company's labor contract administrator put the grievant on FMLA leave retroactive to September 6, 2002 and no discipline for failure to report for duty after that date was assessed. Likewise, the grievant's continuous service was not broken. However, before he could return to work the grievant was required to undergo a physical assessment by ISG which was done at a local hospital. This took between 3 and 4 weeks. When this series of physicals was completed, and after the grievant was cleared to return to work, ISG's supervision attempted to contact him by phone to tell him to report for work. Again, supervision was not successful in contacting the grievant. His department supervisor again referred his case to the labor contract administrator's office. On January 7, 2003 Ms. Buckner sent a third telegram to the

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[7]Company Exhibit 7.

[8]Company Exhibit 6.

grievant which stated the following, in pertinent part.

> "ISG has been trying to contact you regarding your return to work. As you know, you have been cleared to return to work immediately. You are directed to call your department to obtain your schedule immediately upon receipt of this telegram. Failure to do so may result in severe disciplinary action, up to and including discharge..."[9]

On January 7, 2003, according to the record, the grievant contacted the supervisor and finally returned to work. He had been off work since August 15, 2002 which was the day after he had made his request to work the finishing line in lieu of the pickle line in the cold rolling division. Having hired in at ISG on August 5, 2002, the grievant had worked a little more than a week from that date until January 7, 2003.

(B) The Grievant's Receipt of Unemployment Benefits

To understand the facts relating to the grievant's receipt of unemployment benefits it is necessary to chronologically backtrack to the time he was laid off by LTV in December of 2001. After the grievant was laid off by LTV he became eligible for, and started collecting, unemployment benefits from the state of Indiana. Its office is called the Indiana Department of Workforce Development. He collected unemployment benefits from December of 2001 through the summer of 2002. It is unclear from the record if Mr. Rivera's unemployment benefits ran out, or if he became ineligible to receive them after July of 2002 because his pension exceeded the amount he would have collected from unemployment comp. That is not important for the purposes of this case. What is

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[9]Company Exhibit 8.

important is that he testified at the hearing that he was told by the Indiana Department of Workforce Development that he was no longer eligible for unemployment benefits in July of 2002. But he was then told the following month that he was again eligible to receive unemployment benefits because his pension had been reduced by the government. So he testified that he reapplied for unemployment benefits in August of 2002, thinking that he had more unemployment benefits due from LTV.[10] Had the story ended there this case would not exist. Mr. Rivera would have continued collecting his LTV retirement and would have continued collecting unemployment for as long as the Indiana Department of Workforce Development advised him that he was eligible to receive such. However, as is noted in the foregoing, Mr. Rivera accepted employment with LTV's successor company which is ISG on August 5, 2002.

(C) ISG's Discharge of the Grievant on March 5, 2003

The grievant finally returned to work for ISG, as noted earlier, on January 7, 2003 after having been off work since August 15, 2002.

The labor contract administrator testified at the hearing that in February of 2003 she received a document listing unemployment benefits that were being paid out by the

[10]There are a number of hidden agendas in this case which the parties do not address in any detail but which must be understood as background information in order to understand the facts of this case. One is that states' unemployment comp periods (including Indiana's) were affected by a federal mandate extending the unemployment comp period for workers under title of a trade adjustment allowance. In most states unemployment periods seldom extend beyond 26 weeks under normal circumstances. Secondly, federal intervention in Bethlehem, LTV's etc. pension liabilities undoubtedly created the variable amount the grievant received as a pensioned employee formerly working for LTV which is why the Indiana unemployment comp office may have told him one thing about his unemployment eligibility in July of 2002 and then did an about face and told him something else in August of 2002.

Indiana Department of Workforce Development. She states that she was surprised to find that the grievant's name was on the list as having received unemployment benefits for the month of January of 2003 since he was working for ISG most of this month. The document she was examining is called the statement of benefit charges, which is issued to employers by the state. These lists of recipients of benefits are also called Form 535s. The Form 535s list employees who receive weekly unemployment benefits from the state of Indiana by name, by FICA number, and the amount of benefits received.[11] A further check with the Indiana Department of Workforce Development by the contract administrator showed that after the grievant's benefits were shut off in July of 2002 he then reapplied for an extension of benefits on August 19, 2002. This was about two weeks after he had been hired by ISG on August 5, 2002. This was also a few days after he was laid off by ISG because of his request to switch from the pickle line to the finishing line of the cold rolling mill at ISG's Indiana Harbor plant. It was also discovered that the grievant filed a weekly form with the Indiana Department of Workforce Development after August 19, 2002 verifying his eligibility for receipt of benefits. This form which the grievant filed weekly is called a "claimant voucher". It contains pertinent questions which all claimants for unemployment benefits must answer. The company obtained copies of these vouchers filed by the grievant for each week he received unemployment benefits from the Indiana unemployment office. They have been entered

[11]Copies of pertinent 535s which list the grievant's name and what he collected on what dates are provided for the record by the company. Company Exhibits 9 & 10.

as evidence by the company into the record of this case. The vouchers show that when the grievant was asked whether he had worked on the week he collected benefits that he always answered in the negative. They also show that when he was asked if he was unable to work or unavailable to work, he always answered in the negative. Finally, when asked if he had returned to work during the week he was claiming benefits, he also always answered in the negative.[12] Finally, the grievant was required to list job contacts he had made in order to find a job on the weeks claiming benefits. The copies of the forms he submitted to the state of Indiana show that he listed a multitude of employers where he allegedly had applied for work. An actual count of the employers that the grievant approached from August of 2002 through January of 2003, according to the forms submitted by the grievant, is forty-seven (47). These included jobs in the restaurant industry (Bob Evans, Miller Pizza Shop, Road House Bar and Grill, Outback Steakhouse); as a bus driver (Laidlaw); as a gas station attendant (Shell Gas Station), as an employee for a drug store (Walgreens), to jobs in the steel industry (U.S. Steel, Bethlehem Steel, Metron Steel) and so on. In the majority of cases the grievant states that he went personally to apply for jobs at these employers. In a few cases, he states that he sent a resume or applied by phone. In January of 2003, after the grievant finally returned to work again for ISG he states on the Indiana claim vouchers dated January 13, 20 and 27, 2003 and on February 3, 2003 that he had applied in person to five (5) different

[12]Multiple copies of these forms filed by the grievant are found in Company Exhibit 11.

employers during this period and had sent his resume to three others, all while he was working for ISG. Putting all of this information together the company concluded that the grievant was in violation of company policy and it assessed Mr. Rivera a pre-discharge suspension on February 28, 2003. The reason for the suspension was for violating the company's policy dealing with unemployment compensation fraud. The company acknowledged that Rivera had properly applied for unemployment benefits for several weeks in December of 2002 while he was being medically evaluated prior to returning to work. But during all of the rest of the weeks from August of 2002 through February of 2003 the grievant was, according to the company, inappropriately receiving unemployment relief. On March 5, 2003 the company converted the suspension to a discharge. On the day after his discharge the chairman of the grievers filed a grievance on behalf of Mr. Rivera with "...request that the violation not occur again and (that) the grievant be made whole...".[13] Absent settlement of the grievance under the procedures outlined in Article V of the parties' labor Agreement the matter was brought to arbitration.

Discussion

According to the company there is sufficient evidence to show that the grievant improperly filled out information on the weekly claim vouchers from August of 2002 through February of 2003 except for the several weeks in December of 2002. The claim

[13]Joint Exhibit 2.

vouchers show this to be true, and according to the company the union itself does not deny that there were misrepresentations. Since the grievant engaged in fraud and theft against his employer, counsel for the company argues that discharge was the appropriate penalty. To support its position counsel cites arbitral precedent which deals with the issue of employees improperly receiving unemployment compensation. The precedent cited holds inter alia that it is a "...serious breach of (an employee's) employment obligation when (submitting) false information in order to obtain unemployment compensation benefits to which (an employee) is not entitled...". In Leestown Company the arbitrator concluded that under such circumstances a "...company's right to respond with severe disciplinary action, including discharge, cannot be legitimately challenged...".[14] Another arbitrator came to a similar conclusion, in Swepco Tube Corporation, according to the company, in a case whereby an employee attempted to collect unemployment benefits improperly.[15]

The company argues that the grievant was in violation of a specific company policy dealing with the fraudulent collection of unemployment benefits. The policy was posted at the Indiana Harbor plant after it started to function under the ownership of ISG and the policy is one of the company's specific policies issued on September 3, 2002.

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[14]See 102 LA 980-983 (1994) (Arbitrator: Sergent). Information on Awards provided in a separate packet to the arbitrator accompany post hearing Brief.

[15]See Labor Arb. Awards cited in 78-1 ARB (8104) (1978)(Arbitrator: Metzler). "An employee of a tube manufacturing company was correctly terminated for attempting to collect unemployment benefits while still employed with the tube company and for trying to collect benefits charged to the tube company while working for a plastics manufacturer".

Irrespective of whether there existed a policy or not the company argues that the grievant ought to have known that unemployment compensation fraud is unacceptable conduct. According to the company the actions by the grievant represented theft and arbitral precedent has also held that when such occurs there is no need for a specific policy in order for an employer to meet its just cause burden as long as an employer presents sufficient evidence to win a case on merits. This is the reasoning found in National Union Electric Corporation, according to the company, wherein the arbitrator reasoned: "...any employee who steals from his employer in any form furnishes just cause for discharge irrespective of whether or not there is a promulgated rule specifically so enunciating it...".[16] There was harm to the company, according to counsel, because the company has to pay into a state fund for unemployment benefits.

The argument that the company ought to have caught the fraud engaged in by the grievant earlier because the company could not keep up with the paper work ought to go nowhere, according to counsel, since it "...turns common sense on its head...".

Lastly, the company argues that an earlier Award dealing with unemployment compensation fraud at LTV, which may be cited by the union since the arbitrator put an employee back to work in that case after the evidence on merits clearly showed that fraud took place, does not support the grievant's claims in the instant case. In that case, the grievant was found guilty by the arbitrator. All the arbitrator did was amend the quantum

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[16]See 77 LA 815-820 (1981) (Arbitrator: Traynor).

of discipline in view of extenuating circumstances. At the very least, the company intimates that no such circumstances exist in the instant case.

Lastly, and with respect to the last point cited in the foregoing, the company argues that it would be an inappropriate exercise of discretion on the part of the arbitrator in this case to amend the discipline because the discipline assessed was not arbitrary nor discriminatory in any way.[17]

The union argues that the grievant was not discharged for just cause. First of all, the company gave no forewarning to the grievant that his actions could lead to discipline of the type and nature here under scrutiny. The grievant's actions did not fall under the aegis of such behavior that "...an employee in industrial society may properly be expected to know...". The grievant testified that he did not know that receipt of the unemployment benefits improperly affected the company's so-called experience ratings under Indiana law. He further did not even know about the company policy dealing with unemployment benefits' fraud until he was given a copy of the plant rules on February 7, 2003 and by that time he had stopped drawing unemployment benefits.[18] According to the union, what the grievant did was wrong. "He did fill out vouchers and submit them to the state of Indiana, and in doing so answered questions falsely on the vouchers so that he could receive benefits that he felt he had coming from LTV...". According to the union, the

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[17]See Western Auto Supply Co. 96 LA 644-648 (1991)(Arbitrator: Hilgert).

[18]Union Exhibit 3. Receipt signed by Rivera acknowledging receipt of a packet of company policies, including it General Rules and Regulations (dated 9/3/02) wherein the policy dealing with unemployment compensation fraud is outlined.

grievant "...did not understand that his actions could hurt the company, ISG". The union also cites the Award off LTV referenced above by the company wherein a comparable case dealing with unemployment benefits' fraud was dealt with by an arbitrator. In that case, according to the union, the arbitrator "...found that after considering the testimony and facts given, the penalty of discharge was not just and he fashioned a remedy...".[19]

Findings

This is a discipline case and the company as moving party must bear the burden of proof that the actions it took against the grievant were in accordance with just cause doctrine found in Article V, Section J of the labor Agreement.

The narrow issue before the arbitrator here is whether the grievant was in violation of company policy prohibiting the fraudulent receipt of unemployment benefits.

After reviewing the record the arbitrator in not persuaded that the policy in question had not been properly published by the company. The policy was dated September 3, 2002. There was testimony at the hearing that the written policy had been posted on bulletin boards. Reasonable minds would normally conclude that this is all that is needed for an employer to minimally fulfill its obligations to make its written policies accessible to its employees. In view of this the argument that the grievant, or any of the ISG employees for that matter, did not know about the policy is not credible. Further, Mr. Rivera was hired by ISG on August 5, 2002. After he asked to change to the finishing end

[19]See LTV Steel Company, Indiana Harbor Works vs USWA Local No. 1011 (Gr. No. 3-36-88)(1988)(Arbitrator: Mittenthal). Award provided to the arbitrator by the union.

of the cold rolling division on August 15, 2002 he was not really on company premises to see the posted policy until he finally returned to work on January 7, 2003. But this was not the fault of the company. Supervision had made quite a number of attempts to get him to come back to work and he basically refused to cooperate until he received telegrams explaining to him that he either had to come to work or he would no longer have a job. So Rivera did not receive his company policy packet until February 7, 2003. But such did not relieve him of knowing about the policy as an employee with a hire-in date back in August of 2002. Further, since he did finally come to work on January 7, 2003 the grievant could have simply read the bulletin boards and saw the policy. It is not clear if he ever did this nor not. But it was his responsibility to have done this. What is clear is that he continued, in January of 2003 and into February of 2003, to send in weekly claim vouchers to the state of Indiana stating that he was out looking for work at many different employers and that he was not employed when, in fact, he was working at ISG and certainly ought to have been familiar with the policy by this time. So it is clear that the policy dealing with fraudulent collection of unemployment compensation was known to all ISG employees and the company had taken reasonable measures to make that policy known. As one of those employees the grievant ought to have known about it.

The union cites an earlier arbitration Award issued off LTV, which was this grievant's prior employer, which deals with the improper collection of unemployment benefits. That Award was issued in 1988. At that time LTV did not have a rule dealing with the improper collection of unemployment benefits and the arbitrator in that case so

notes. But ISG does. Thus that Award and this case are distinguishable. Nevertheless the arbitrator issuing the LTV Award in 1988 found the grievant in that case culpable. The grievance was denied on merits even in the absence of a written policy. In contrast, the arbitrator in the instant case must frame a ruling in the presence of a policy which is both clear and unambiguous and which states that "...filing false claims for unemployment compensation benefits...will subject an employee to immediate suspension and discharge...".

Was the grievant guilty of violating this policy? The documentary evidence of record that he continually, over a long period of time, violated this policy is indisputable. Week after week from August of 2002 into February of 2003 the grievant sent claimant vouchers to the state of Indiana stating that he was not working, was able to work, and was looking for work. Over that period of time he listed almost forty (40) different employers whom he was supposed to have personally visited or to which he sent in resumes or called looking for work. But throughout this time he had a job at ISG. The record reasonably establishes that the grievant engaged not only in fraudulent behavior but he did it with foresight and planning. Further, to compound the situation the grievant ended up telling ISG that he was unable to work from 9/5/2002 through 11/12/2002, according to a note from his doctor,[20] while concurrently stating to the Indiana unemployment office that he was able to work between those dates, and that he was

[20]Company Exhibit 6.

actively looking for work with a multitude of employers. Obviously the grievant could not have it both ways.

There is also an argument in this case that the grievant thought he was still collecting unemployment benefits from LTV while he was already working for ISG. First of all, that argument, as a general matter, is confounding because unemployment benefits are collected when one is unemployed. This is a most basic notion. And the grievant was not unemployed. Secondly, there is an argument that the grievant did not know that his actions in improperly collecting unemployment benefits "...could or would harm the company ISG..." or reflect on ISG's experience ratings in any way. One wonders why this argument even surfaced if the grievant thought he was still collecting unemployment benefits from LTV? Again, he was not able to have it both ways.

The evidence of record warrants conclusion that the company reasonably met its burden of proof in this case. The grievant was discharged for just cause.

There only remains the issue of whether the discharge assessed was reasonable and appropriate. A search for extenuating circumstances in this case shows the following.

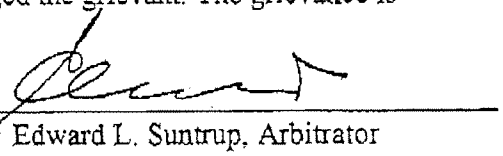
First of all, arbitrators normally look to tenure with an employer as one of the factors to be considered for amending a discipline. The grievant is a short term employee with this employer. His seniority date with ISG is August 5, 2002. Further, his actual time on the job with this employer is very short. For reasons which only he understands best -- since the grievant told the company he was sick from early September of 2002 until the middle of November of 2002, and then concurrently told the Indiana unemployment

office that he was able to work during that time --- the grievant refused to work, after he was hired by ISG, but for a few days from his date of hire in early August of 2002 until January of 2003. His tenure with this employer is basically nil. Secondly, the nature of the infraction in this case is grievous. Purloining unemployment benefits is a species of theft irrespective of whether there is a company rule forbidding it or not. Such conclusion is both in accordance with arbitral precedent cited by both sides to this case and is consistent with common sense.

Upon the record as a whole the arbitrator has no reasonable recourse but to rule that the actions by the company in discharging the grievant were neither arbitrary nor unreasonable. In accordance with the authority given to the arbitrator by Article V of the parties' labor Agreement the ruling is that the grievance will be denied.

Award

The ruling is in accordance with the Findings. The company did not violate Article V of the labor Agreement when it discharged the grievant. The grievance is denied.



Edward L. Suntrup, Arbitrator

Dated: August 20, 2004