

ARBITRATION PROCEEDING

INTERNATIONAL STEEL GROUP
MITTAL STEEL
LACKAWANNA PLANT

GRIEVANCE NO. 7078

SCHAEFER DISCHARGE

and

HEARING: October 20, 2005

USWA
LOCAL 2604

AWARD: November 4, 2005

APPEARANCES

For MITTAL

Patrick David Parker
Larry Sampsell

Corporate Manager, Labor Relations
Manager, Labor Relations

For USWA

Len Sauro
Timothy A. Hartman
Anthony Fortunato
Mike Schaefer

Staff Representative
Grievance Chairman, Local 2604
Local 2604 President
Grievant

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GRIEVANCE

This grievance arises from a dispute concerning the discharge of the grievant for violation of Plant Rules prohibiting drug use. The Complaint Form states:

"The Union contends Mr. Schaefer was discharged without just cause. The Union requests an immediate 2nd Step meeting. The Union also requests Mr. Schaefer to be reinstated and to be made whole."

POSITIONS OF THE PARTIES

The Company contends that the grievance is not procedurally arbitrable because the Union failed to move the grievance to Step 3, and that the grievant admitted reporting to work under the influence of drugs, a cardinal offense. The Union asserts that the parties historically have been lax in following the grievance procedure and that the grievant received disparate treatment because he should have been given employee assistance and last chance status.

RELEVANT CONTRACT PROVISIONS

ARTICLE 2A	RECOGNITION AND COVERAGE
ARTICLE 3G	THE RIGHT TO A REASONABLE POLICY ON ALCOHOLISM AND DRUG ABUSE
ARTICLE 5A	LOCAL WORKING CONDITIONS
ARTICLE 5I	ADJUSTMENT OF GRIEVANCES
ARTICLE 5J	MANAGEMENT RIGHTS

HISTORY

The Company is a successor to Bethlehem Steel as of May 2003. The plant under Bethlehem in the 1960s employed approximately 21,000 people. The plant now employs approximately 260 classified employees and operates as a finishing mill for products primarily used in the auto industry. The grievant at the time of his discharge had approximately ten years with the Company, and was classified as an Operating Technician on the galvanizing line. On the night of March 10, 2004, he was suspended pending discharge for being under the influence of marijuana on Company property.

Previously, on February 6, 2004, the Labor Relations Manager received an anonymous tip that the grievant and another employee smoked marijuana in their vehicles in the Company parking lot when they worked the 3:00 p.m. to 11:00 p.m. or 11:00 p.m. to 7:00 a.m. shift. The Manager contacted the local police to arrange for surveillance.

On March 10, 2004, the Manager received another anonymous tip to the same effect. He again contacted the police. He and four police officers confronted the grievant around 11:00 p.m. at the galvanize mill entry. When questioned, the grievant admitted that he had just smoked marijuana and had done so on other occasions at the plant. When asked if he was "high", he replied, "Yes, I am." He said that he made a terrible mistake and that he was very sorry. He was asked if he had a pipe on him and he

replied that he did not. He was then asked to empty his pockets.

He then admitted that he had a pipe and he produced it. The Manager informed the grievant that he was discharged, meaning that he was suspended with intent to discharge.

On March 12, 2004, the notice of suspension with intent was issued. On March 15, 2004, the parties met to discuss the matter. On March 16, 2004, the Union filed the grievance as a Step 2 Complaint. On March 23, 2004, the Step 2 Hearing was conducted and the suspension was converted to discharge. On March 24, 2004, the Step 2 minutes were delivered to the Union. On April 4, 2004, the Union delivered its response to the Step 2 minutes. The Union did not appeal the grievance to Step 3.

On March 30, 2005, the Staff Representative wrote the Manager as follows:

"This letter is to advise you the Union is not in agreement with your answer to this Grievance and we would like to schedule a date for Arbitration.

Thank you for your prompt attention to this very important matter."

On May 6, 2005, the Manager responded as follows:

"Received your letter dated **March 30, 2005** requesting a scheduled date for Arbitration, reference grievance stated above.

A second step meeting was held on **March 23rd, 2004**. This grievance was denied at that step. Timothy Hartman, Chairman, Grievance Committee, Local 2604, USWA, hand carried the written results of the meeting to the International Rep., District No. 4 within the specified time frame as stated in the provisions of the collective bargaining agreement dated 12/15/02. Therefore, as there was not a request for a 3rd step meeting within those time limits, this grievance was

considered to be withdrawn and no further action will be forthcoming.

If you require anything further, please give me a call." (Emphasis in original.)

The grievance proceeded unresolved to arbitration via the contractually authorized procedures. At the hearing the witnesses were sworn, and both parties were afforded full and fair opportunity to present evidence and testimony, to examine and cross-examine witnesses, to introduce exhibits and authority, and to provide oral and written argument in support of their respective positions. The parties waived the contractual requirement for the arbitrator to issue a decision no later than two days after conclusion of the hearing.

DISCUSSION

The threshold issue is whether or not the grievance is arbitrable because of alleged procedural deficiencies. Article 5 Section I states in pertinent part:

"3. Grievance Procedure

. . . .

b. Step 2 - Written

- (1) In order to be considered further, a grievance shall be appealed by the Grievance Chair to the head of the grievant's department within five (5) days of receipt of the Step 1 written record.
- (2) Such grievance shall be discussed within five (5) days at a meeting with the grievant, the involved Grievance Committeeman, the Grievance Chair, the

grievant's supervisor and the involved department head. Management may call any non-represented employee as a witness to provide testimony and/or evidence to the meeting. The Union may call any USWA represented Employee as a witness to provide testimony and/or evidence to the meeting.

- (3) In Bargaining Unit Work or safety grievances, a representative of the relevant committee shall also be present.
- (4) The department head shall provide the Grievance Chair with a written response (the Step 2 Answer) to the grievance within three (3) days of the Step 2 meeting.
- (5) Unless the Grievance Chair informs the department head in writing that the grievance is settled or withdrawn on the basis of the Step 2 Answer, the Company shall, within five (5) days of providing the Step 2 Answer, provide the Grievance Chair with Step 2 minutes for the grievance which shall include the date and place of the meeting; names and positions of those present; the number and description of the grievance discussed; background information and facts; a statement of the Union's position as understood by the Company; and a statement of the Company's position including its response to all claims, points of evidence, testimony and arguments presented by the Union as well as Company testimony and evidence, including past grievances and/or arbitration awards and the decision reached.
- (6) If the Grievance Chair disagrees with the accuracy of the minutes, s/he shall submit a signed written response to the Company within five (5) days of the receipt of the Step 2 minutes.

- (7) The Company shall send a copy of its version of the Step 2 minutes and any Union response to the designated representative of the International Union (the International Rep) and the Grievance Chair immediately upon its receipt of the Union response.

c. Step 3 - Written

- (1) The International Rep shall send a written appeal of a Step 2 Answer to the Plant General Manager (the Company Step 3 Rep) within five (5) days of the receipt of the Step 2 Minutes.
- (2) The International Rep, the Grievance Chair and the Company Step 3 Rep shall meet at a mutually acceptable time within ten (10) days of the Company's receipt of the International Rep's appeal.
- (3) Grievances discussed at such meeting shall be answered in writing and sent to the International Rep within five (5) days after such meeting.
- (4) The International Rep may appeal a grievance to arbitration by sending a written notice to the Board of Arbitration and the Company Step 3 Rep within ten (10) days of the Union's receipt of the Step 3 written answer.

4. Grievance Provisions

...

- j. If, for any reason, the time limits specified in Paragraph 3 above for:

- (1) meetings between the parties are not met, the grievance shall be considered denied as of the last day within the time limit for such meeting and the appropriate Union representative shall have the right to move the grievance to the next step;

(2) the Union to act are not met, the grievance shall be considered withdrawn;
or

(3) the Company to act are not met, then the grievance shall be considered granted with the requested appropriate contractual remedy to the grieving party.

. . . .
6. Board of Arbitration
. . . .

b. The member of the Board (arbitrator) chosen in accordance with Paragraph 7(a) below shall have the 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.

. . . .
9. Suspension and Discharge Cases

a. No Peremptory Discharge

(1) Before imposing a discharge (which must be in accordance with Paragraph 9(b) the Company shall give written notice of its intent to the 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 no more than 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 below.

- (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 to 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 proposed 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."
(Emphasis added.)

The chronology of events is as follows:

03/10/04 Caught smoking marijuana in the plant
03/12/04 Suspension letter mailed
03/16/04 Union Step 2 complaint filed
03/23/04 Step 2 Hearing
03/24/04 Step 2 minutes generated
04/04/04 Union response to Step 2 minutes generated
03/30/05 Union appeals grievance to arbitration
05/06/06 Company responds to request as denied as untimely
05/13/05 Union requests to proceed to arbitration

The Union did not send a Step 3 written appeal of the Step 2 Answer to the Company within five days of receipt of the Step 2 Minutes in order to move the case through the balance of the grievance procedure. The Union, in fact, never sent a Step 3 written appeal of the Step 2 Answer. On April 4, 2004, the

Grievance Chairman did provide the Union's Statement of Position and Response to the Company's Step 2 Minutes. That Statement and Response, however, did not challenge the accuracy of the Minutes. More importantly, it did not equate with a Step 3 written appeal and did not constitute a request for arbitration. Most importantly, the International Rep never filed a Step 3 written appeal. On March 30, 2005, more than one year after Step 2, the International Rep did make a written request for arbitration which request was denied by the Company as untimely.

It is readily apparent that the Union failed to comply with the requirements of the grievance procedure. The Union, nevertheless, asserts that the case should be considered on the merits. The Union argues that a ten year employee with an excellent record should not receive industrial capital punishment because of a "technicality". The argument has emotional appeal, but the arbitrator is bound by the relevant contractual language and has no power to alter the provisions that the grievance "shall be considered withdrawn" for the Union's failure to act in accordance with the time limits and the grievance procedure which cannot be considered "technicalities".

The Union also asserts that in the past the parties have been lax in enforcing the contractual time limits, thus those limits should not be enforced in the instant case. How Arbitration Works, Elkouri and Elkouri, Sixth Edition, states at page 222:

"If both parties have been lax as to observing time limits in the past, an arbitrator will hesitate to enforce them strictly until prior notice has been given by a party of intent to demand strict adherence to the contractual requirements."

There is ample arbitral authority for this principle.


In the instant case the Union cited a number of grievances in which the parties did not enforce the contractual grievance procedure requirements. The Labor Relations Manager agreed that such was the parties' practice, but only up to Step 2. The Local Union vice President/Grievance Chairman conceded that none of the grievances cited involved discharge and that the majority involved Office and Technical personnel. Most importantly, he conceded that the parties practice was lax only up to Step 2 but was in accordance with the contract thereafter.

It is always tragic to an employee and his or her family when that employee is discharged for misconduct, and it is no benefit to an employer to lose a trained and experienced employee. In the instant case, despite the Union's ardent presentation, it is the arbitrator's determination that the evidence clearly establishes that the Union failed to move the complaint through the grievance procedure after Step 2, thus the grievance "shall be considered withdrawn" as per the relevant contractual language. Nevertheless, in recognition of the grievant's past service, excellent prior record, and his voluntary rehabilitation, the arbitrator recommends that he be

considered as eligible to be rehired with a last chance agreement.

AWARD

The grievance is denied as procedurally defective.



JOHN J. MORGAN, ESQ.
Arbitrator