IN THE MATTER OF THE ARBITRATION BETWEEN

ARCELORMITTAL USA
INDIANA HARBOR WEST PLANT

And ArcelorMittal Case No. 115

UNITED STEELWORKERS
INTERNATIONAL UNION AND
LOCAL UNION 1011, USW

OPINION AND AWARD

Background

This case from the Indiana Harbor West Plant concerns the suspension of Grievant Dan Bannon for neglect and carelessness. The case was tried by video hearing on December 3, 2020. Chris Melnyczenko represented the Company and Jacob Cole presented the case for Grievant and the Union. Grievant was present throughout the hearing and testified in his own behalf. The parties submitted the case on final argument.

The events leading to Grievant's suspension occurred on September 30, 2019, when Grievant was working as an operating technician at No. 3 Steel Processing. At the time at issue, Grievant was assigned as a nozzle setter whose duties include visually inspecting ladles for refractory abnormalities before they are sent back into service. There is no dispute that following the visual inspection the ladles are inspected by a laser process performed by another employee assigned to the area. Although Grievant claimed to have inspected the ladle, it subsequently failed, which led to a burn through of molten iron.

Matt Chabes is BOF Process Manager at No. 3 Steel Producing. He stressed the importance of both visual and laser inspection of the ladles, which he said is essential to safety. Molten steel is at 3000 degrees Fahrenheit, so a burn through can threaten lives and equipment. The procedure is for the ladle to be cleaned out by a gradual once it has been used. The ladle is then lifted by a crane and the nozzle operator looks inside from various vantage points to identify problems with the refractory. If he sees something, he can have the ladle set aside for inspection by a manager, who will determine whether the ladle has to be taken from service. The ladle is sent on for a laser inspection whether or not the visual inspector finds a problem. The Company introduced a video of the ladle as it was when Grievant was required to inspect it, as well as still pictures taken from the video. Chabes said the hole, or thin refractory, that led to the burn through was visible on both the video and in the stills, and he contended that Grievant should have seen it on a visual inspection. The video simply shows Grievant walking by the ladle when it was on the crane and turning his head once for a quick glance at the ladle. Grievant, however, said he was inspecting the ladle from a distance and was not within the view of the camera. The Company also introduced a second video, which shows another employee inspecting the same ladle earlier that day. He can been seen fairly close to the ladle looking inside it for several seconds. I will discuss the videos more in the Findings. On cross examination, Chabes reiterated that a ladle is always inspected by laser, no matter the findings of the visual inspection.

Tim Halls, No. 3 Steel Producing Division Manager, said there was an investigation following the incident. He reviewed the findings and decided to discharge both Grievant and the laser operator, Employee P. Both employees filed grievances, although Employee P decided to retire rather than pursue his case. Halls calculated that the burn through cost the Company about $3.8 million, including about $775,000 in equipment damage and over $3 million in lost

production; the steel shop was down about 27 hours because of the incident. Grievant's 5-day suspension was converted to discharge on October 10, 2019. The parties conducted a step 2 grievance meeting on October 19, 2019, and then a step 3 meeting on December 20, 2019. On February 4, 2020, the Company notified Grievant and the Union that Grievant's discharge had been reduced to "a time served suspension." Grievant testified that he was off work from October 9, 2019 to February 6, 2020, and lost 48 twelve hour turns. That suspension period is the issue in this case, with the Union claiming that the Company did not have proper cause for the discipline. Halls testified that he was motivated to reinstate Grievant because of his 48 years of service and his work record.

Grievant described the procedure he uses to inspect a ladle, which he said begins while the gradual is still cleaning the ladle. Grievant said he stands by an idle gradual a bay away on the west side of the ladle being inspected, and that he can see the east wall of the ladle for the entire period. He can also see the west side when the gradual rotates the ladle and when the crane operator picks it up. Grievant's claimed vantage point is not visible in the video of the incident. Grievant said by the time he walks in front of the ladle, he has already seen what he wants to see. When he gets to the west side of the ladle, he motions the crane operator to remove the ladle. Grievant said he has inspected ladles for the same way for over 20 years and that he has continued to do it the same way since his reinstatement. He estimated that he has inspected 80,000 ladles and this was the only burn through. Grievant said on September 30, 2019, he inspected ladle 53 in the usual manner and did not see any defects. However, pointing to the reports from the laser process, the Union says the defect should have been obvious to the laser operator, who should have taken the ladle out of service pending inspection by a manager.

On cross examination, the Company asked Grievant about his prior discipline, which was a 1-day suspension issued on June 28, 2019, for leaving work without relief. The Union pointed out that the discipline notice for that incident does not say Grievant was suspended for neglect, carelessness, or poor work performance, which are the charges against him in the instant case.

Jaime Quiroz, Local Union President, testified about a previous burn through incident in 2012 where the laser operator was given only a 3-day suspension for failing to perform a proper inspection. The nozzle setter who did the visual inspection on the ladle was not disciplined at all. Rick Barron, Grievance Chair, said Employee P told him he saw a red spot when he did the scan, but did not take the ladle out of service, and that the burn through was his fault, not Grievant's. Barron said the laser can see things not apparent on a visual inspection. He also said that at the step 2 meeting, Process Manager Chabes said he was aware of how Grievant inspects ladles and that he does not have a problem with his procedure. Griever Dave Franco testified that when he was in the BOF as a vessel operator he inspected the ladle as he was carrying it to the teeming cart. He said he has also heard crane operators call out ladles with holes. To his knowledge, neither the vessel operator nor the crane operator was interviewed by management in this case.

On rebuttal, Chabes said he did not recall any conversation at step 2 about whether he approved of how Grievant inspected ladles. He also said Grievant could not have seen where the hole was in the ladle from his claimed observation point about 60 feet from the ladle.

Positions of the Parties

The Company argues that Grievant was guilty of gross negligence. He had been trained, had performed the job before, and knew what he was supposed to do; he just did not do it. It is not necessary to speculate about what Grievant did or did not do, the Company says. The video clearly shows that he casually walked by the ladle with just a passing glance. His only defense is that he inspected the ladle from a place that was located conveniently off camera, which, the Company insists, was not credible. The Union says Grievant's conduct put lives at risk and resulted in a burn through that caused almost $4 million in damage and lost income. The Company also contends that it is the Company's responsibility to determine the proper level of discipline to be imposed and that an arbitrator cannot substitute his judgment in the absence of unfairness, capriciousness or arbitrariness, none of which exists here.

The Union cites Grievant's 48 years of service and the absence of any citable relevant discipline. It also points to the 2012 case, in which the Company imposed only a 3-day suspension for the failure to perform a proper inspection and in which the employee performing the visual inspection was not disciplined at all. The Union says Grievant inspected the ladle the same way he always did and that he did not see any bad spot. The fault in this case, the Union argues, was with the laser operator, who had a more objective method of detecting refractory problems, and who failed to take the ladle out of service after noticing a problem. The Union contends that no hole was visible to the naked eye on visual inspection and that Grievant should be made whole for all losses.

Findings and Discussion

I am not persuaded that no hole or weakened refractory was visible to the naked eye. As pointed out in Company testimony, the weak spot is clearly visible in the video, and the camera was farther away from the ladle than Grievant claims to have been. The Union argues that the hole is not visible in at least one of the pictures introduced at the hearing, but that was simply a still shot taken from the video and is not particularly clear. Grievant did not explain why he stationed himself so far away and why he would have had a better view in his claimed location. This suggests that he chose the spot he claimed to occupy mostly because it was not within view of the camera. I cannot ignore the fact that the only time Grievant appears in the video he did no more than make a very brief glance in the direction of the ladle as he walked by it. The video shows Grievant walking by the ladle for only a few seconds. He did not look inside the ladle as he approached it and, once in front of it, he looked over at it for only about two seconds while he continued to walk. Even so, he should have been able to identify the orange spot identified at the hearing as the defective area. By the time Grievant glanced at the ladle, that area was no longer visible to the camera, but Grievant, who had a different perspective, could have seen it if he had stopped and looked inside. His failure to do so explains why he did not see a defect that was clearly visible in the video.

The Union argues that I cannot consider the second video introduced by the Company as evidence of a proper inspection because it was not shown to the Union prior to the hearing. The evidence about that is in conflict, but even if I exclude the video, I can still consider Chabes' testimony about the proper way to inspect a ladle, which involves being fairly close and having a clear view of the inside. Grievant was close enough to have seen the defect if he had only

stopped and looked inside the ladle. If his testimony about observing the ladle from a distance is true, then he obviously did not position himself in an area that allowed an adequate inspection.

I find, then, that Grievant failed to perform a proper inspection, which was very likely a factor in a defective ladle being placed in service, leading to a burn through. The fact that the laser operator should also have discovered the defect does not excuse Grievant's failure to perform his job. Grievant cannot excuse his own negligence by claiming that someone else was also guilty. If either of them had performed properly, the burn through would not have occurred. I reject the Union's claim that Grievant's inspection was merely subjective, with the laser test the more objective and accurate evaluation. In the first place, Grievant did not do a proper inspection, so he can hardly claim that it would simply have been a subjective guess. More important, an inspection is not subjective simply because it is visual. There was no testimony that an operator has to exercise significant discretion in evaluating a problem area. Rather, the testimony was that if an inspector sees the kind of area that was clearly visible in the video, he is to take the ladle out of service pending further evaluation. There may be discretion involved in the manager's determination about whether to place the ladle back in service, but that was not Grievant's responsibility. His failure was earlier in the process.

I agree with the Company's assertion that Grievant's conduct warrants significant discipline. But I have serious questions about how the Company decided a four month suspension was appropriate. It is reasonable to assume that the parties discussed a settlement prior to scheduling the case for arbitration and, had they agreed to reinstatement without back pay, no one could reasonably question that resolution. But that obviously did not happen here. Halls did not explain how he happened to review the discharge after four months, as opposed to three months, five months, or some other period. I do not – and in any event, could not –

question his decision that an employee with 48 years of service and a good work record should not have been terminated for the events of September 30, 2019. But that does not mean the Company has virtually unlimited discretion to determine the length of the suspension. The parties agreed that discipline could only be for proper cause, and that standard applies to the level of discipline imposed.

The Union points to an incident from 2012 in which a laser operator was suspended for only three days as a result of his failure to identify a hole leading to a burn through. That fact alone does not convince me that a like penalty should be assessed on these facts. The Union bears the burden of proving disparate treatment. It cannot carry that burden simply by pointing to different discipline in a separate case. The elements of proper cause are influenced heavily by the particular facts of an incident. The Union has not advanced any evidence indicating similarities between the facts at issue in the 2012 incident and the one at issue here. On this record, and given Grievant's 48 years of service and his work record, I find that the Company did not have proper cause to impose an unpaid suspension of greater than 30 days. Thus, I will order the Company to make Grievant whole for all losses beyond 30 days. As I understand the facts, Grievant routinely worked 12 hour shifts. Thus, the suspension will cover whatever shifts Grievant would have worked during the 30 day calendar period beginning October 9 – the day Grievant said he was taken off work – and up to and including November 7, 2019. He is to be made whole for all losses occurring after November 7. I will retain jurisdiction for 60 days to resolve any disputes concerning implementation of the remedy.

AWARD

The grievance is sustained, in part. Grievant's suspension is modified to 30 days. As explained in the Findings, he is to be made whole for all losses incurred after November 7, 2019. I will retain jurisdiction for 60 days to resolve any issues concerning implementation of the remedy.

Terry A. Bethel

Terry A. Bethel, Arbitrator
December 21, 2020