BEFORE
ANDREW M. STRONGIN
ARBITRATOR

March 17, 2023

In the Matter of the Arbitration between-	:	
CLEVELAND CLIFFS INC.	:	**Grievance No. 1025A**
-and-	:	
UNITED STEELWORKERS, LOCAL NO. 979	:	Case 136

APPEARANCES:

For the Employer:
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For the Union:
James H. Walker, Jr.
Sub-District Director
United Steelworkers
District 1; Sub-District 1
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This grievance protests the suspension and discharge of grievant Elizabeth Morgan, a Stocker at the Cleveland Works Hot Mill Slab Yard, for failing to report a serious crane collision and dishonesty during the Company's subsequent investigation. The Union claims that the discharge lacks proper cause in violation of Art. 5.I.9 of the Agreement and that the Company improperly denied grievant application of the Justice and Dignity provisions of Art. 5.J of the Agreement. The Union asks that grievant be reinstated to her former position and made whole for her losses.

BACKGROUND

Video evidence confirms that during the overnight shift at the Cleveland Works Hot Mill Slab Yard on August 12, 2022, a crane operated by Alex Nezdoliy collided with the Charge Crane operated by Josh Hartness, causing a slab drop, damaging and rendering temporarily inoperable the Charge Crane, but fortunately not leading to any reported injuries. Based on the record as a whole, the Arbitrator finds that the collision was a serious one, implicating not only the general rule that all employees must work safely but, more importantly for this case, the reporting requirements set forth in the Company's Incident and Near Miss Reporting policy: "Every incident or near miss, no matter how small, is crucial to report so that the proper measures can be taken to prevent a future occurrence." Timely reporting of collisions like this is crucial, not only to permit the Company to initiate a safety investigation to ensure the equipment can remain in operation, but also to permit it to send the operators for drug and alcohol testing.

As a Stocker, grievant was trained and worked pursuant to that reporting policy, and her Job Procedure specifically required her to communicate

with the Hot Mill Scheduler, the Roller, and the Shift Manager on "breakdowns or other problems that occur throughout the turn." It appears, too, that several other employees working in the area, in addition to the two Crane Operators, also worked pursuant to the reporting policy. Notwithstanding the reporting policy, it appears, no employee immediately reported the collision. Shift Manager Jim Thompson testifies that he overheard some radio chatter immediately after the incident to the effect that there was some contact between the Charge and Hoist Cranes, but heard no indication of any serious collision that required his immediate attention. As he put it, contact between cranes is somewhat commonplace and it is not unusual to overhear repair-related calls. Thompson adds that he usually would be called directly in the event of a serious, reportable incident, but was not in this case.

It was not until the following night, Sunday, August 14, that the Company finally learned of the severity of the incident via receipt of an anonymous email. The Union disputes the accuracy of the email in several respects, but the important point for purposes of this proceeding is that it was reported the next morning to Human Resources Area Manager Janet Jordan and served to trigger her investigation.

Jordon first obtained and watched video of the incident and had no difficulty concluding that the collision was an immediately reportable one. Further, Jordan concluded that grievant, who was working on the ground at the time, certainly knew the collision occurred and could be seen communicating with Nezdoliy in its aftermath.

On August 15, Jordan and other Company representatives interviewed grievant and others known to have been in the area at the time of the collision. According to Jordan, grievant specifically was advised of the need to be open and honest, subject to discipline up to and including discharge. Jordan testifies that

grievant claimed at this interview not to have been in the immediate area at the time of the collision and declined to describe the collision as a serious one, claiming only to have "heard something" that she took to be cranes bumping. Grievant stated that she did not report the incident to management because she was unaware of it. Grievant allowed that she had seen Nezdoliy at the start of the shift, but told Jordan that she did not see Nezdoliy at the end of the shift and stated that she left the plant alone.

Subsequently, the Company retained a private attorney, Ryan Smith, to investigate the matter. In his interview with grievant, he reports, grievant denied any direct contact with Nezdoliy after the collision and states that at the end of her shift she clocked out and left alone. Having viewed the video and Company records, Smith concluded that grievant was not being truthful in either respect, as she could be seen communicating directly with Nezdoliy immediately after the collision via hand signals, and he confirmed through video and time punch records that grievant and Nezdoliy left the plant together, in the same vehicle. Smith reported his conclusions to Jordan, who separately confirmed from time records that grievant and Nezdoliy left the plant via Gate 9 only four seconds apart. Jordan testifies that, to her understanding from that four-second gap, they must have badged out from the same vehicle, as shown in the video.

Based on the foregoing, the Company determined to suspend grievant with an intent to discharge, notifying her of that decision by letter dated September 22.

A post-suspension interview was held on September 26. At this interview, Jordan testifies, grievant newly claimed that although she was aware of the collision, the matter was not sufficiently serious to require reporting. Grievant held to her earlier claim that she did not speak with Nezdoliy after the incident.

Grievant newly admitted, however, that she took Nezdoliy out of the facility at the end of their shift, explaining that she had not earlier reported that fact to Jordon because she was not aware that Jordan had asked about that.

Two days later, on September 28, the parties held their Step 2 meeting. The Company's notes from this meeting indicate that grievant claimed that she did not cause the collision and therefore was not obligated to report it. The notes show that grievant newly admitted speaking with Nezdoliy after the collision, albeit she claimed it was not about the collision, it was just to get his attention. She also clarified her earlier account that she took Nezdoliy out of the facility, stating that she actually gave Nezdoliy a ride home after work. She explained that she earlier thought the Company was asking if she gave Nezdoliy a ride home immediately after the collision, rather than at the end of their shift.

The Step 3 meeting followed on October 19. On this occasion, Jordan testifies, grievant seemed to accept that the matter was reportable, but attempted to minimize her failure to report it.

Ultimately, the Company converted the suspension to a discharge by letter dated October 27 on the ground that grievant failed to report the collision, precluding timely inspection of the two cranes by the Company's Crane Repair Group, consisting of employees trained in OSHA compliance; precluded the Company from sending the two crane operators for timely drug and alcohol testing; and more generally contributed to serious safety hazards. The Company also took note of grievant's short service, amounting to just over one year at the time of these events.

Meanwhile, the Union had requested that grievant be allowed to work during the Company's investigation, citing the Justice and Dignity provisions of the Agreement, but the Company denied that request on September 27. Initially, the

Company advised the Union that Justice and Dignity "does not apply to case[s] involving offenses which endanger the safety of employees or the plant and its equipment," but several hours later advised the Union that it was correcting that response to state that, "the reason for the refusal is providing false and misleading information during an investigation which could have endangered the safety of employees and its equipment."

At hearing, Shift Manager Thompson acknowledges that the cranes remained in service for two days after the collision, but emphasizes that is only because nobody reported anything that would trigger a safety inspection until the anonymous email, and that a proper safety inspection of both cranes was conducted the next morning. Thompson also acknowledges that the cranes remained in service from Sunday night until Monday morning, despite the Company's receipt of the email. Further, Thompson states that there had not been such a serious crane collision to his recollection since November 2021, on which occasion the operator admitted fault.

Union Grievance Committee Chair Tony Panza testifies that grievant was the only employee terminated from the group of non-Crane Operators interviewed by the Company, all of whom he understood to share reporting obligations. Further, Panza acknowledges the Union's general right to rebut the Company's Step 2 and Step 3 Minutes, but asserts that the Minutes were filed untimely in this case, depriving the Union of adequate time and opportunity to respond, and therefore contends that the Minutes should not be taken as admissions by the Union of the Company's factual assertions, which the Union rejects.

Grievant, for her part, testifies that notwithstanding the allegations in the anonymous email, grievant did not appear drunk or incapacitated when she saw him at the start of the shift, and the first she knew of any issue was when she heard

a loud noise coming from the yard, she having stepped away with another employee whom she was training at the time. Grievant testifies that she returned to the yard after hearing the noise and attempted to communicate with both Hartness and Nezdoliy to see if they were okay. She testifies that she was unable to speak with Nezdoliy by radio due to the noise and so tried to communicate with him, instead, through hand signals. As she put it, her job requires her to direct crane traffic, and it is commonplace to use hand signals to communicate because it is too loud to talk. Grievant states that cranes do bump, and slabs do get dropped, but neither gets reported. Challenged on this point, grievant allows that the collision was "serious," but nevertheless holds to her testimony that she was not obligated to report it aside from calling Electrical and Mechanical over the radio – which she claims to have done, and may be the communication that Thompson overheard – presumably to repair the damage to the Charge Crane. Grievant testifies, too, that she gave Nezdoliy a ride home at his request, explaining that she did not initially disclose that fact because the Company did not specifically ask that question. Generally, grievant disclaims any dishonesty, asserting that she did not know the subject of the Company's investigation and lacked specific recall by the time she was asked.

THE PARTIES' CONTENTIONS

The Company first contends that grievant admittedly failed to report the collision despite her training to the contrary. The Company emphasizes that grievant admits that the collision was a serious one, notwithstanding her efforts to minimize it, to the point that she radioed both to ensure they were okay and redoubled that effort with respect to Nezdoliy when she found it impossible to communicate over the radio. Second, the Company contends that grievant lied

during the Company's investigation, offering an evolving and contradictory set of explanations regarding what she knew of the collision, why she failed to report it, and her subsequent interactions with Nezdoliy. The Company argues that these offenses, singly and together, warrant her discharge, especially considering her short service, and that justification is not undermined by the time it took the Company to complete its investigation. Further, the Company argues that it was justified in denying grievant the protections of the Justice and Dignity provision because safety is an express exception and lying is unacceptable.

In response to the Union's presentation, the Company acknowledges that there was not an immediate safety investigation, but places blame for that squarely on grievant's role in failing to report the collision. Further, the Company argues that the substance of the anonymous email is irrelevant, as the email served only to trigger the subsequent investigation.

The Union contends that the case is poisoned from the start by the unfounded and spurious anonymous email, which served to instigate what it terms a witch hunt. The Union argues in this regard that grievant is not the responsible party; there was a collision between two cranes, neither of which grievant operated, that she did not see occur. In the Union's estimation, the reporting obligation lies with the Crane Operators, not the Checker. In any event, the Union claims that grievant thought someone else reported the incident.

The Union denies that grievant was dishonest to the Company, arguing that she answered the questions in real time as she understood them, changing or clarifying her answers only when it became evident that she had not properly understood the Company's questions. In this regard, the Union emphasizes that the interviews were held weeks after the incident. More generally, the Union asserts that grievant knew the incident was on video, giving her no reason to lie.

Further, the Union argues that the foreman knew of the collision, but took no action to initiate a safety investigation or even to remove the cranes from service, suggesting that the Company has trumped up the charges against grievant for improper purpose. The Union also emphasizes that Jordan testified that all employees share the reporting obligation, rendering it improper to single out grievant for discipline alone among the non-Crane Operators with knowledge of the collision. The Union argues that this disparate treatment is at odds with grievant's proper efforts to keep the plant operating, which she did by communicating appropriately with the Crane Operators. Ultimately, the Union contends, there is no demonstration of any harm to the Company.

DISCUSSION

As an initial matter and setting aside for the moment the Union's contention that grievant has been subjected to disparate treatment, the Company has demonstrated proper cause to discharge grievant for failure to report a serious collision and her subsequent dishonesty during the Company's investigation. As the Company shows and consistent with grievant's Job Procedure as a Checker, grievant worked pursuant to the Incident and Near Miss Policy and was obligated to report breakdowns and other problems to supervision. As grievant herself ultimately admits, the collision at issue was a serious one. At hearing, the Company explained in detail the reasons why reporting is required for such incidents: to ensure it is safe to continue operating the equipment and to enable the Company to determine whether the incident was attributable to an employee working under the influence of drugs and/or alcohol. That explanation echoes the training grievant received. Despite this training, grievant admittedly was aware of a serious incident subject to

the reporting policy, yet failed to report it, thereby at least contributing to the Company's inability timely to investigate the cause of the collision, allowing the two cranes to remain in operation without inspection and/or necessary repair and the two operators to escape drug and alcohol testing. To the extent grievant attempts to downplay the collision as somewhat routine and unexceptional, the video shows otherwise and, further, the Company shows that reports of such episodes routinely are filed by other employees subject to the same reporting policy.

Grievant's evolving and changing accounts of her activities over the course of her several interviews cannot reasonably be attributed to confusion over the questioning or forgetfulness due to the passage of time. The Company made plain that it was questioning grievant in connection with the collision and that she was required to be open and honest, subject to discipline. Despite this clear message, grievant failed to be open and honest and instead chose to obfuscate and frustrate the Company's investigation. There is no need to parse again the several iterations grievant offered. It is enough to consider grievant's initial disclaimers against her ultimate admissions, which include that she knew there was a serious accident to the point that she radioed both Hartness and Nezdoliy to check on their condition and then signaled Nezdoliy by hand, and then left the plant with Nezdoliy and drove him home after the shift. During the interviews, the Company pursued two basic lines of questioning: what did she know of the collision, and what did she know of Nezdoliy's condition. Grievant was not forthcoming with respect to either line of questioning and, even to the end, proved unable to accept any responsibility or express any contrition for her failure to aid the Company in its efforts to investigate a serious collision that jeopardized the safety of all working in the area.

Singly and together, the Arbitrator is persuaded that grievant subjected herself to discharge for these two offenses. Both offenses are serious ones, and

grievant was a short-term employee. Whatever special consideration grievant might have earned through previous good service – there is no evidence to show that her service was particularly valuable or meritorious – is outweighed by her failure to heed a reasonable and clearly enunciated, safety-related reporting policy and subsequent dishonesty during the Company's investigation.

The Union proffers a number of defenses on grievant's behalf, including that she has been subjected to disparate treatment. True, it appears that grievant alone among the non-Crane Operators the Company interviewed was discharged in connection with this incident. It is not enough, however, to show that grievant was singled out; it is incumbent on the Union, as the party pressing this defense, to show not just that grievant was singled out, but that she was unfairly singled out from among a group of similarly situated employees. There is no evidence to show that any other employee at issue worked pursuant to a Job Procedure containing an affirmative obligation to report breakdowns and problems, was dishonest during the Company's subsequent investigation, and had only one year of service. Absent such a showing, the Arbitrator cannot find that grievant improperly was singled out for discipline. As the Company argues, there is some history in the plant of affording leniency to those who report safety violations, such as was the case with the incident in November 2021.

Neither is the Arbitrator persuaded that the Company's delay in inspecting the two cranes between the time the matter was reported on Sunday night until Monday morning bespeaks a lack of commitment to safety or otherwise provides a reasonable basis for excusing grievant's conduct. First, as a contributor to the delay, grievant has scant standing to complain about any delay, particularly a delay that did no harm to grievant's ability to defend herself against the charges at issue. Second, grievant's reporting obligation is independent of the Company's

response. Collisions such as this are reportable, irrespective of whether the Company perfectly responds to such reports. Third, the quality of the Company's operational response is unrelated to grievant's dishonesty during the investigation that followed. The Union has ample recourse in the event it finds cause to challenge safety procedures within the plant; the Arbitrator does not find it appropriate on this record to excuse grievant's unsafe and dishonest conduct on the ground that the Company could or should more quickly have inspected the two cranes.

Neither is the Arbitrator persuaded that the anonymous email that sparked the Company's investigation has any bearing on this case. The Company undoubtedly had a right and obligation to investigate the collision, notwithstanding what may be spurious allegations in the email. There is no indication in the record that the particulars of the anonymous email to which the Union objects played any role in the Company's determination to discharge grievant.

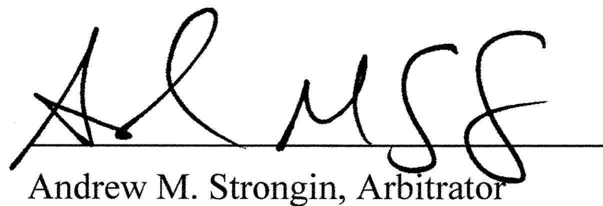
Turning now to the denial of the Justice and Dignity benefit of the Agreement, the Arbitrator is not persuaded that the Company erred in withholding it from grievant. In establishing that negotiated benefit, the parties expressly agreed the Company could withhold it in the event of safety violation: As stated at Art. 5.I.9.b.2, the Justice and Dignity provision "will not apply to cases involving offenses which endanger the safety or employees or the plant and its equipment." Initially and after correction, the Company indicated that it was denying the benefit because grievant provided false and misleading information during an investigation which could have endangered the safety of employees and its equipment. The record supports the Company's view of the matter: the case turns on grievant's failure to meet reporting obligations relating to a serious crane collision, and her subsequent dishonesty during the Company's investigation. Grievant's conduct materially contributed to the delay in the Company's response to a serious collision, as a result

of which two cranes remained in operation without proper safety inspection and the two Crane Operators escaped drug and alcohol testing, all counter to grievant's plain, understandable, and known obligation to report such collisions pursuant to general safety rules, the Incident and Near Miss Reporting Policy, and her Job Procedure. It is understandable and reasonable that the Company would decide that such an employee is unwelcome in the plant.

In the final analysis, the Arbitrator finds insufficient basis to disturb the Company's determination that grievant's misconduct warranted her discharge. Accordingly, the grievance is denied.

DECISION

The grievance is denied.



Andrew M. Strongin, Arbitrator

Takoma Park, Maryland