IN THE MATTER OF THE ARBITRATION)
)
Between)
)
CLEVELAND-CLIFFS, INC.)
(INDIANA HARBOR))
)
and)
)
UNITED STEELWORKERS,)
LOCAL 1010)

OPINION AND AWARD

RONALD F. TALARICO, ESQ.
ARBITRATOR

Grievance No.: 26-CC-001
Case 138

GRIEVANT

Thomas Sach

ISSUE

Discharge

VIDEO HEARING

May 3, 2024

APPEARANCES

For the Employer
Kerry P. Hastings, Esq.
TAFT STETTINIUS & HOLLISTER LLP

For the Union
Jacob Cole
Staff Representative
UNITED STEELWORKERS

ADMINISTRATIVE

The undersigned Arbitrator, Ronald F. Talarico, Esq., was mutually selected by the parties to hear and determine the issues herein. An evidentiary hearing was held via video on May 3, 2023, at which time the parties were afforded a full and complete opportunity to introduce any evidence they deemed appropriate in support of their respective positions and in rebuttal to the position of the other, to examine and cross examine witnesses and to make such arguments that they so desired. The record was closed at the conclusion of the hearing. No jurisdictional issues were raised.

PERTINENT CONTRACT PROVISIONS

ARTICLE FIVE – WORKPLACE PROCEDURES

. . .

Section I. Adjustment of Grievances

. . .

9. **Suspension and Discharge Cases**

. . .

b. **Justice and Dignity**

(1) In the event the Company imposes a suspension or discharge, and the Union files a grievance within five (5) days after notice of the discharge or suspension, the affected Employee shall remain on the job to which his/her seniority entitles him/her until there is a final determination on the merits of the case.

(2) This Paragraph will not apply to cases involving offenses which endanger the safety of employees or the plant and its equipment, including use and/or distribution on Company property of drugs, narcotics and/or alcoholic beverages; possession of firearms or weapons on Company property;

destruction of Company property; gross insubordination; threatening bodily harm to, and/or striking another employee; theft; or activities prohibited by Article Five, Section K (Prohibition on Strikes and Lockouts).

. . .

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.

. . .

BACKGROUND

The Employer is Cleveland-Cliffs, Inc., which operates a large integrated steel mill in East Chicago, Indiana. The Union, United Steelworkers, Local 1010, is the exclusive collective bargaining representative for all production and maintenance employees at the Plant. The Employer and Union have been parties to a series of collective bargaining agreements over the years, the most recent of which is effective September 1, 2022.

The Grievant, Thomas Sach, was hired on April 6, 2012 and at all times pertinent to the within matter, was assigned to Internal Logistics (Trucking Division). On January 12, 2023 Section Manager Slavco Pupaloski learned of an altercation between the Grievant and a co-worker, Mark ("Horse") Bernal which occurred in the IHE trucking office. An immediate investigation took place and both employees as well as six additional potential witnesses were interviewed. A video of the altercation was also available for review. The Grievant and Bernal were both instructed not to return to work unless they were notified by Management to do so.

On January 17, 2022 the Company sent a five-day suspension letter to both employees subjecting them to discharge after the suspension for a violation of Personal Conduct Rule 2 a.: "Fighting with or attempting bodily injury to another employee or non-employee on Company property." The Grievant was also informed that he was not entitled to Justice and Dignity under Article Five of the collective bargaining agreement which is not applicable to offenses involving threatening bodily harm or striking another employee.

On January 23, 2023 a suspension hearing was held for Grievant. The surveillance video was played and showed the Grievant punching Bernal, pushing him against the wall and pressing his forearm against his neck. During his initial interview the Grievant claimed that he was just defending himself.

At the suspension hearing the Grievant claimed that Bernal had a reputation for being crazy and made inappropriate comments toward him and other employees such as "I'm going to make you my bitch" and "I'm going to knock you out and fuck you in the ass". The Grievant also claimed that on the day of the altercation Bernal approached him and aggressively kicked his chair and then got in his face. The Grievant stated that he then stood up and swung at Bernal.

The Company found the Grievant's behavior to be unacceptable and subsequently converted the five-day suspension to discharge effective January 26, 2023. It should be noted that Bernal resigned rather than challenging his suspension through the grievance procedure of the collective bargaining agreement.

ISSUE

Whether the Employer had just cause to terminate the Grievant? If not, what should be the appropriate remedy?

POSITION OF THE COMPANY

This grievance challenging the routine discharge of Grievant Tomas Sach for physically attacking co-worker Mark Bernal should be denied. Video evidence establishes that Grievant punched Mr. Bernal in the face, grabbed this throat, and forcefully pushed him back into some equipment. When it comes to workplace violence, the only way Grievant's attack could have been worse is if he had used a weapon. Remarkably, Mr. Bernal did not physically escalate this altercation and they were separated by co-workers. No supervisors witnessed the altercation, but it was captured on video. Cliffs investigated and interviewed both Grievant and Mr. Bernal in the presence of a union representative. Unaware of the video, Grievant was not forthcoming during his interview. Grievant falsely claimed he was defending himself, which the video shows is untrue. Grievant refused to identify witnesses. During the interview, Grievant did not offer any excuse for his attack based on Mr. Bernal kicking his chair or based on alleged inappropriate statements supposedly made by Mr. Bernal in the last few weeks in connection with a vague dispute. When Cliffs interviewed Mr. Bernal, he was also less than forthcoming. He said he had a minor disagreement with Grievant. He said he kicked Grievant's chair, resulting in Grievant coming at him. He falsely said Grievant did not put his hands on him, which the video shows is a lie. Furthermore, Cliffs saw Mr. Bernal face had been injured as a result of Grievant's punch. Unlike Grievant, Mr. Bernal did identify three witnesses. Cliffs interviewed those three employees and a fourth employee who was identified during the investigation. None of them had anything material to add. They all had a case of what I call union amnesia when it comes to incidents like this one that can get employees discharged.

Cliffs suspended Grievant subject to discharge for physically attacking Mr. Bernal. During the Step 2 grievance meeting, Grievant changed his tune from the initial investigation meeting, presumably because he now knew Cliffs had video of his attack. Grievant now said Mr. Bernal was crazy and had a bad reputation. He said Mr. Bernal had made inappropriate comments about him in the weeks leading up to his attack, but Grievant did not make these claims in the initial investigation meeting and Grievant admitted he never previously reported Mr. Bernal's alleged inappropriate comments to management. He claimed Mr. Bernal kicked his chair before the attack, which Grievant had not said previously. Grievant now admitted he took a swing at Mr. Bernal and that the video showed the rest, but Grievant had not made any such admissions in the initial investigation meeting.

Cliffs converted the suspension to discharge. Cliffs also discharged Mr. Bernal for his role in this altercation. Instead of fighting the discharge, Mr. Bernal retired.

During the Step 3 grievance meeting, Grievant aggravated the situation. Grievant told Cliffs he tried to arrange for Mr. Bernal to have an accident at work so Mr. Bernal would be tested for drugs and alcohol, which Grievant thought would result in Mr. Bernal's discharge because he would fail the test. This shocking statement showed that Grievant was willing to endanger the safety of co-workers in a dishonest scheme involving engineering an accident involving heavy equipment to try to get him fired. During the Step 3 meeting, Grievant again admitted he never previously reported Mr. Bernal's alleged inappropriate comments to management until the Step 2 grievance meeting.

Cliffs properly discharge Grievant. Physically attacking another employee is widely viewed by arbitrators as a dischargeable offense. This offense has major safety implications especially in a steel mill with its inherent hazards. Brawling in a steel mill is totally unacceptable.

Mr. Bernal showed remarkable restraint when he did not physically escalate this incident in response to being punched in the face, having his throat grabbed, and being forced backwards into equipment. Grievant's actions could easily have resulted in an all-out brawl and serious injuries. Cliffs also discharged Mr. Bernal for his role in this altercation. Grievant also aggravated his offense by not being candid during his investigatory interview where Grievant failed to accurately describe what happened and refused to identify potential witnesses. Grievant further aggravated his offense with his totally unacceptable comments in the Step 3 grievance meeting where he said he tried to manufacture an accident involving Mr. Bernal so Mr. Bernal would be drug tested and fired.

The appropriateness of discharging an employee who physically attacked another employee, particularly involving this level of violence, has rarely been seriously questioned. But assuming the Union questions it today, this Arbitrator in the recent Nezdoliy decision applying the same contract language at Cliffs' Cleveland plant recognized the arbitral principle that arbitrators should generally uphold management's disciplinary decisions after misconduct is established. The Arbitrator stated at page 17 of the decision: "Finally, with respect to the ability of this Arbitrator to modify the penalty imposed upon Grievant for the above misconduct, as a general rule arbitrators should not interfere with the penalty imposed by an employer if the collective bargaining agreement permits management to exercise discretion and the reasonableness of the penalty is not seriously called into question. However, even where their power to mitigate a penalty is unencumbered arbitrators should still be loathe to substitute their judgement for that of management unless the degree of mitigation is of a major and consequential change." The Arbitrator then quoted the familiar McCoy decision which I won't repeat here. In this case

involving a very serious physical attack and aggravating factors, Cliffs did not abuse its discretion by discharging Grievant.

So what do we expect to hear from the Union today. Grievant will presumably claim Mr. Bernal provoked him by kicking his chair and standing over him. But the appropriate response to chair kicking is to report this to management, not a physical attack of this nature. Mr. Bernal did not physically attack Grievant and Grievant's attack was not self-defense. Grievant will presumably claim Mr. Bernal said bad things to and about him. But words, even inappropriate words, do not justify a physical attack of this nature. Notably, Grievant never reported Mr. Bernal's alleged inappropriate comments to management. Cliffs responded appropriately after Mr. Bernal (not Grievant) reported a vague disagreement (they had a "few words") between Grievant and Mr. Bernal by instructing them to stay away from each and not to talk to each other. Grievant cannot blame Cliffs for his physical attack.

Last week, well after the Step 3 grievance meeting, the Union started to raise new arguments that attempt to put Mr. Bernal on trial by invoking ancient criminal and disciplinary history. Mr. Bernal was initially hired by Inland Steel in July 1976, so he does have a lengthy work history. First, the Arbitrator should not consider these new arguments. The contract at page 54 requires the Union to provide at each step of the grievance procedure a "full and detailed statement of the facts . . . . replied upon". The contract requires that: "Facts, provisions or remedies not disclosed at or prior to Step 3 of the grievance procedure may not be presented in arbitration." The Union did not invoke Mr. Bernal's ancient criminal and disciplinary history at or before the Step 3 grievance meeting and indeed did not raise these issues until last week, so the contract bars its consideration now. Second, these new arguments are irrelevant. The contract at page 60 does not permit consideration of disciplinary history in arbitration going back more than five years, so

the Arbitrator should not permit the Union to dredge up incidents from 30 and 45 years ago which significantly predated Grievant's employment (he was hired in 2012), even more significantly predated Cliffs' ownership of the Indiana Harbor operation (which Cliffs purchased in late 2020), and which have nothing to do with Grievant's attack. Mr. Bernal's actions in 1977, more than 45 years before Grievant attacked him, do not justify Grievant's attack. Mr. Bernal's criminal conviction in early 1990s, more than 30 years before Grievant attacked him, does not justify Grievant's attack. Mr. Bernal's ancient history does not entitle Grievant to punch him in the face, grab him by the throat, and push him into equipment.

Grievant undeniably committed a major offense that arbitrators widely recognize as immediately dischargeable. Although pushing and shoving itself would be dischargeable, Grievant's offense was much worse than pushing and shoving. The parties themselves have recognized the severity of this offense by carving it out from the contract's justice and dignity provision. If Grievant can phys

ically attack co-worker and retain his job, this operation will become unsafe and unmanageable. This grievance should be denied.

POSITION OF THE UNION

Is Tom Sach the only entity to blame for the altercation on January 9, 2023? I ask you to simply review all the evidence presented by the Union today. The contrasting differences between the two parties involved in this altercation. Polar opposites is the simplest way to define the stark differences. One has had numerous people willing to stand up for him and shut the shop down to testify on his behalf. The other not one good thing mentioned about him.

I cannot name another time in my dealings with this company that an employee literally tells on himself and the company does not react. Think about the countless hours that employers typically spend investigating and researching allegations attempting to uncover the truth. Until this case that is what companies usually do. This one was wrapped in a bow and delivered on a silver platter. But they brushed it to the side, no regard for their greatest asset their employees, and a really good one at that. Especially an employee like Tom Sach. Witness after witness and statement after statement all standing up for their brother. Their brother was not given a fair shake, their brother was not treated with dignity and respect.

It is easy for a company to simply put out a catchy slogan like "One Cliffs Way" and claim to be held in the highest standard for Anti-harassment and ethics. But it's a different story when its time to walk the walk. Clearly Horse had been known as a troubled individual. His work history speaks for itself, but when all of these people say the same thing management cannot say they didn't know. He not only told on himself that he was going to RAPE someone, but he told coworkers he would just retire after pushing Tom over the edge of provoking him into a fight. He may as well have been a mass shooter leaving a manifesto behind. It is eerily similar to some of the absolute horror stories we hear almost weekly in the news. Cries for help, no one listened, no one cared, NO ONE DID ANYTHING. We may be blessed that we are only discussing a scuffle, and nothing more.

One Cliff's way is the Company's slogan for conducting business and ethics, and Cliffs cannot be any more hypocritical of it. One Cliffs way details a "sounds good on paper" process for reporting workplace incidents, encouraging employees to bring up matters to their supervisors or other individuals without fear of reprisal. The process even details about expectations for their supervisors "a key aspect of our culture is to speak up and voice concerns". Supervisors must also

escalate a prompt and accurate report to proper personnel in cliffs. Did John Petrungaro follow any of this? No. Did Bruce White even bother to ask what the slight disagreement was? No. Bruce White inaccurately testified that he spoke to both employees on the same day, his credibility is shot. Is Horse any different that he is not subject to the very "core values"? The Company openly admitted that the situation would clearly be different when questioned by you Mr. Arbitrator. John Petrungaro admits that had this claim been made about a secretary – it would have been treated differently.

Cleveland Cliffs has failed as an Employer to provide an environment that everyone is treated with dignity, fairness and respect. If anything they promoted it. Countless people in the department were well aware what was happening. NO ONE said a word, except the man doing all the harm. Employees couldn't sit in the lunchroom without hearing Horse talk about rape or sex or knocking someone out. Employees couldn't get dressed without hearing. Imagine coming to work every day and constantly having to hear this. The Company was aware and accepted it. Did they even care about fighting? No one that was in the break room during the altercation reported the fight. Tom was provoked by Horse, Tom was attacked by Horse. Tom retaliated, no doubt about it as I stated before the actions of the Grievant were in no way acceptable, they were wrong, and that there is no minimizing it. But what other choice did he have? As demonstrated today – telling supervision would've gone nowhere because Horse told on himself. There is culpability of the Company for why we are here today. Their negligence is deplorable and must be considered as a mitigating circumstances. If anyone is to be absolutely guilty of the accused it is Horse and Cleveland-Cliffs, one was a convicted felon and the other a fortune 500 company guilty of harboring and providing a safe haven for Horse and guilty of neglecting their own core values, guilty of promoting this ridiculous environment.

In regards to the video, the Company has admitted that there is no clear evidence that a punch actually occurred, but what is clear is the Bernal provoked and was the aggressor as they stated in the second step minutes.

One arbitration stands out as a comparative to the circumstances of today. It involves USW Local 7-827 and Eagle Ottawa. The 2005 decision underscores some similarities. The Union did not condone violence in its case, by the time of the incident the grievant had put up with the other involved abuse, witnesses described the other involved as a trouble maker, repeatedly used abusive language, management was aware of the issues involving the two and did nothing, grievant had an impeccable work record at the time of his discharge, both cases the other involved was bearing down on the grievant and had no other option.

In the arbitrator's view, he clearly noted that the two involved were not getting along, the other involved was the aggressor, that the company had ample notice that there was trouble brewing between the grievant and the other involved.

Ultimately the arbitrator determined that the company fell short of meeting its obligations to investigate the numerous reports it had received about the other involved aggressive behavior and potential it raised. The second basis for him believing that the grievant was not entirely at fault was that the grievant was not the initial aggressor. Further explaining the altercation was fast paced adrenaline-fueled tussle that lasted a few seconds. Also noting that give the history of the other involved it was unrealistic to expect that grievant to remain calm. He decided that both the grievant and company shared blame for what happened, because the company ignored complaints.

Lastly and I quote that he found not a smidgen of evidence that returning the grievant to his former position will endanger anyone. It was obvious to the arbitrator that the grievant was a conscientious employee respected and highly regarded by employees and supervisors alike. The

company had a 7-year investment in his training and development. His return to the workplace will have a positive impact on the company's productivity and profitability.

If you struggle with the rationale of reducing the degree of discipline that it may undermine the deterrent effect of its rule against fighting. I offer ArcelorMital award 27 in which Arbitrator Bethel cites USS-44,279 and that proportionality between offense and discipline in part of the just cause formulation. Disciplinary action short of discharge was appropriate was the case in all three cases.

The Union respectfully asks you to grant our grievance and return the employee to work.

FINDINGS AND DISCUSSION

Discharge is recognized to be the extreme industrial penalty since the employee's job, seniority, other contractual benefits and reputation are at stake. Because of the seriousness of this penalty, the burden is on the Employer to prove guilt of wrongdoing. Quantum of proof is essentially the quantity of proof required to convince a trier of fact to resolve or adopt a specific fact or issue in favor of one of the advocates. Arbitrators have, over the years, developed tendencies to apply varying standards of proof according to the particular issue disputed. In the words of Arbitrator Benjamin Aaron, on some occasion in the faraway past, an arbitrator referred to the discharge of an employee as "economic capital punishment". Unfortunately, that phrase stuck and is now one of the most time honored entries in the "Arbitrator's Handy Compendium of Cliches". However, the criminal law analogy is of dubious applicability, and those who are prone to indiscriminately apply it in the arbitration of discharge cases overlook the fact that the employer and employee do not stand in the relationship of prosecutor and defendant. The basic dispute is still between the two principals to the collective bargaining agreement. In general, arbitrators use

the "preponderance of the evidence" rule or some similar standard in deciding fact issues before them, including issues presented by ordinary discipline and discharge cases such as within.

The Grievant was terminated for violating the following Personal Conduct Rule:

> **"2. The following offenses are among those which may be cause for discipline, up to, and including suspension preliminary to discharge.**
>
> **A. Fighting with, or attempting bodily injury to another employee or non-employee on Company property."**

This type of rule of conduct is commonly promulgated by most employers and is fairly straight-forward. However, it is what this particular Rule does not provide for that is of significance to the within matter. This Rule does not embody or constitute a "zero tolerance" policy against fighting which, in my experience, is never fully complied with, nor makes much sense, because such a concept cannot preempt the just cause standard found in most collective bargaining agreements. This Employer must therefore evaluate the evidence, assess all relevant factors, and come to a reasonable decision that meets the Section J. Management Rights provision of "proper cause basis for suspending or discharging an employee".

There is no doubt that the Grievant engaged in "fighting" with Bernal. However, the video depicted what I would describe more as a lot of "shoving" and "grabbing" on the part of the Grievant rather than multiple blows being exchanged. But, in this situation, the Grievant clearly was the aggressor and did most, if not all, of the "shoving" and "grabbing". Moreover, the video was shot from a vantage point which focused on the open doorway between the office area and the break room. As such, the video only captured what could be seen through the open doorway but nothing that occurred away from the doorway such as in the break room.

The Company asserts that the video shows the Grievant's fist actually striking Bernal in the face. My review of the video is not as certain. However, be that as it may, there is no question

that the Grievant's fist went near Bernal's face and then he clearly grabbed Bernal in the throat area and aggressively shoved him against the wall. According to the testimony of Trucking Department Supervisor Brian Huff, Bernal did have some bruising on his face when he was interviewed three days later but denied that the bruising was the result of a fight. Importantly, however, Bernal did admit to Huff that he kicked the Grievant's chair while they were in the break room just prior to the altercation. According to the Grievant, it was Bernal towering over him and kicking his chair that was the final provocation that caused Grievant to jump up and engage Bernal in a scuffle.

There is no sound on the video so we do not know what words, if any, were exchanged between the two combatants. It is generally agreed, however, with few if any exceptions, that words alone are not sufficient provocation for starting a fight. However, the scuffle, itself, lasted but a few seconds, neither employee was hurt, no one else was involved in the fighting, and no Company property was damaged. For all intents and purposes I would describe that as a fairly innocuous "fight" or "scuffle".

I accept the long recognized arbitral principle that fighting in a steel mill is considered to be serious misconduct because of the inherent dangers that could result from a physical altercation occurring near a blast furnace, or molten steel, or where dangerous equipment is moving about, etc. However, in this situation the altercation actually took place in an office area (although technically within the steel mill) which would therefore negate the application of this general principle.

The Company is correct that the Grievant's version of the events changed somewhat during the investigative/grievance process and attributes this to the Grievant becoming aware of the existence of the video evidence. These "changes" in the Grievant's testimony primarily focused

on the fact that he did not initially disclose the vile and lewd provocation he claimed he had been receiving from Bernal. Interestingly, the evidence reflects that Bernal also lied/downplayed any conflict that existed between he and the Grievant. I must, therefore, accept Grievant's explanation that in an industrial setting employees typically like to deal with co-worker conflicts on their own and do not want to be seen as tattling or snitching on a co-worker to management.

The record is replete with the Grievant's credible testimony of how Bernal would incessantly taunt him by stating he was "going to make him his prison bitch", and that he was "going to fuck him in the ass." I would note that there is, in fact, a significant physical disparity between Bernal and the Grievant who is an average to slightly built male while Bernal is a much bulkier individual with the nickname "Horse". Significantly, however, we do not have to just rely upon the Grievant's testimony about the alleged taunting he received from Bernal because we have a memo from Supervisor John Petrungaro dated January 15, 2023 acknowledging that Bernal told Petrungaro two weeks earlier that "he was going to make Tom (Grievant) his prison bitch".

I would first point out that this type of language from one employee to another employee or from one employee about another clearly constitutes a violation of two Personal Conduct Rules:

Rule 2 R. provides as follows:

> **"Use of profane, abusive, or threatening language/behavior towards supervisors or other employees or officials of the company or any non-(company) personnel."**

Rule 2 V. provides as follows:

> **"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."**

Just like "fighting", violations of these two Rules may be cause for discipline, up to, and including suspension preliminary to discharge. And what was the Company's response to having

Bernal admit that he violated these two Rules of Conduct in such a vile and lewd manner towards the Grievant: absolutely nothing -- other than Petrungaro telling Bernal and then the Grievant that they had to stay away from each other. Not only was no discipline issued to Bernal but it is also significant that the Company failed to inform the Grievant about the vile and lewd threats made by Bernal. I find that to be a wholly inadequate and unreasonable response on the part of the Company not to alert one employee when a second employee makes such vile, lewd and threatening statements about them. Petrungaro testified that he didn't take Bernal's words as a serious threat but admitted Bernal used the word "bitch" in referring to Grievant. I wonder if the Company's reaction would have been the same if Bernal had referred to a female employee as a "bitch".

To give context to the vile and lewd behavior of Bernal, Court records reflect that in December 1990 he pled guilty to aggravated criminal sex assault and served two (2) years in prison. Whether the Company was or should have been aware of his prior criminal record before he was rehired is a question that is not before me. Whether the Company should have been aware of his prior criminal record at the time of this incident has little bearing on the decision reached within. However, Bernal's criminal record and prison time does significantly add credibility to the Grievant's claim of provocation and being the target of such highly sexualized verbal barrages coming from this co-worker. In fact, further corroboration can be found in a video of an incident that took place the very next day. Bernal can be seen interacting with another co-worker in the same office area where this incident occurred. That co-worker was bent over head long into a canister as if to retrieve something. Bernal can be seen reaching towards him and grabbing his leg. Then, in keeping with his depraved and lewd personality, Bernal can be seen pumping his arms

and thrusting his pelvic area making recognizable physical gestures mimicking that he was engaging in sexual intercourse with the other employee.

There is no question that Bernal has a very aggressive, lewd and sexually deviant personality which for some reason he chose to direct towards the Grievant. It is reasonable to conclude that the Grievant felt provoked and pushed into a corner and regrettably responded in an aggressive, but understandable, manner towards his tormentor. Perhaps this was retaliation by Bernal for Grievant referring to him as a "pothead". We will never know why because Bernal chose retirement over challenging his termination through the grievance process since he was eligible for retirement.

Finally, I do have concerns about the Grievant's "plot" to get Bernal involved in a vehicle accident on Company property which would result in him being forced to take a drug test at which time the Company would discover (what the Grievant believed was true) that Bernal was often intoxicated while at work. This type of abhorrent thinking has no place in a steel mill. However, the Grievant's clean disciplinary record during his 11 plus years of service is found to be a considerable mitigating circumstance.

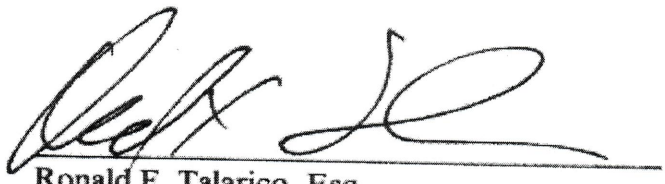
On the basis of all of the above, the Grievant certainly engaged in behavior which is worthy of significant discipline but, equally certainly, is not worthy of the severe punishment of termination.

AWARD

The grievance is sustained in part. The Grievant shall immediately be reinstated to his former position but without the payment of any lost wages or benefits, except for receiving full seniority credit.

Jurisdiction shall be retained in order to ensure compliance with this Award.

Date: June 8, 2023
Pittsburgh, PA



Ronald F. Talarico, Esq.
Arbitrator