

IN THE MATTER OF ARBITRATION)
)
)
CLEVELAND-CLIFFS STEEL LLC)
)
)
and)
)
)
UNITED STEEL, PAPER AND FORESTRY,)
RUBBER, MANUFACTURING, ENERGY,)
ALLIED INDUSTRIAL AND SERVICE)
WORKERS INTERNATIONAL UNION,)
LOCAL 1165)
)

Grievance No. 23-021

Case 141

Marcus Valentino, for the Employer
Joseph B. Pozza III, for the Union
Before Matthew M. Franckiewicz, Arbitrator

OPINION AND AWARD

This arbitration proceeding involves the termination of Grievant Stephen Mattson.

A hearing was held on July 11, 2023 at Coatesville, Pennsylvania. Both parties called, examined and cross examined witnesses, and offered documentary evidence. The Parties agreed to waive the prohibition on briefs (Article Five Section I (8) (a) (2)), and the hearing concluded with the exchange of briefs on July 25, 2023. The Parties agreed that I should issue a decision with full opinion within 30 days of the receipt of briefs.

The Facts

Grievant Stephen Mattson, an employee with 17 years service, was issued a suspension with intent to discharge letter on February 13, 2023. The letter states, in its entirety:

On February 7, 2023, we met along with Area Manager of LR/HR Marcus Valentino, Labor Relations Representatives Brett Whitehead and Lamar Brickus, Managers Jace Brenner, Toby Stoltzfus, Randy Chamberlain, and Union Representatives Lee Myers and Dave Grande.

The purpose of the meeting was to discuss incidents that occurred on or about February 2, 2023 - specifically, threats, violent behavior, and abusive language used toward your manager and co-workers. In the course of the meeting, both you and the Union requested additional camera footage to corroborate a related incident you voluntarily disclosed. This

incident involved former Senior Operating Technician (SOT) Sean Murry and your work, and whereabouts on January 14, 2023. This incident resulted in the aforementioned SOT's resignation from the SOT program. The Company has obtained the footage requested and discovered serious discrepancies, not covered in your account of the shift. The video shows a lengthy absence from your work area; you eventually returning to your work area not wearing your appropriate PPE; and you welding in a storage locker - not working on capsules as claimed. At this time, the Company is amending your suspension with intent to discharge to include these violations of Company Policies, Procedures, and/or standards. The Company has found you have violated the following rules:

Rule 3 - Stealing, theft, or intent to steal or defraud the Company, of either Company property or time or the property of a fellow employee.

Rule 4 - Insubordination (including refusal or failure to comply with a Supervisor's directive or the use of profane, abusive or threatening language.

Rule 6 - Neglect or carelessness resulting in damage to equipment or plant property.

Rule 10 - Failure to stay on the job in your department or assigned place of duty during working hours.

Rule 16 - Deliberately restricting production or persuading others to do so, loafing on the job or in the locker or rest rooms.

Rule 20 - Violation of established safety rules of the Company which includes compliance with housekeeping standards in the workplace; any careless or unsafe act which results in injury either to self or another employee, or carelessness or inattentiveness leading to an accident, or potential injury or accident.

Rule 22 - Disorderly conduct on Company premises.

Rule 23 - Failure to use safety devices and proper safety equipment provided for employee protection.

Rule 28 - Cooperation and Attitude - Treat Co-workers with respect, avoiding behavior which includes the use of threatening or abusive language directed toward an individual. Work in a manner that promotes the safety of yourself and co-workers. Behave in a manner that demonstrates cooperation and promotes teamwork with co-workers and supervisors. The words "that is not my job" will be replaced with "how can I help you".

You have been counseled numerous times regarding your behaviors and uncontrolled anger. The Company has offered you resources and support, including recommending the use of the Company's Employee Assistance Program (EAP). You have refused the support offered and refused to correct your behavior. Based on the seriousness of your actions, the facts of the matter, our investigation, and taking into account your seniority and your work record - I have determined that you are unable to meet Cleveland-Cliffs standards of employment. Therefore, you are being issued a revised five-day suspension with intent to discharge you effective February 18, 2023.

By letter dated March 1, 2023, the Company converted the suspension-with-intent into a termination.

As the last sentence of the February 13, 2023 letter indicates, the process leading to the termination of Grievant Mattson was more involved than is usually the case. As the Company explained, there had been a prior suspension-with-intent letter, based solely on events that occurred on February 2, 2023 (although this letter was not placed in evidence), but during discussions between the Union and the Company relating to

possible discipline of the Grievant, Grievant Mattson requested that the Company review video recordings of events on January 14 and January 18, 2023 which he believed supported his case. (Grievant Mattson disputed this version and stated that he asked the Company to produce any video that supported its claim that Mattson and another employee had gotten into an argument.) The Company did review those recordings and in the course of doing so it discovered what it regarded as additional evidence of misconduct by the Grievant.

Although the February 13 letter does not correlate events occurring on particular dates with specific alleged rule violations, the contentions are fairly obvious from the evidence presented.

It seems fair to say that Grievant Mattson was on a path to possible discharge based on his interaction with his immediate Supervisor, Shift Manager Randy Chamberlain, on February 2, and that but for those events and the investigation that followed (and perhaps Mattson's request that the Company review video of January 14 and January 18), the Company would never have even been aware of any possible grounds for discipline based on the events of January 14 and/or January 18, much less that it would have imposed any discipline on Grievant Mattson on the basis of those events. What if any discipline the Company would have issued to Grievant Mattson based solely on the events of January 14 and January 18 (assuming it had been aware of them) independent of and apart from the allegations relating to February 2 is simply impossible to know on this record.

At the hearing the Company played excerpts from the videos of January 14, January 18, and February 2, and it offered a copy of this video evidence on USB drive. I have viewed this video evidence multiple times in the course of reaching my decision in this case.

Shift Manager Randy Chamberlain had worked with Mattson before Chamberlain became salaried on November 15, 2021, and the two had no conflicts. After Chamberlain became Shift Manager, Mattson reported to him for a total of about a year. For about six weeks during that period, Mattson voluntarily returned to production to help the Company to fill in after two employees became ill.

According to Chamberlain, on January 14 he assigned Mattson to a capsule change, a job Mattson had not performed but had seen done. Chamberlain regarded this as a learning experience for Mattson. Chamberlain testified that Mattson did not perform the job, not the first instance of Mattson not performing tasks as instructed. But according to Grievant Mattson on January 14 he did perform work on the capsule change. One of the two capsules was complete and other employees were working on the second capsule in anticipation of putting it in the west yard.

Chamberlain testified that on February 1, at a meeting with Section Manager Toby Stoltzfus, Mattson asked to be separated from another employee with whom a relative of Mattson had had a disagreement. Chamberlain stated that in order to accommodate the request, he assigned Mattson to be on the "whistle" (discussed in more detail below) on February 2. According to Chamberlain the "whistle" is an every day assignment and he did not give Mattson this duty as a punishment.

On February 2, Mattson and Chamberlain were both inside a blue metal building inside the mill. This is a two story building with the time clock, a break room and some offices. According to Chamberlain Mattson wanted to know why he was on the whistle, and he asked what's the problem. Mattson went on to say, everybody fucking hates you and I'm the only one man enough to tell you. I gotta get out of here before I do something that gets me fired. At that point Mattson exited the building.

Mattson's version is that in late January he was upgraded to SOT, a higher labor grade than working on the whistle. He asked why Chamberlain took him off SOT and put him on the whistle, which involves a pay cut, and Chamberlain replied I can do what the fuck I want, you'll do what you are told, everybody wants to be on the whistle. Mattson said he did not want his pay cut and Chamberlain advanced toward him. Mattson said I'm getting out of here before you get me fired.

Mattson had applied Family and Medical Act (FMLA) leave to absences to attend to his father, who had cancer. According to employee Ron Kauffman, Chamberlain said, with respect to Mattson having reported off on FMLA, this fucking guy's gotta go. He doesn't need to be off that much. According to Chamberlain, his only comment about Mattson's use of FMLA leave was asking Mattson's nephew John, is your grandfather all right. Stephen Mattson testified that on December 8, Sean Mattson told him that Chamberlain was watching every move he made, and was watching on camera to get him, Chamberlain was pissed at his use of FMLA. Sean Mattson did not testify.

Chamberlain acknowledged having used profanity, including damn, shit and fuck, although not directed at Mattson. Luke Patzek corroborated that Chamberlain curses about as often as most employees. Ron Kauffman stated that all the employees have sworn at others at times. According to Mattson, Chamberlain has called him an asshole, son of a bitch, cock sucker and mother fucker, sometimes in front of other employees.

Video of the building (which does not include audio) shows Mattson bursting through the steel door at the right (as viewed on the video) of the building. The door, which opens outward, contacts what witnesses called a tool box. There was another employee roughly five feet to the left of the door, but since the door swings to the right, this employee was in no danger of injury from Mattson charging out the door. Mattson walks rapidly away, and while walking turns back and points and appears to say something, just as Chamberlain is exiting the same door, while Mattson is already about 30 feet away. According to Chamberlain Mattson said, apparently to the other employee, don't get caught up in his shit.

A photograph of the door (Company Exhibit 1) shows four or perhaps five small indentations near the bottom of the door, apparently caused by the door impacting with the tool box. There are also some darker marks between the indentations which may or may not also have been the result of the door contacting the tool box. The Company obtained an estimate of \$2775.00 for replacement of the door, but the Company has not as of the date of the hearing replaced the door, and it appears to be fully functional despite the indentations.

Chamberlain attributed the dark marks on the door to employees using their feet to open the door. This is incorrect since the dark marks are on the outside of the door, which opens outward. Employees using their feet to kick the door open would be doing so from the inside. Chamberlain denied that there had been any dents in the door prior to February 2. Employees Luke Patzek and Ron Kauffman testified, and the video confirms, that this door swings open freely. According to Kauffman and Patzek the door has dents and paint scrapes and has never been repaired.

Posters are posted prominently in multiple locations saying:

NOTICE TO ALL CLIFFS EMPLOYEES

GRAFFITI AND/OR
VANDALISM, THEFT, OR
DISRESPECT OF ANY
KIND
WILL RESULT IN
IMMEDIATE DISCHARGE
FROM THE COMPANY

Section Manager - Maintenance Toby Stoltzfus characterized Mattson as a bully, a challenging employee to lead and coach, who threatened physical violence against other employees, and whose bullying caused Sean Murry to leave the SOT position, after which Mattson became SOT, shortly before Mattson's own discharge.

Personal Protective Notices are posted in work areas and break rooms. These state:

NOTICE TO ALL CLIFFS
EMPLOYEES
PPE IS REQUIRED AS A
CONDITION OF YOUR
EMPLOYMENT - IT MUST BE
WORN CORRECTLY AND
COMPLETELY - THE RIGHT PPE
FOR THE TASK. FAILURE TO
WEAR ALL REQUIRED PPE
WILL RESULT IN CORRECTIVE
ACTION UP TO AND INCLUDING
DISCHARGE FROM THE
COMPANY

Stoltzfus characterized a minor PPE infraction as walking through an area without safety glasses for a minute, and a major PPE infraction as not wearing a hard hat or safety shoes. Stoltzfus acknowledged that employees forget their hard hats on occasion. According to Stoltzfus Mattson was counseled for prior PPE infractions, although he did not recall the specifics. Mattson denied that Stoltzfus ever counseled him regarding use of PPE.

Video evidence of a welding and burning area, where a furnace operates of temperatures of 1900 degrees, and an overhead crane moves, shows Mattson walking without a hard hat on January 14.

Additional video evidence from January 18 shows Mattson walking in and out multiple times apparently with a hard hat but wearing a blue shirt, rather than the orange and yellow PPE shirts worn by other employees seen in the video. Mattson stated that he had been told that if you are not actually working you do not need to wear the orange shirt.

The final video evidence offered by the Company depicts Mattson welding. According to Stoltzfus, Mattson was welding galvanized metal, which produces toxic gases, without wearing respiration protection, which

employees are taught is needed when welding galvanized metal. According to Grievant Mattson during his welding training there was no discussion of galvanized metal or gases.

The Company's assessment of video evidence from January 14 and January 18 is that Mattson spent 4 hours and 51 minutes in the break room on January 14, and 5 hours and 39 minutes in the break room on January 18 (Company Exhibit 9). However, the Exhibit includes the following notation for January 14: "Camera footage starts at 2:26:32 pm, Mattson is not seen until 4:20 pm." If this period of 1:54 is discounted, Mattson's total time in the break room would be 2 hours and 57 minutes, rather than 4 hours and 51 minutes.

Mattson testified that on January 18, he was on the "whistle." According to multiple witnesses, being on the whistle means being on call for any emergencies that occur. Originally the trouble call was made by a whistle, hence the name, although now a radio call has replaced the whistle. Two Millwrights are on the whistle at any given time. Their responsibility is to respond to any breakdowns that may arise. One of the two does preventive maintenance, such as fluid checks, and filter replacement. The other simply maintains radio contact in the case of any emergencies that may occur. This employee has no assigned location and nothing prevents him from being in the break room. Multiple Millwrights testified that an employee on the whistle is allowed to wait in the break room for any trouble calls.

Mattson testified that during his employment he was never suspended, written up, or even counseled.

There was testimony that in December 2022, Grievant Mattson complained about alleged comments by Chamberlain regarding his use of FMLA leave. The Company granted Mattson a paid day off to calm down and said it would address the situation with Chamberlain.

Issue

The issue, as agreed to by the Parties is: Did the Company have just cause to terminate the Grievant and if not what should the remedy be.

Position of the Employer

The Company maintains that Grievant Mattson committed several offenses which individually or in combination warrant discharge, including: theft of time, intentionally damaging Company property, gross insubordination, and serious safety violations.

As to theft of time, the Employer contends that Mattson spent nearly five hours in a break room instead of working during his off shift (at premium pay) on January 14, and more than 5 ½ hours in the break room instead of working during his off shift on January 18. It disputes Mattson's "whistle" excuse (January 18), asserting that there is always preventive maintenance to be done. It understands employee Patzek's testimony to be that employees on the whistle always have work to do. It explains that most of the time in the break room was during the afternoon shift (3:00 to 11:00) when no supervision is usually present. It submits that contrary to Mattson's testimony, it is not possible to work on a capsule change (January 14) from the break room.

It contends that the Grievant spent an enormously excessive amount of time, without permission, in the break room on these two days without a legitimate explanation. It claims that as SOT Mattson had a responsibility to be out on the work floor. It views the Union's contentions about a police report as a red herring.

It points to its Rule 3, cited in the February 13 letter, and to my own decision in a prior arbitration case between the Parties.

As to property damage, the Company cites Mattson slamming the door on February 2, which it claims caused damages requiring nearly \$3,000 in repairs. It points to its rule that vandalism "will result in immediate discharge."

As to gross insubordination, the Company argues that on February 2 Mattson "initiated a confrontation where he profanely berated and threatened his supervisor" and then damaged the door, as mentioned above. It asserts that Mattson's actions toward Manager Chamberlain "constituted gross insubordination and made Mr. Chamberlain feel uncomfortable and unsafe."

It insists that Mattson yelled at Chamberlain, used obscene language and implicitly threatened physical violence. It asserts that Mattson was the aggressor and Chamberlain himself did nothing wrong. It sees no evidence, other than Mattson's own self-serving testimony, that Chamberlain ever cursed at Grievant Mattson. It reasons that "The Company cannot manage the plant if employees can treat their managers this way."

As to safety violations, The Employer counts that Mattson walked beneath an overhead crane without a hard hat on January 14, failed to wear the protective orange shirt on January 18, and failed to use a required respiratory device while welding on January 18. It points to its notice that failure to wear all required PPE "will result in corrective action up to and including discharge."

It sees aggravating factors in that it regards Grievant Mattson's actions as intentional, and it sees him as being dishonest during the investigation, claiming there was nothing to do while he was in the break room and in his account about his behavior to his supervisor.

The Company argues that it needs to be able to trust its employees, since this is an enormous operation where supervisors cannot watch every employee, particularly on off shifts.

It maintains that the question of the proper degree of discipline is for Management to determine, so long as it does not abuse its discretion by acting in an unreasonable, arbitrary or capricious manner. It urges that any of the four offenses would justify the Grievant's discharge.

Acknowledging the Grievant's length of service and absence of referable discipline, the Company insists that the seriousness of the offenses nonetheless warrants his termination. It regards the Justice and Dignity provision as not at issue in this case.

It asks that the grievance be denied.

Position of the Union

The Union emphasizes that Grievant Mattson had no prior discipline. It depicts him as a 17 year employee with an excellent work record.

As to the door, the Union asserts that the door is used dozens of times a day, and according to disinterested witnesses has been dented and scratched for years, but still operates without need for repairs.

As to alleged theft of time, the Union cites testimony by multiple employee witnesses that of the two employees on the whistle at any given time, one is on stand by to respond to radio calls in case of a breakdown, and the other moves around doing preventive maintenance tasks.

The Union argues that Grievant Mattson has worked under extreme pressure from Chamberlain, who cursed and threatened him and made comments indicating resentment for Mattson's use of FMLA leave. It considers him the victim of being "harassed by his supervisor, cursed at and falsely accused."

It insists that Grievant Mattson should never have been disciplined at all, much less terminated.

It asks that the grievance be sustained and that Grievant Mattson be reinstated with no loss of seniority and made whole for all lost monies and benefits.

Analysis and Conclusions

I begin the discussion in reverse chronological order, with February 2. I do so because it appears that the Company likely would have discharged Mattson based on his interaction with Manager Randy Chamberlain on February 2, and Mattson's alleged "vandalism" to the door on that same date.

With respect to the interplay between Chamberlain and Mattson, it seems to me highly probable that there was much more to the conversation than either Chamberlain or Mattson recollected by the time of the arbitration hearing. As described by each of them they would have spoken for less than a minute, hardly enough time for Mattson to become as irate as he appears to be on the video.

Nonetheless, my conclusions must be based on the evidence provided to me, and not on my speculation of what else may have happened. Mattson and Chamberlain were the only two people present in the blue building, and they gave somewhat different accounts of what was said between them. Of these, Chamberlain's version seems the more plausible to me and I credit his testimony.

Even under Chamberlain's account however, nothing Mattson said amounts to insubordination, the most serious of the allegations in the Company's February 13 letter in regard to this incident, or to any other form of misconduct.

Employees and supervisors get into disagreements all the time. This is why there is a grievance procedure. Indeed, the grievance procedure in the collective bargaining agreement begins with the sentence "An employee may informally discuss a complaint with his/her supervisor, with or without his/her Grievance Committeeman (Griever) being present." This is just what Mattson was doing with Chamberlain on February 2, raising a complaint that Mattson should not have assigned him to the whistle, which Mattson believed cost

him money. Of course the merits of Mattson's gripe in that regard are not part of the current case and I express no opinion on that point.

While an employee has some right to protest with his or her supervisor, that right is not unlimited, and the employee may cross the line through threats or personal vituperation. But an analysis of Mattson's words and conduct leads to the conclusion that he did not cross such line on February 2.

According to Chamberlain's testimony inside the blue building Mattson said everybody fucking hates you, and outside the building Mattson said (to a fellow employee) don't get caught up in his shit.

I recognize that Rule 4 of the Company's Rules of Conduct & Major Company Policies prohibits "the use of profane, abusive or threatening language." (Company Exhibit 5). The record does not indicate when this rule was drafted, but in 2023 no one who works in the steel industry would faint, blush or be traumatized at hearing a "fuck" or "shit." If the Company discharged everyone who uttered one of these words then most of its workforce, including manager Randy Chamberlain, would be gone.

Variations of the word "fuck" include verbs, as in "fuck you," nouns as in "oh fuck" or "you mother fucker" and adjectives, as in "that's fucking great." If I recall what I learned in fifth grade grammar, the usage by Mattson "everybody fucking hates you" was actually an adverb. More pertinent than diagramming the sentence however, is recognizing that Mattson used the word for emphasis and not as a form of personal abuse to Chamberlain such as calling him a fucker or saying "fuck you." Mattson's later use of the word "shit" was not even directed to Chamberlain.

A steel plant is not a church. Salty language alone, without an element of personal insult or slander, is not a basis for discipline.

The Company interprets Mattson's further statement that he had to get out of the conversation before he did something that gets him fired as a threat. It was the exact opposite. Mattson was telling Chamberlain that he recognized he was angry, and that he needed to end the discussion before he did something foolish. Mattson was not telling Chamberlain that he intended to harm him; he was telling Chamberlain that he intended *not* to harm him.

Mattson's words to Chamberlain, and the fellow employee, and his conduct in bolting out the door, do not constitute threats, personal abuse, or insubordination. They do not constitute just cause for the imposition of any discipline whatsoever.

When Mattson exited the blue building, he pushed open the door violently, causing it to slam into the tool box. The door opens outward toward the toolbox. It is not a door that swings in both directions. A photograph of the outside of the door shows at least four and perhaps as many as nine injuries to the door, most likely all caused by other employees opening the door too forcefully, exactly as Mattson did. I strongly doubt that all this damage was caused by Mattson on February 2. Rather, I find it much more probable, in keeping with the testimony of other employees, that most of these dents and scrapes predated Mattson's exit on February 2 and that Mattson accounted for no more than one of the dents.

The door remains perfectly functional, and although the Company obtained a replacement estimate, it had not repaired or replaced the door after its prior mishaps, and there is no reason to expect that it will ever do

so, since as of the time of the arbitration hearing no arrangements had been made for repair or replacement of the door, and in the interim dozens of people continued to use the door on a daily basis.

To call any damage to the door “vandalism” amounts to a gross exaggeration. Vandalism, according to my dictionary, is “mischievous or malicious destruction or damage to property.” Vandalism implies an element of intent or willfulness. There was nothing intentional or willful in any damage Mattson inflicted on the door on February 2. His only intent was to make a quick getaway from Chamberlain; he certainly entertained no ill will toward the door.

At worst, Mattson’s action was careless or negligent, but not an act of vandalism. As such it would not support the imposition of any discipline beyond a warning. I note in this regard that there is no evidence that any other employee was ever disciplined for inflicting damage on the door.

I turn next to the events of January 14 and January 18. I discuss them by topic rather than date.

The Company claims that Mattson committed what it calls theft of time on both dates. I conclude that the evidence substantiates the allegation only with respect to January 14.

By the Company’s calculation (Employer Exhibit 9) Mattson was in the blue building which houses the break room for a total of 4 hours and 51 minutes during the afternoon shift on January 14. I have confirmed the accuracy of the Company’s calculation, although I have not attempted to compare the Company’s summary of the times on the Exhibit against the video. There is also the question of the anomaly suggested by the notation on the Exhibit that the camera footage starts at 2:26 p.m. Even discarding the first segment on the basis of that possible glitch, Grievant Mattson apparently spent at least 2 hours and 57 minutes of the shift inside the building. This is sufficient to meet the Company’s burden of proof on this point.

The burden therefore shifts to the Union and the Grievant to explain what he was doing for such a large portion of the day. Lunch and breaks would explain only a portion of the total, and it fell on the Grievant to explain his apparent idleness on that day. He failed to do so.

As to January 18, the undisputed evidence is that Mattson was one of the two employees on the whistle during this shift. According not only to Mattson but other employees as well, of the two employees on the whistle one is essentially on call or standby waiting for radio calls of breakdowns, while the other employee ranges through the plant doing fluid checks and preventive maintenance. This employee may be out of radio range. The first employee has no assigned location, and there is no prohibition against him/her parking in the break room. Based on this evidence, I conclude that the Union has adequately explained the apparent discrepancy of Mattson spending 5 hours and 39 minutes (here again I have checked the accuracy of the Company’s calculation) inside the blue building, presumably within the break room.

The Company relies on an answer by employee Luke Patzek that an employee on the whistle can always find something to do. Patzek may well have been speaking about the second whistle employee who goes about performing preventive maintenance while his partner waits for radio calls. I find no malfeasance by Grievant with respect to January 18.

With respect to the allegation of failure to wear proper PPE, I again find that the Company has satisfied its burden of proof in part.

As to the welding of galvanized metal without a respiration hood, Mattson denied having been given any special training about welding galvanized metals. The Company has not demonstrated the contrary. To the extent the Company asserts that Mattson violated PPE protocol when welding galvanized metal, I find that it has not proven its case.

As to Mattson's failure to wear a hard hat on January 14, the video evidence demonstrates him walking briefly on the shop floor without a hard hat. The Company acknowledged however that employees at times do forget to wear helmets.

Mattson committed a much more serious infraction, in my judgment, on January 18 by repeatedly walking back and forth wearing what appears to be an ordinary shirt as distinguished from the orange and yellow PPE shirts worn by other employees. Mattson's assertion that he was told that he did not need to wear the orange and yellow shirt if he was not performing physical labor is unavailing. Mattson provided no details as to who gave him this dispensation or when. The proposition that any supervisor or manager would authorize an employee to forgo the use of PPE seems to me beyond dubious. If as the Grievant contends, wearing the orange and yellow shirts was conditioned on what the individual was doing, the video would show other employees in street clothes, but it does not.

The second "P" in PPE stands for protective, but in the case of the orange and yellow shirts it could also stand for preventive. These PPE shirts protect employees from burns, but they also make employees highly visible to co-workers so as to avoid injuries as materials are being moved throughout the plant.

As to this PPE incident, I find that Mattson committed multiple willful PPE violations on January 18.

To recapitulate my findings, I have found that the Company has not established that Mattson engaged in insubordination, threats or other misconduct during his contentious conversation with Manager Chamberlain on February 2; it has not shown that Mattson engaged in theft of time on January 18 when he was on the whistle; it has not shown that Mattson violated a PPE requirement for respiratory protection of which he should have been aware on January 18. I have found that the Company has established that Mattson committed the following acts of misconduct: carelessly denting the door on February 2; failing to wear a hard hat on January 14; spending at least 2 hours and 57 minutes and perhaps as much as 4 hours and 51 minutes inside the blue building on January 14, apparently performing no useful work; and deliberately ignoring the PPE requirement to wear the orange and yellow shirt on January 18.

I regard the first two transgressions mentioned above as relatively minor misconduct, warranting only minor discipline. Both appear to involve carelessness: not being mindful that the door swings freely as one witness described it, and not remembering to wear his hard hat. Mattson wears a hard hat most of the time, and I interpret his failure to do so on January 14 to forgetfulness rather than deliberate disregard of the PPE requirements.

The same does not apply to the failure to wear the PPE orange and yellow shirt on January 18. Mattson's attempt to explain this failure by claiming that someone told him he did not have to wear the orange and yellow shirt (which I do not accept) shows that he decided not to wear the PPE shirt, rather than that he forgot to put on the PPE shirt. This amounts to a much more serious PPE violation than the neglect to put on a hard hat on January 14.

On January 14 Mattson spent hours in the lunch room, or at least somewhere inside the blue building, during which time he apparently performed no useful work. The Company characterizes this as theft of time and points to a prior decision of my own in which I upheld the termination of a long term employee who punched in, then drove off in his car, returned at the end of the shift and punched out.

The phrase “theft of time,” which has become popular in management circles in recent years, is a broad one and can cover a wide range of behaviors. These range from what used to be called loafing, to an employee dozing off at his/her work station, to an employee reporting to work and then finding a hiding place to sleep through the shift, to “ghosting” as the employee did in my prior case. The latter two examples involve deliberate, premeditated plans to obtain pay for no work; the former two examples do not.

The classic case of loafing is usually addressed by a supervisor telling the employee to get back to work, perhaps with an official reprimand or warning, the first step of progressive discipline. If the employee becomes a habitual loafer, the employee will progress through the progressive discipline regimen.

Mattson’s action, or more accurately inaction, on January 14 has not been shown to amount to anything more nefarious than loafing. Still, this is a lot of loafing for one day. Nonetheless, Mattson has not been shown to be a serial loafer: he has no prior discipline of record for loafing or anything else.

To summarize the above, Grievant Mattson committed two minor offenses: careless disregard for the door (which caused slight damage not deemed worthy of repair by the Company); and forgetting his hard hat, which other employees have also been guilty of. He committed two serious offenses: deliberate disregard of the orange and yellow shirt PPE requirement, and what might be characterized as aggravated loafing.

The Company’s Rules of Conduct & Major Company Policies provide for “disciplinary action ranging from a written warning to discharge from the Company depending on the seriousness of the offense, the employee’s record with the Company and other related factors,” with a list 37 offenses. A few of these specify suspension subject to discharge for a first offense: stealing [#7], possession or being under the influence of alcohol or drugs [#11, #12, #31], fighting [#32], weapons [#13], violation of Company EEO policy [#35]. The others would be addressed through progressive discipline. (See footnote 1 of the Rules of Conduct.) Of the rules providing for discharge upon a first offense, the only one arguably applicable to Grievant Mattson is the first. But stealing or theft involves a component of intent or willfulness, which has not been established here.

Among the infractions listed in the Rules of Conduct & Major Company Policies not calling for suspension subject to discharge for a first offense are “Neglect or carelessness resulting in damage to equipment or plant property; willful neglect in care or use of Company property; defacing or marking buildings, locker rooms, or any plant property with chalk, paint, or any other substance” [#6], “Failure to stay on the job in your department or assigned place of duty during working hours” [#10], “Deliberately restricting production or persuading others to do so, loafing on the job or in the locker or rest rooms” [#16], and “Sleeping or assuming the attitude of sleep while on Company property, or while on Company business off Company property” [#17].

Mattson’s minor damage to the door fits under Rule #6. His loafing on January 14 seems more appropriately characterized as failure to stay on the job in his department [#10] or loafing [#16] rather than as stealing or theft [#7], and of comparable seriousness to sleeping on the job [#17]. In both cases the Rules of Conduct

call for the application of progressive discipline rather than termination for a first offense, as specified in footnote 1 of the Rules of Conduct.

The Rules of Conduct do not explicitly address use of PPE, but a separate notice, quoted earlier in this decision, provides for “corrective action up to and including discharge from the Company” for PPE violations. I have found that Mattson committed two PPE violations, one more serious than the other.

But no instance has been called to my attention in which any employee has been terminated for even a serious PPE violation. Likewise the record does not indicate that any employee has been terminated for loafing or careless damage to Company property.

I do not find that any one of the four acts of misconduct proven by the Company would warrant termination for a long service employee with no prior discipline. Further, while each of these incidents would warrant the application of some discipline, combining separate transgressions, none of which would call for termination of itself, to support termination, without affording progressive discipline the opportunity to achieve its corrective purpose, seems to me unwarranted.

This case is complicated by the fact that it aggregates several infractions of different types, discovered by the Company during the course of one investigation. Had the events occurred on multiple occasions and come to the Company’s attention separately, the Company presumably would have addressed each through progressive discipline, likely with enhanced discipline for the second (and more serious) PPE violation.

While I conclude that the misconduct proven by the Company is insufficient to support the termination of a long term employee with no prior discipline, there is just cause for the imposition of lesser discipline. There is no guideline to determine what that discipline should be but I nonetheless have the responsibility to decide what discipline is appropriate under all the circumstances, including the number and seriousness of transgressions shown, the Grievant’s length of service and his prior record. Under all the circumstances, I conclude that his termination should be abrogated and reduced to a disciplinary suspension of 30 work days.

Accordingly, I shall sustain the grievance in part.

Award

The grievance is sustained in part. The termination of Grievant Stephen Mattson is abrogated and modified to a disciplinary suspension of 30 work days. The Company shall reinstate Grievant Mattson with no loss of seniority and shall make him whole for economic losses suffered. Jurisdiction is retained for the limited purpose of resolving any disputes that may arise in connection with the implementation of this remedy.

Issued August 5, 2023

Matthew M. Franchewing