IN THE MATTER OF THE ARBITRATION BETWEEN

CLEVELAND-CLIFFS LLC
CLEVELAND WORKS

And

Grievance #2036
Fredricka Davis Discharge

UNITED STEELWORKERS
INTERNATIONAL UNION AND
LOCAL UNION 979

Case 144

OPINION AND AWARD

Background

This case from the Cleveland Works concerns the discharge of Grievant Fredricka Davis for stealing time. Grievant had worked for the Company (or its predecessors) for about 12 years at the time of her discharge on October 13, 2023. The case was tried in the Union's offices in Cleveland on December 13, 2023. Susan Bungard represented the Company and James H. Walker, Jr. presented the case for Grievant and the Union. Grievant was present throughout the hearing and testified in her own behalf. The parties agreed there were no procedural arbitrability issues and that the issue on the merits is whether there was just cause for discharge and, if not, what the remedy should be. The parties submitted the case on closing arguments.

Grievant had worked in iron producing for about 11 years and was a labor grade 3 Operating Technician. In early January 2023, she accepted an open bid in waste water treatment (WWT), which apparently involved a decrease to labor grade 1 during her training period. Although she began working in WWT in January, Grievant was not fully trained by July and August of 2023, which is when the events that gave rise to this case occurred. By July of 2023,

Grievant was working WWT in the steel producing area. Both sides acknowledge that employees in WWT were allowed to work open overtime, which I understood to mean that they did not have to be called in or assigned to overtime and did not have to report for a specific project. In Grievant's case, she could simply clock in early and work overtime hours.

The Company says it began to suspect the honesty of Grievant's overtime claims sometime in July of 2023. A member of WWT management questioned Grievant's claim that she had worked over 15 overtime hours in a particular week because he had not seen her there during the hours in question. Ultimately, the Company believed there were seven or eight days on which Grievant had clocked in four hours early, and had then been seen either sitting in her car and not working or leaving the plant in her car after clocking in. Grievant claimed her husband dropped her off on some of those days and, because the Company could not be certain who drove the car out of the plant after Grievant clocked in, it eliminated several of the days. There is no real contention that Grievant actually performed any work on those eliminated days, despite having clocked in early. However, the Company's case apparently started as a claim that Grievant clocked in and then left the property, so initially it did not pursue days in which it could not establish that Grievant was away from the premises. Ultimately, the Company claims that Grievant clocked in to work overtime on July 17, August 2, August 3, and August 21, but did not work, and did not report to her department.

The Company, through the testimony of Section Manager of Labor Relations Michelle Hattendorf and supplemented by workplace video, pictures, and exhibits, explained its contention that Grievant had been present in the workplace, but had done no work. There is no dispute that Grievant clocked in early on each of the days in question, generally around 2 p.m.,

when her regular shift would have started at around 6 p.m.[1] There is also no dispute that after clocking in, Grievant went to her old locker room in the iron producing area because the Company had not yet assigned her a locker in the steel producing area. The parties do not disagree that on July 17, August 2, and August 3, Grievant sat in her car for extended periods of time because she was trying to avoid ZT, a supervisor she did not like and whom she believed did not like her. Grievant admitted in arbitration that she did not tell ZT that she had arrived for work or clocked in, that she stayed away from the lab area in order to avoid him, that she sat in her car to stay away from him, and that she sometimes moved her car for the same reason.

On July 17, Grievant clocked in just before 2 p.m. A Union representative picked her up and she attended a meeting with someone from the Company that lasted about 45 minutes. The video shows her car leaving after she returned from the meeting, but Grievant said she was going to her locker in the iron producing area. However, there is no dispute that she did not report to her work area until around 5:30, and management said no one there had seen her until that time. Grievant claimed four hours of overtime for July 17. On August 2, Grievant clocked in at 1:28 p.m., but she did not report to her work area until 5:30 or 6 p.m., after ZT left work. According to Hattendorf, in interviews prior to her discharge, Grievant said she waited until ZT left before she reported. She also said in the interviews that she had not performed any work prior to reporting to her area. Grievant claimed four hours of overtime for August 2.

On August 3, Grievant clocked in at 1:35, but did not report to her work area until about 5:30. The video shows her sitting in her car and moving it from one location to another. According to Hattendorf, during her interviews Grievant admitted that she did no work on August 3 and that she did not report until after ZT had left for the day. She claimed four hours of

[1] The regular shift apparently begins at 6 p.m., but employees have a practice of relieving each other early.

overtime for August 3. On August 21, Grievant clocked in at 3:03 p.m. Hattendorf said she noticed that Grievant had clocked in, so she called WWT management to see if Grievant was there; she was not. The bargaining unit employee who answered the phone said Grievant did not come in until 6 p.m. Grievant claimed three hours of overtime pay for August 21. The Company suspended Grievant with intent to discharge by letter dated August 22, 2023. It converted the suspension to discharge on October 13, 2023 and denied the Union's request to allow Justice and Dignity under Article 5-I-9-b.

On cross examination, the Union asked Hattendorf how she knew Grievant did not perform any work on August 3. Hattendorf said the video of Grievant sitting in her car doing nothing was three hours long and Grievant did not perform any work during that time. She also said Grievant's coworkers told her Grievant did not perform any work until 5:30 p.m. Hattendorf said when she called the lab on August 21 to ask for Grievant, whoever answered put her on a speaker phone. The employee who answered the phone told her Grievant was not there and no one else in the room disagreed. Hattendorf acknowledged that during the investigation one coworker said he had a text message from Grievant at 3:32 on August 21 telling him she was downstairs. Hattendorf said she could not confirm that the message on the employee's phone came from Grievant's phone. She also said that employee was in the room during her call to the lab and did not say anything about having a text from Grievant.

The Union called Chris Pirro, the Zone 7 Grievance Committeeman. He said other employees had had issues with ZT. They complained that he talked to them like they were kids, talked down to them, and did not listen to them. During one grievance meeting, Pirro said, ZT ignored him and worked on his computer. He talked down to Pirro and was condescending. Pirro said he spoke to ZT's superior about his behavior. The manager said he would look into it.

Pirro also said that employees in WWT do not report to their manager when they arrive for work. On cross examination, Pirro said he did not know about specific incidents between Grievant and ZT. He also said he did not know of other employees who sat in their cars on working time waiting for ZT to leave the premises.

Grievant testified that she worked a lot of overtime because she needed the money due to the wage reduction while she was still in training. She said no one warned her about leaving the work area, although she said she left the area only to go to her locker in iron producing. Grievant testified that ZT did not treat her with respect, that he claimed to watch her work on camera, and that she sat in her car to avoid him. She said she had reported ZT to one of his superiors. She also said when she arrived each day, she texted coworkers that she was present and in her car. She said she sometimes performed work assignments when WWT employees notified her while she was sitting in her car. This was no different, she said, than sitting in the break room waiting for an assignment, which she sometimes did when there was downtime. Grievant said no one ever told her she wasn't allowed to sit in her car and wait for a work assignment. On cross examination, Grievant said she did not text coworkers on July 17, but that she did on August 2 and 3 and that she texted an employee named Patrick on August 21. She said she could not remember who she texted on August 2 or 3. She also said that she "now" has the cell numbers of her coworkers. She agreed there were times when she arrived, clocked in, and then performed no work until after ZT left.

Positions of the Parties

The Company argues that the only issue in the case is whether Grievant stole time. If she did, the Company says there should be no question that it had just cause for discharge. The

evidence shows, the Company insists, that Grievant deliberately sat in her car and avoided working while she was on the clock accruing overtime pay. Thus, the company argues that the grievance should be denied.

The Union agrees that Grievant sometimes sat in her car and did not perform work. But it notes that she was not fully trained and was not qualified to fill a vacancy. It also claims that if Grievant had been trying to hide, she would not have sat in her car in plain view. The Union notes that Grievant had 12 years of service and was given no progressive discipline.

Findings and Discussion

The Union says, correctly, that the Company has the burden of proving Grievant stole time. The Company presented evidence that Grievant clocked in for overtime on four separate days when she sat in her car (or, maybe elsewhere) to avoid contact with management until her normal reporting time of between 5:30 and 6 p.m. Grievant admitted sitting in her car and seeking to avoid any contact with manager ZT. The Company also presented evidence that on most of those days, employees said they did not know Grievant was at work. There was also testimony that Grievant told Company investigators she had not performed any work on the days at issue.

Grievant claimed that on each day, she texted or otherwise informed coworkers that she was present, was available for work, and could be found in her car. The problem is that Grievant could not identify anyone she contacted other than an employee named Patrick, who she said she texted on August 21. Hattendorf testified that the Company could not verify any text to Patrick from Grievant's phone prior to the arbitration hearing. At the hearing, Grievant did not reveal a text to Patrick on August 21, and she did not display any texts to any other employees on July

17, August 2, or August 3. She said she might be able to do so if she examined her phone. But the arbitration hearing had been scheduled for weeks and she surely understood that the hearing was her opportunity to submit whatever evidence she had. She also said that she knew the phone numbers of her coworkers "now," with an emphasis on that word. This suggests that she may not have known the numbers in July and August. Nor did the Union call any of Grievant's coworkers – including Patrick – to testify that they received a text from her or otherwise knew she was on site and available for assignments.

In these circumstances, I cannot accept Grievant's claim that she informed her coworkers she was present and available for work or that she actually performed any work on the August 2, 3 or 21. Obviously, someone knew Grievant was on site on July 17 because a Union representative picked her up and took her to a meeting with management. It may be that after the meeting, Grievant just sat in her car for several hours without informing anyone in WWT that she was present and available. Nevertheless, I am willing to give her the benefit of the doubt for that day. But there are still three days when Grievant signed in and accepted pay at the overtime rate even though she avoided telling anyone that she was available and on-the-clock, and even though she admitted that her subterfuge was a scheme to avoid seeing a manager.

The Union argues that Grievant's conduct was understandable because she had a bad relationship with ZT, who treated her poorly. I believed Pirro's testimony that he met with ZT's superior over the issue, and it may be that Grievant also complained to management about ZT. But if ZT treated her so badly that she had to avoid him, it is hard to understand why she did not file a grievance or a harassment complaint against him. She could also have avoided working overtime when ZT was on site, since his schedule apparently did not overlap with her regular assignment. I understand that Grievant had taken a pay cut and needed money. But she was the

one who made the decision to transfer to WWT; the Company did not move her involuntarily. She could not make up the reduction in income by clocking in and then getting paid for doing nothing until ZT left the building.

I also understand Grievant's claim that there were times when she was in her work area waiting for assignments, but was given nothing to do. It is not uncommon for workers to experience downtime of one kind or another. But that is not what happened here. Grievant wasn't sitting in her car waiting for an assignment that never came. She was sitting in her car getting paid and avoiding any assignment that might become available. There is no merit to the Union's argument that Grievant did not work because she was not fully trained. She could have supplemented her training by actually reporting for her overtime shifts and observing or assisting other employees. She was not likely to learn anything useful sitting in her car. There is also no defense in the Union's claim that ZT was improperly using the video system to watch Grievant work. If that was the case, the proper response was a grievance, not accepting pay to avoid work. And, finally, there is no merit in the Union's argument that the Company tried to change the open overtime system after it had already discharged Grievant. That neither explains nor justifies Grievant's conduct.

The Union argues that Grievant should have been given progressive discipline, especially given her 12 years of service. But other industry arbitrators have recognized that theft often justifies stern discipline, even among long-service employees. See e.g. USS-44,855. Employers have the right to expect that employees will not steal from them. Grievant's conduct in this case was particularly harsh. She not only schemed to accrue pay for not working, she accepted premium pay for sitting in her car and smoking cigarettes and avoiding work assignments. This

was such an egregious breach of trust that I am unable to conclude the Company lacked just cause for discharge.

I do not understand the Union's claim that Grievant should have been paid under the Justice and Dignity language of the Agreement. Such continued work opportunities do not extend to all discharged employees. In particular, Article 5-I-b-(2) says expressly that "This Paragraph will not apply to cases involving offenses which endanger the safety of employees or the plant ...[or] theft...." This was a case of theft; Grievant deliberately accepted money for not working, which she knew she was not entitled to. She was not eligible for Justice and Dignity under the plain terms of the Agreement. Thus, the grievance will be denied.

AWARD

The grievance is denied.

Terry A. Bethel

Terry A. Bethel, Arbitrator
January 3, 2024