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 1011	)	Case 146

Richard Samson, Esq. & Hilarie Carhill, Esq., for the Employer
Jacob Cole, for the Union
Before Matthew M. Franckiewicz, Arbitrator

OPINION AND AWARD

This arbitration proceeding involves the discharge of Grievant James Hillegonds.

A hearing was held on April 12 and May 16, 2024 in East Chicago, Indiana. Both Parties examined and cross examined witnesses and provided documentary evidence. The Parties offered their summations at the close of the hearing. The Parties agreed to waive the requirement for a decision within 48 hours (see Article Five Section I (8) (a) (5) of the Basic Labor Agreement), and agreed that I would have 30 days to issue a decision including a full opinion.

Contract Provisions Involved

ARTICLE FIVE - WORKPLACE PROCEDURES

Section I. Adjustment of Grievances

1. Purpose

Should any differences arise between the Company and the Union as to the interpretation or application of, or compliance with, the provisions of this or any other Agreement between the Company and the Union, prompt and earnest efforts shall be made to settle them under the following provisions.

3. Grievance Procedure

* * *

b. Step 2 - Written

(1) In order to be considered further, a grievance shall be appealed by the Grievance Chair to the head of the grievant's department within five (5) days of receipt of the Step 1 written record.

(2) Such grievance shall be discussed within five (5) days at a meeting with the grievant, the involved Grievance Committeeman, the Grievance Chair, the grievant's supervisor and the involved department head. Management may call any non-represented employee as a witness to provide testimony and/or evidence to the meeting. The Union may call any USW represented Employee as a witness to provide testimony and/or evidence to the meeting.

(3) In Bargaining Unit Work or safety grievances, a representative of the relevant committee shall also be present.

(4) The department head shall provide the Grievance Chair with a written response (the Step 2 Answer) to the grievance within three (3) days of the Step 2 meeting.

(5) Unless the Grievance Chair informs the department head in writing that the grievance is settled or withdrawn on the basis of the Step 2 Answer, the Company shall, within five (5) days of providing the Step 2 Answer, provide the Grievance Chair with Step 2 minutes for the grievance which shall include: the date and place of the meeting; names and positions of those present; the number and description of the grievance discussed; background information and facts; a statement of the Union's position as understood by the Company; and a statement of the Company's position including its response to all claims, points of evidence, testimony and arguments presented by the Union as well as Company testimony and evidence, including past grievances and/or arbitration awards and the decision reached.

(6) If the Grievance Chair disagrees with the accuracy of the minutes, s/he shall submit a signed written response to the Company within five (5) days of the receipt of the Step 2 minutes.

(7) The Company shall send a copy of its version of the Step 2 minutes and any Union response to the designated representative of the International Union (the International Rep) and the Grievance Chair immediately upon its receipt of the Union response.

c. Step 3 - Written

(1) The International Rep shall send a written appeal of a Step 2 Answer to the Plant General Manager (the Company Step 3 Rep) within five (5) days of the receipt of the Step 2 Minutes.

(2) The International Rep, the Grievance Chair and the Company Step 3 Rep shall meet at a mutually acceptable time within ten (10) days of the Company's receipt of the International Rep's appeal.

(3) Grievances discussed at such meeting shall be answered in writing and sent to the International Rep within five (5) days after such meeting.

(4) The International Rep may appeal a grievance to arbitration by sending a written notice to the Board of Arbitration and the Company Step 3 Rep within ten (10) days of the Union's receipt of the Step 3 written answer.

4. General Provisions

c. At each Step of the grievance procedure the parties shall provide a full and detailed statement of the facts and provisions of the Agreement relied upon and the grieving party shall provide the remedy sought. Facts, provisions or remedies not disclosed at or prior to Step 3 of the grievance procedure may not be presented in arbitration.

j. If, for any reason, the time limits specified in Paragraph 3 above for:

(1) meetings between the parties are not met, the grievance shall be considered denied as of the last day within the time limit for such meeting and the appropriate Union representative shall have the right to move the grievance to the next step;

(2) the Union to act are not met, the grievance shall be considered withdrawn; or

(3) the Company to act are not met, then the grievance shall be considered granted with the requested appropriate contractual remedy to the grieving party.

8. Rules for Hearings

a. The parties agree that the prompt resolution of cases brought to arbitration is of the highest importance. Therefore, except as provided in paragraph 8(b) below, arbitration hearings shall be heard in accordance with the following rules:

(1) the hearing shall be informal;

(2) no briefs shall be filed or transcripts made;

(3) there shall be no formal evidence rules;

(4) the arbitrator shall have the obligation of assuring that the hearing is, in all respects, fair;

(5) the arbitrator shall issue a decision no later than two (2) days after the conclusion of the hearing. The decision shall include a brief written explanation of the basis for the conclusion; and

(6) the board shall adopt such other rules as it deems necessary.

c. The Company agrees that it shall not, in an arbitration proceeding subpoena or call as a witness any bargaining unit Employee or retiree. The Union agrees not to subpoena or call as a witness in such proceedings any non-bargaining unit employee or retiree.

9. Suspension and Discharge Cases

a. No Peremptory Discharge

(1) Before imposing a discharge (which must be in accordance with Paragraph 9(b) below) the Company shall give written notice of its intent to the affected Employee and the Grievance Chair.

(2) Where the Union files a grievance protesting such intended discharge within five (5) days of receipt of the notice, the Company may impose no more than a suspension (which must be in accordance with Paragraph 9(b) below) on such Employee prior to completing the procedure referred to in Paragraph 3 below.

(3) The grievance protesting the intended discharge shall be filed at Step 2 of the grievance procedure and the Step 2 Answer shall be given prior to the Company converting the suspension to a discharge. At the Step 2 meeting the Company shall provide a written statement fully detailing all of the facts and circumstances supporting its proposed disciplinary action.

(4) In the event the Company does convert the suspension to a discharge, the action shall be treated as a denial of the grievance at Step 2 and the Union may thereupon move the case through the balance of the grievance procedure.

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; acts of workplace harassment; threatening bodily harm to, and/or striking another employee; theft; or activities prohibited by Article Five, Section K (Prohibition on Strikes and Lockouts).

(3) When an Employee is retained pursuant to this procedure and the Employee's discharge or suspension is finally held to be for just cause, the removal of the Employee from the active rolls shall be effective for all purposes as of the final resolution of the grievance.

(4) When a discharged Employee is retained at work pursuant to this provision and is discharged again for a second dischargeable offense, the Employee will no longer be eligible to be retained at work under these provisions.

e. Should the arbitrator determine that an Employee has been suspended or discharged without just cause, the arbitrator shall have the authority to modify the discipline and fashion a remedy warranted by the facts.

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.

The Facts

Background

The Company's Indiana Harbor Works is an enormous complex in Northwest Indiana. It consists primarily of two steel making operations, 3SP (also called the West Side) and 4SP (also called the East Side). SP stands for steel producing. Bargaining unit employees at 3SP are represented by United Steelworkers Local 1011. Bargaining unit employees at 4SP are represented by United Steelworkers Local 1010.

Although there is common ownership and upper level management for 3SP and 4SP, the two function largely as separate entities. Budgeting and purchasing at each are handled separately. There are some exceptions to this system of independent operation, for example on occasion some employees from 3SP have worked temporarily at 4SP, but on a day to day basis, it seems fair to say that the right hand does not know what the left hand is doing. According to Grievant James Hillegonds, he and 3SP Engineer Dan Brown helped with some scales at 4SP.

This case focuses on the system for pre-heating ladles. The ladles are large vessels that hold and transport molten steel. It is important for a ladle to be pre-heated before steel is poured into it, for if the ladle were at room temperature, the steel would cool rapidly as heat transferred from the molten steel to the ladle. On the other hand, maintaining the ladles at a constant temperature would waste energy.

The control system for ladle pre-heating at 3SP is largely the creation of Grievant James Hillegonds.

Grievant Hillegonds has worked for Cleveland-Cliffs (or a predecessor) for about 15 years. His classification is Maintenance Technician Electrical (MTE). Hillegonds began work for the Company while he was still a student at Purdue University. He holds a degree in Electrical Engineering from Purdue. As I understand it, most MTE's for the Company are involved in maintenance, troubleshooting and repair of electrical equipment. By contrast Hillegonds' work seems more in the nature of software engineering or electrical engineering, and he has an office of his own, and apparently works largely independently and with minimal supervision. Prior to his termination, which is the subject of the current arbitration, he had no prior discipline with the Company.

The ladle pre-heat system at 3SP is a remote control system, so that the operator does not need to adjust controls at the ladle itself, but from a distance. For present purposes the two most important components of the system are the Programmable Logic Controller or PLC, sometimes called the brains of the system, which houses the hardware and memory for the software instructions, and the Panel View, which is a touch screen resembling an iPad, which is the human interface for the system. An Operator can see information about the system on the Panel View, and can direct the operation of the ladle preheater by touching the appropriate boxes on the Panel View.

During the relevant time frame, which spans 2022 through 2024, the ladle preheater control system at 3SP was in place and fully functional. 4SP was in the process of acquiring a new control system for the ladle pre heater. Presumably some form of ladle preheater system had been in place at 4SP, but the pre-existing system is not material to the current case.

The new system at 4SP was being provided under a contract between 4SP and FRC. Various subcontractors or entities were involved in the design and production of the Ladle preheater control system, including FRC,

FedMet, Belmont, Steele Services LLC, and an individual named John Steele. For present purposes it does not matter which particular entity was responsible for any phase of the transaction, and I will refer to the contractor as Belmont. In the narration below, various acts by John Steele (who did not testify at the arbitration hearing) are discussed, and it is immaterial whether Steele was acting on his own behalf or one of the named entities, since in any case Steele was not an employee of Cleveland-Cliffs.

Belmont ultimately installed a Panel View and PLC at 4SP.

Belmont's price for the Panel View and programming was just under $5,000.00. (See Employer Exhibit 16, dated March 8, 2023 and including a requisition for a replacement Panel View dated April 4, 2023.) The price for the entire preheater system, including burners, PLC and Panel View, was nearly $50,000.00. (See Employer Exhibit 17, dated March 3, 2022.)

Factual History

Some time prior to April 2023 3SP Senior Engineer Dan Brown (not a member of the bargaining unit) saw a blueprint for a ladle preheater system on Hillegonds' printer with the name NLMK (a competitor to Cleveland-Cliffs) and asked Hillegonds about it. Hillegonds told Brown he was just looking at it. An NLMK blueprint (from Hillegonds' laptop similar to the hard copy Brown had seen on Hillegonds' printer) is captioned "Belsteele Preheater Control" and includes a Belmont logo.

In April 2023 Brown on several instances noticed files which included the name Belmont on the computer that Hillegonds used, and his report led the Company to undertake an extensive forensic investigation, overseen by (then) Senior Labor Relations Representative Alisha Watts.

The forensic investigation entailed identifying files on Hillegonds' Engineering Desktop computer in the office Hillegonds used, and on the Basic Oxygen Furnace (BOF) laptop that Hillegonds used, as well as comparing these files with files on the ladle preheat system at 4SP. These two computers can connect to a PLC with an Ethernet connector. At some point around April 2023 the Company confiscated Hillegonds' laptop.

The forensic investigation examined tens of thousands of files on the two computers. It revealed (Employer Exhibits 5 and 8) several folders with names beginning "Belmont_Preheater." The modified dates for these folders ranged from November 22, 2022 through April 11, 2023. Hillegonds' payroll records (Employer Exhibit 10) show that Hillegonds was clocked in at the times files were created or modified.

The investigation revealed PLC program comparison files on Hillegonds' computers at 3SP and files with identical names on the 4SP PLC (Employer Exhibit 6). The file content on both were nearly although not quite identical. Some files were under folders with the name "Belmont_Ladle_Preheater." As Alisha Watts characterized, the software for the 3SP ladle controller was the basis for what ended up at 4SP. Time stamps on files indicated that they were modified at times when Hillegonds was on the clock.

Hundreds of files with Belmont in the filenames were in Hillegonds' computer recycle bin. (Employer Exhibit 7).

Some files on Hillegonds' desktop or laptop at 3SP for the Panel View included both Cleveland-Cliffs and Belmont logos. (See e.g. Employer Exhibit 9, pages 32, 42, 54, 68.) The obvious conclusion is that files generating the Panel View display seen by Operators at 4SP were in fact created at 3SP on Hillegonds' computers. Of course there would be no reason for a Belmont logo to appear on the Panel View in use at 3SP.

On October 19, 2023, in the presence of Union representation, the Company interviewed Hillegonds and questioned him about his activities relating to the production of the PLC and Panel View for 4SP, and Hillegonds essentially denied everything. He denied working with Belmont and claimed to have known John Steele but denied consulting with him regarding the preheater. He said that Steele had asked him to look at a blueprint and gave him a thumb drive and asked for his advice and he looked at the files on breaks or at the end of his shift, but did not edit them. He acknowledged using Company software, but only to view files and not to edit them. He denied knowing where Steele intended to use the files. It is now undisputed that Hillegonds' responses were false. (The findings in this paragraph are based on the credited testimony of Alisha Watts.)

James Hillegonds testified that he was recruited while a student at Purdue to perform instrumentation and process automation. Although his classification was MTE, his work was not that of a typical MTE. He stated that he worked with contractors, helping with equipment they brought or the Company leased, and that his work in this respect included programming and instrumentation. Sometimes Management asked him to assist a contractor and sometimes contractors approached him on their own. He characterized his work as self-directed and not subject to daily assignments. He had remote access from home via a laptop to the mill and performed troubleshooting at all hours.

Hillegonds testified that he knew John Steele as a business partner for about 15 years. He might encounter Steele weekly, or not at all for a while.

Hillegonds stated that Steele approached him with questions about a preheater for NLMK. According to Hillegonds, Steele asked him to look over some prints and see if they looked feasible and if it complied with National Fire Prevention Association (NFPA) code, and he advised Steele what was needed to meet NFPA standards and said the prints looked okay and did not provide any proprietary information. He recognized Employer Exhibit 4, an NLMK blueprint with the name Belmont on it with the notation "Approved JH" but stated that he did not make changes on the document and that nothing on it is proprietary. Hillegonds denied using a Company laptop or programs in connection with the NLMK blueprint and asserted that he took the print home and worked on it there, and checked the NFPA standards online.

Engineer Dan Brown saw the blueprint on the printer and asked what Hillegonds was doing with it. He responded that he was just looking it over for Steele. Brown said he can't work on something for another company, and he replied that he was just looking over blueprints and was not doing so for money.

With respect to the ladle preheater for 4SP, Hillegonds stated that Steele came to him and said he had a purchase order with 4SP and was having trouble starting the furnace at 4SP. He estimated that this was around October 2022. Hillegonds was able to diagnose that the burner at 4SP was binary, either on or off, rather than adjustable, comparable to a home furnace versus a gas stove.

Steele told Hillegonds that as part of his purchase order at 4SP, he wanted to craft a graphical display so that the operator could troubleshoot and select options, and Hillegonds assisted.

He denied giving any hardware to Steele but acknowledged that he provided Steele with software, the Panel View application. He recognized from his termination letter that the Company believed he had stolen a Panel View, and he specifically denied doing so. He stated that he redesigned the application for the Panel View and that he provided only software, not hardware, to Steele. He stated that at one point Steele had a Panel View for 4SP in a box, and he discussed briefly with Dan Brown that this was not Cleveland-Cliffs equipment.

He stated that he developed the Panel View application for Steele to use with the 4SP hardware. In response to a question why he did so, Hillegonds replied that it was for Cleveland-Cliffs and he did not think he was doing anything wrong. He acknowledged working on the software on work hours but said that he did so during lunch or near the end of his shift and that it did not affect his job responsibilities. He said that he worked on the project in bits and pieces, sometimes as little as 5 minutes in a day. He estimated that in the aggregate he spent about 8 - 10 hours on this project.

Hillegonds used the 3SP Panel View interface as the basis for that at 4SP and tried to standardize them while at the same time redesigning for 4SP. He gave Steele the programming for the PLC and Panel View for 4SP. After 4SP had to replace a damaged Panel View (apparently damaged at 4SP), Hillegonds made some further changes for the PLC and Panel View. He intended to update the 3SP Panel View interface but never did so.

Hillegonds denied any attempt to hide what he was doing for Steele. He noted that he did not rename files or attempt to camouflage the "Belmont" name on them, and while he placed some files in the Recycle Bin because he no longer needed them and kept more recent versions, and did not want to access them accidentally, he did not empty the Recycle Bin. But he conceded that no one from 4SP asked him to work on the 4SP preheater and he was unaware whether anyone from 4SP knew he was doing so.

Hillegonds acknowledged that when the Company interviewed him in October 2023, he did not answer truthfully. He explained that he was caught unaware, felt nervous and interrogated, had never been in trouble before and was really caught off guard. He admitted that he falsely denied that he consulted with Steele on a preheater project.

Hillegonds denied receiving any form of compensation from Steele.

On October 26, 2023 the Company issued the following letter to Grievant Hillegonds:

> You are hereby notified that you are suspended for five (5) days, effective the date of this letter, and at the end of that period, you are subject to discharge.
>
> This action is being taken as a result of your violation of the Personal Conduct Rules 2.L. and 2.U., which state in pertinent part:
>
> > 2. The following offenses are among those which may be cause for discipline, up to, and including suspension preliminary to discharge:
> >
> > L. Theft or attempted theft of Company property (including falsification of time worked) or property belonging to another employee or contractor. Employees found leaving the plant in possession of Company property or materials, equipment,

supplies, etc. without a valid material pass will be considered to have engaged in theft.

U. Engaging in unauthorized use of Company computers, email, internet, and intranet, or other electronic equipment.

Your behavior also violated the Company's Code of Business Conduct and Cleveland-Cliffs Steel LLC (CCS) Acceptable Use Policy.

Lastly, you disclosed sensitive and confidential information to an unauthorized individual outside the Company without the consent of the Company.

Any of the above violations is grounds for suspension pending discharge.

The excerpts from the Personal Conduct Rules set forth in the letter are not exact quotes from those rules. The corresponding portions of the Rules state:

L. Theft or attempted theft of Company property (including falsification of time worked) or property belonging to another employee or contractor. Employees found leaving the plant in possession of property or materials, equipment, supplies, etc. without a valid material pass will be considered to have engaged in theft. Malicious conduct including destroying, damaging, or hiding any property of other employees, outside contractors, or of the Company and the destruction, damaging, or pilfering of vending machines or any equipment made available to employees for the purpose of in-plant feeding.

U. Engaging in unauthorized use of Company telephones, copy machines, fax machines, computers, email, internet and intranet, or other electronic equipment.

The Company's Code of Business Conduct provides in part:

Confidential Information

Data, information and documents pertaining to the Company are to be used strictly for the performance of our respective duties and may be disclosed or communicated to persons outside the Company only to the extent that the information in question is needed by such persons in connection with their business relations with the Company, or where the information is already in the public domain or is required to be disclosed by law or court order. In case of doubt as to whether the information may be disclosed and to whom it may be sent, we should consult our supervisor or the Legal Department.

We are required, for the duration of our employment with the Company, and after our employment terminates, to keep such information confidential and to use the utmost discretion when dealing with sensitive or privileged information. Such information includes, in addition to the technology used by the Company, intellectual property, business and financial information relating to sales, earnings, balance sheet items, business forecasts, business plans, acquisition strategies and other information of a confidential nature.

> Confidential information must not be discussed with or disclosed to any unauthorized persons, whether Company personnel or persons outside the Company. We must take the necessary steps to ensure that documents containing confidential information, when sent by fax or other electronic media, are not brought to the attention of unauthorised persons, whether Company personnel or persons outside the Company. We must take the appropriate security measures when destroying documents that contain confidential information (regardless of the medium by which such documents are recorded).

The Company's Acceptable Use Policy, which appears each time an employee accesses a Company computer, requiring the employee to click "OK" before proceeding, states in pertinent part:

> Cleveland-Cliffs Steel LLC (CCS) IT Resources (Devices, Applications and Data), are to be used in compliance with the following summarized policy.
>
> Usage must be for CCS Business related purposes, by Users who have been approved for access by CCS.
>
> Users must use these IT Resources in compliance with the CCS Code of Business Conduct, Policies and Procedures, as well as Federal, State, and Local laws.
>
> 4. Users will report any security incident related to these resources, improper or suspicious usage or theft, to the local IT Department.
>
> 9. Violation of this agreement may result in disciplinary or legal action.

By letter dated December 8, 2023 the Company converted the suspension to a discharge, effective that same day.

Procedural History

In response to the Company's October 26, 2023 suspension pending discharge of Grievant Hillegonds, the Union filed the grievance in this case the following day.

Under the Basic Agreement, the Step 2 meeting was to take place within 5 days but the Union requested a postponement because Grievant Hillegonds was scheduled to be on a vacation outside the U.S. The Company agreed to the postponement.

A Step 2 meeting was conducted on November 30, 2023. The Company presented its evidence including computer forensic printouts showing Hillegonds' computer activity. It went through the documentation and summarized its conclusion that it showed Hillegonds performed work for an outside company on Company time, using Company computers without authorization and that he disclosed sensitive information. Hillegonds was silent in response.

The Company provided the Union with the NLMK blueprint (from Hillegonds' laptop similar to the hard copy Brown had seen on Hillegonds' printer). This blueprint is captioned "Belsteele Preheater Control" and includes a Belmont logo. The Company presented a printout including listings of folders with names

beginning "Belmont_Preheater" (Employer Exhibits 5 and 8). The payroll records the Company provided to the Union (Employer Exhibit 10) showed that Hillegonds was on the clock when files relating to Belmont were created, accessed or modified. It provided the printout of PLC program file comparisons with time stamps indicating changes to the files while Hillegonds was on the clock (Employer Exhibit 6). The Employer provided a spreadsheet listing files with Belmont in the name to the Union (Employer Exhibit 7) in January, 2024, after the Step 2 meeting.

At the Step 2 meeting the Company gave the Union a printout (Employer Exhibit 9) indicating that files for the 4SP Panel View (some of which included both Cleveland-Cliffs and Belmont logos) were created on Hillegonds' computers at 3SP. Watts acknowledged that at the Step 2 meeting the Company did not provide the Union a written statement of position, unlike at every other Step 2 meeting at which she had been present, although the Company explained its position and provided a number of exhibits.

After the Step 2 meeting, during which he had been silent, Grievant Hillegonds requested a second meeting in order to be open and honest with the Company.

Around December 1, 2023, Local 1011 Grievance Chairman Rich Barron called Watts and asked for a follow up meeting and that time lines be placed on hold.

This follow up meeting was conducted on December 7, 2023. At this later meeting Hillegonds acknowledged helping John Steele with the ladle preheating system for 4SP, that he used Company computers, software and templates, and that he knew the work was for 4SP. He apologized for his conduct and admitted that what had been laid out at the original Step 2 meeting was what happened, but that he had no malicious intent, never profited from his actions and did not intend to. He claimed that he did the work on breaks or when he was not busy and that he did not compromise his duty at 3 SP. He apologized for being untruthful during the October interview but said that he had been caught off guard. He was asked whether anyone from the Company knew that he was doing work for Belmont and responded that no one knew. (The findings in this paragraph are based on the credited testimony of Alisha Watts, which Hillegonds did not contradict at the arbitration hearing.)

Watts also testified that during this meeting she asked if Hillegonds took a Panel View from 3SP and he replied that he did, he programmed it and gave it to Steele. She asked if he meant a physical piece and he said yes. Hillegonds said he gave the Panel View to Steele and used the PLC to launch it. Division Manager Steel Processing Steve Keck, who attended the follow up Step 2 meeting testified that near the end of the meeting Watts asked if Hillegonds took the Panel View, uploaded it and gave it to Steele, and he replied yes.

Hillegonds testified that at this follow up meeting he apologized for lying during the investigatory interview and admitted knowing that the work was for 4SP. At the arbitration hearing, he denied telling the Company during the follow up meeting that he had given a Panel View, as distinguished from Panel View software, to John Steele.

The Company did not provide Step 2 minutes within five days of this follow up meeting.

Under Article Five Section I (3) (b) (4) of the Basic Labor Agreement, the Company is to provide a Step 2 Answer within 3 days of the Step 2 meeting.

Under Article Five Section I (3) (b) (5) of the Basic Labor Agreement, the Company shall provide the Step 2 minutes within five days of the Step 2 Answer and the Step 2 minutes "shall include: the date and place of the meeting; names and positions of those present; the number and description of the grievance discussed; background information and facts; a statement of the Union's position as understood by the Company; and a statement of the Company's position including its response to all claims, points of evidence, testimony and arguments presented by the Union as well as Company testimony and evidence, including past grievances and/or arbitration awards and the decision reached."

At the Step 2 meeting, the Union did not assert any timeliness issue.

Watts testified that she phoned some time after December 7 asking for an extension, and emailed in December requesting an extension of time lines. She recalled that in a follow up phone call Grievance Chairperson Barron responded to the effect yeah, that's fine.

Around December 14, 2023, Barron sent Alisha Watts an email requesting the Step 2 minutes. Watts replied stating she understood the minutes were due December 15, and requested an extension. Her email stated "I was going to ask for an extension on them to 12/20. Is that something you are willing to accept? If not, you will get them by EOB tomorrow." Barron replied yeah, that's fine.

On January 8, 2024, Watts emailed Barron first regarding the scheduling of other grievance meetings, and stating she owed him the Hillegonds minutes and the minutes on anther grievance, and that she would have the minutes that week. Barron replied to the scheduling request but did not specifically reply regarding the minutes, but Barron testified that his response was yeah, that's fine.

Barron acknowledged that the general practice is that both Parties request and grant extensions, but even if the Union says it needs something by X date, the Employer does not always comply, but the idea is that the Parties work together.

On January 22, 2024, the Company did provide Step 2 Minutes, which included sections labeled "G. Statement of Facts,"H. Statement of Union Position," and "I. Statement of Company Position." Barron responded by email on January 29, 2024, stating "The Union does not dispute the accuracy of the minutes but does not agree with the decision."

Under Article Five Section I (3 (b) (6) "If the Grievance Chair disagrees with the accuracy of the minutes, s/he shall submit a signed written response to the Company within five (5) days of the receipt of the Step 2 minutes."

The Parties disagree as to whether the Union is bound by factual assertions in Sections H and I of the Step 2 minutes, but there is no dispute that the Union is bound by the Section G Statement of Facts. Section G of the Step 2 minutes states:

> The Grievant, James Hillegonds (#26345), was hired by the Company on August 18, 2008, and was most recently working as a Maintenance Technician Electrical at #3 Steel Producing ("3SP").
>
> The facts of the case are not in dispute. The investigation revolves around ladle preheaters. Preheaters are commonly used in steel shops to heat ladles after new refractory linings are

installed, to re-heat between casts and to remove any slag or residue from previous pours. Two main components of a preheater are the PLC program which controls the function of the preheater and the PanelView which allows an operator to access and operate the preheater. Grievant was very familiar with the preheater at 3SP and stated in the investigation he was part of the team that redesigned the preheater at 3SP approximately 10 years ago. The investigation concluded Grievant worked on the PLC program and PanelView for an outside contractor, John Steele, who worked for a company called Belmont. Neither Belmont nor Mr. Steele were working on any current projects at 3SP. Grievant used Studio 5000 software purchased by the Company, to complete this work. Within Studio 5000 he used View Designer to complete the PanelView portion and Logix Designer to complete the PLC portion of the work. The relevant files in the investigation were found on two different company computers. The desktop in Grievant's office (IHW-3SPENG18) and the BOF laptop commonly used by Grievant to perform work in the field (IHW-3SPBOFLI1LT).

NOTE: IHW-3SPENG18 will be referred to as the ENG desktop and IHW-3SPBOFL1LT will be referred to as BOF laptop going forward.

The files found on both the ENG desktop and BOF laptop, the majority of which under his user profile, were compiled by 3SP Management and Corporate Forensics. Modification dates and times on these files were compared to Grievant's Dayforce swipes to conclude that he was on the clock while doing this work. Program comparisons were also done to conclude Grievant used the Company's intellectual property to complete this work when he used the current programs that were in operation at 3SP as a framework. Subsequent to that an investigation was completed which included an interview with the Grievant.

The Grievant was suspended pending discharge without Justice & Dignity on October 26, 2023, and the grievance was filed on October 27, 2023. The parties subsequently agreed to hear the suspension hearing on November 30, 2023. At the request of Grievant and Union a follow up meeting to the suspension hearing was held on December 7, 2023. The convert to discharge was issued on December 8, 2023.

At the arbitration hearing I asked Grievant Hillegonds to read Section H of the Step 2 Minutes (Joint Exhibit 4) and to identify anything with which he did not agree. He denied that he had provided a Panel View to John Steele.

Section H. Statement of Union Position in the Step 2 minutes includes the following:

> Although in the investigation he stated he did not know where the PanelView or PLC program was going, he admitted he knew it was going to 4SP. . . . Grievant also noted that he took a PanelView from 3SP to complete this work, gave it to Mr. Steele, and used the PLC in his office to launch the program."

As noted in the Step 2 minutes, Grievant Hillegonds' suspension was converted to a discharge on December 8, 2023.

In an email on February 1, 2024, USW Staff Representative Jacob Cole requested documentation that the Company had not provided and asked that timelines be put on hold while he investigated the matter. The Company provided the documents by email attachment on February 1, 2024 but did not mention the request that timelines be placed on hold.

By letter dated February 12, 2024 the Union appealed the grievance to Step 3. The Step 3 meeting was held around February 23, 2023. According to Barron at the Step 3 meeting Staff Representative Jacob Cole brought up the failure to provide a written statement at Step 2, but Barron did not remember whether timeliness was addressed at the Step 3 meeting.

The Union raises two procedural issues: it asserts that the Company did not supply a detailed written statement of the evidence at Step 2, and that the Company failed to provide the Step 2 minutes within 5 days. (The Union dropped a third procedural objection.) The Union had not raised any procedural arguments prior to the arbitration hearing.

Issue

The Parties agreed in part to a statement of the issue: Was the Grievant discharged for just cause and if not what should the remedy be?

The Union would add a further issue: Did the Employer's procedural violations surrounding the handling of Grievance No. 3SP-23-046 warrant granting of the grievance under Article Five Section I (4) (j) (3)?

Position of Management

Procedural Issues

The Employer insists that the Union did not raise any procedural objections until the first day of the arbitration hearing on April 12, 2024. It argues that under Article Five Section I (4) (c) matters not disclosed may not be raised.

The Company emphasizes that the Union asked for extensions multiple times and it views this as the Parties' approach.

As to the Step 2 minutes, it points to testimony that Watts asked for extensions and Barron replied that's fine, that the Parties discussed time lines multiple times and that lateness was never raised. It insists that the Union cannot change the rules mid-game.

With regard to the detailed statement at Step 2, the Employer compares Article Five Section I (4) (j) and Article Five Section I (9), and concludes that there is no default forfeiture in situations like this.

It summarizes that the Union's procedural contentions themselves were not timely raised and are contrary to the understandings of the Parties.

The Merits

The Company argues that it cannot retain an employee who is untrustworthy, and the proposition is so basic that no rule is necessary. It regards the offense as so serious that termination is appropriate for an employee who breaches the duty of loyalty, even for an employee with long seniority.

The Employer submits that Company equipment is not for personal use and that time paid is time owed to the Company.

It asserts that the case against Grievant Hillegonds was painstakingly and thoroughly investigated, triggered by Dan Brown observing a panel screen on Hillegonds' desk with an NLMK blueprint. It considers unremarkable that the investigation took so long, because there was so much computer information to cover and because it wanted to get it right.

The Company cites the computer file evidence as indicating that the Grievant used Company property and software to craft preheater software unknown to the Company. It cross references file date stamps and the Grievant's time records and deduces that he spent more than 25 days working on the software for 4SP on Company time.

It deems that Grievant Hillegonds shows a history of concealment: by moving files to new folders, by defensiveness in his responses to Dan Brown, and by lying at the investigatory meeting. It considers that he told the truth only after confronted by so much evidence against himself. It submits that the Step 2 minutes capture admissions, including an admission now contradicted that Hillegonds took a Panel View, which is supported by the testimony of Watts and Keck that at the follow up Step 2 meeting Hillegonds admitted taking the Panel View. Moreover, it points to his acknowledgment that he used 3SP software to tailor programs for John Steele.

The Employer regards Grievant's estimate that he spent only 8 - 10 hours working on the software as not credible. It asserts that the Company paid Hillegonds, and it paid for the software and the Panel View Hillegonds took, so that 4SP paid for what the Company already owned. It regards the Grievant's conduct as causing a breakdown of trust and it infers from his work on an NLMK blueprint that this was a long term course of conduct.

Position of the Union

Procedural Issues

The Union faults the Company for failing to provide a written statement detailing its position at Step 2. It also asserts that the Company failed to submit the Step 2 minutes within 5 days.

It recognizes that the Parties do work together but reasons that Watts knew the minutes were due on December 15 and requested an extension to December 20, 2023, but did not provide the minutes until January 22, 2024.

It considers that Justice and Dignity was improperly denied under the circumstances, arguing that since the Grievant was permitted to continue working for 6 months even though he was accused of theft, he should have been allowed to remain working until the issue was resolved.

It asks that the grievance be sustained on procedural grounds.

The Merits

The Union asserts that Grievant Hillegonds was never a problem, only an asset to the Company. It emphasizes that he did not benefit from his involvement with John Steele and had no motive to jeopardize his job. It recounts that he worked with contractors under his own direction and was not required to report his daily activities but simply did his work.

It contends that while the Company was conducting its investigation the Grievant was allowed to continue performing what the Employer regarded as a dischargeable offense for 6 months, and it deems this equivalent to entrapment. It faults the Company for not even having a conversation with him during the period of its investigation.

It compares the time and money the Company spent on its investigation with the total time Hillegonds spent on the project for 4SP. It observes that while the Grievant admitted using Company software for the project, employees at 3SP and 4SP use Company software. It regards the Company as receiving the benefit of his skill and knowledge. It compares a Manager moving between 3SP and 4SP and taking his knowledge with him.

The Union insists that there is no substantiation that the Grievant took a Panel View, and no demonstration that a Panel View was missing at 3SP. It interprets Belmont's invoices as indicating no charges for programming.

It separates offenses into dischargeable offenses and offenses calling for corrective action, and it notes that discharge offenses are normally handled swiftly.

The Union maintains that if anyone stole from Cleveland- Cliffs it was Steele, who took advantage of Grievant's intelligence and willingness, and it notes that no criminal changes were filed against Steele.

It asks that if the grievance is not sustained on procedural grounds, it be sustained on substantive grounds with an appropriate remedy.

Analysis and Conclusions

Procedural Issues

The Union asserts that the Company failed to provide a written position statement at the Step 2 meeting. In effect the Union says "The Company did not provide a written statement at Step 2, and so we win."

At the Step 2 meeting the Company did submit a substantial amount of documentation, probably numbering in the hundreds of pages. Although arguably this amount of written matter could be deemed a "statement," I do not resolve that question, and for present purposes I assume that what the Company provided did not constitute a statement as the term is used in the Basic Labor Agreement.

The providing of statements at Step 2 is addressed in two different places in Article Five Section I of the Basic Labor Agreement, and these two provisions should be read as congruent with one another.

Paragraph 4 [General Provisions] (c) states that:

> At each Step of the grievance procedure the parties shall provide a full and detailed statement of the facts and provisions of the Agreement relied upon and the grieving party shall provide the remedy sought. Facts, provisions or remedies not disclosed at or prior to Step 3 of the grievance procedure may not be presented in arbitration.

Paragraph 9 [Suspension and Discharge Cases] (a) (3) states in pertinent part that:

> At the Step 2 meeting the Company shall provide a written statement fully detailing all of the facts and circumstances supporting its proposed disciplinary action.

Read in conjunction with one another, these two provisions mean that the Company must give the Union a statement of position in every Step 2 grievance meeting, but only in suspension and discharge cases must that statement be a written one.

What happens if the Company fails to provide such a statement? That possibility is addressed in Paragraph 4 (c), and the consequence is an evidentiary rule precluding the offering of evidence at an arbitration hearing, perhaps the only evidentiary rule specified in the Basic Labor Agreement, and an exception to the general proposition (Paragraph 8 (a) (3)) that the formal rules of evidence do not apply in arbitration.

The notable conclusion is that failure to provide a statement (written or otherwise) does not result in a forfeiture or default, but instead in the exclusion of certain evidence that would otherwise be admitted at the arbitration hearing.

That conclusion is reinforced by reference to Paragraph 4 [General Provisions] (j), which *does* specify a forfeiture or default if the Union or the Company fails to comply with the time limits specified in Paragraph 3, namely that the grievance shall be considered withdrawn or granted, for Union's or Company's failure to comply with the time limits.

There are two lessons to be learned from Paragraph 4 (j): first, that when the Parties intended a forfeiture to result, they knew how to say so, and second that they did *not* intend a forfeiture to be the result of failing to provide a written statement at Step 2. This is because a forfeiture results only from failure to meet time limits and not from other procedural defects, and because a forfeiture results only in conjunction with requirements set forth in Paragraph 3, while the written statement requirement arises under Paragraph 9.

Accordingly, I conclude that the Company's failure to produce "a written statement fully detailing all of the facts and circumstances supporting its proposed disciplinary action" is not a fatal flaw.

The Union's second procedural contention is that the Company was late in providing the Step 2 minutes, resulting in a default victory for the Union.

Unlike the failure to provide a written statement at Step 2, the obligation to provide Step 2 minutes is an obligation arising under Paragraph 3, and does implicate time limits.

It can be said that a Party which raises a timeliness objection must itself do so in a timely manner. The upshot would be that since the Union dis not assert at Step 3 that the Company's Step 2 minutes were late, the Union's timeliness argument is itself untimely. While there is a certain symmetry to this position, I rely instead on the Parties' own custom and practice with respect to time limits.

There was testimony in this case that these Parties have a history of accommodating one another in applying the time limits under the Basic Labor Agreement. There seems to be an atmosphere of what goes around comes around, and that neither Party demands strict adherence to the time limits lest the situation be reversed in the next case.

That spirit of accommodation is evident in the current case. After filing the grievance, the Union requested an extension for the Step 2 meeting to accommodate the Grievant's scheduled vacation. After the Step 2 meeting was held the Union asked for what the Parties referred to as a follow up meeting. The Basic Labor Agreement does not provide for a Step 2 ½ meeting, and how the follow up meeting would affect time lines thereafter is problematical, but the Union also asked that time lines be placed on hold. That statement from the Union can easily be construed as applying to all further time lines, including that for the Step 2 minutes.

On December 14, 2023 Watts explicitly requested an extension of the due date for the minutes, which she calculated as due the next day, until December 20. Significantly, in her email she stated that if the Union insisted on strict adherence to the time limit, she would have them by them, but Barron responded that the extension was fine. December 20 passed and no minutes were submitted, and in January 2024 Watts acknowledged that the minutes were past due and requested a further extension to which Barron replied to the effect yeah, that's fine. The clear impression from the lack of any objection that the minutes were already overdue is that the Union was not holding the Company's feet to the fire on time lines.

On several occasions one or the other of the Parties asked that time lines be placed on hold. For example, Grievance Chairperson Barron made such a request to Alisha Watts on or around December 1. For the most part, they did not ask that a specific time line be placed on hold but spoke generally about time lines being placed on hold. The ambiguity as to whether the Parties intended to extend only a specific time line, or time lines generally, inclines against a conclusion that the Parties meant to apply some time lines loosely but others strictly in this case.

The overall tenor of the Parties' interactions in this case is that at least in this case, time lines were not being strictly enforced. Once that mind set has been generated, for either Party to thereafter insist on strict compliance without at least a warning would be unfair and inequitable.

I therefore conclude that, at least under the specific circumstances of this case, the Union is precluded from asserting a claim of forfeiture based on the late submission of the Step 2 minutes.

Having rejected the Union's procedural arguments, I now consider the substantive merits of this case.

The Merits

This case has more than its share of logical inconsistencies, paradoxes and conundrums.

The most obvious one is that Grievant Hillegonds received no personal benefit from his association with John Steele, not even a free lunch, and I credit his uncontradicted testimony to that effect.

Although Hillegonds derived no personal gain from assisting John Steele, ironically Cleveland-Cliffs may well have benefitted from the arrangement. As an author of the preheater controller software at 3SP, Hillegonds was intimately familiar with it and could adapt it easily for 4SP. Since the burner system at 4SP was different, Hillegonds had to do some re-coding, and he apparently also tweaked the software somewhat for 4SP. By contrast an outside engineer writing the code would have to start from scratch and recreate what 3SP already had on hand. Moreover the code that Hillegonds adapted had already been debugged. Thus in some respects what the Company received at 4SP as Hillegonds' product was likely "better" than what it would have obtained if Steele, Belmont, etc. had to find a different coder for the PLC and Panel View software.

As noted, Hillegonds apparently did not help Steele for personal gain, but what his actual motivation was for writing code for Steele is less than apparent. The Company would portray him as an accomplice or at least a dupe of John Steele. I would state parenthetically at this point that John Steele is not a party to this case, he did not testify, and he had no opportunity to provide his story at the arbitration. Whatever picture of John Steele may emerge from this discussion must be viewed with these considerations in mind.

James Hillegonds as a witness seemed straightforward and credible and his assertion that he worked with John Steele because he knew the software was being written for Cleveland-Cliffs and he felt he was doing nothing wrong was a plausible one. But this plausible explanation does not square with Hillegonds' denial at his investigatory interview that he had anything to do with the 4SP project. If Grievant Hillegonds felt he had done nothing wrong, that should have been his defense, not denial. Furthermore, his explanation for his false denial, that he felt blind-sided by the interview, is itself curious. Hillegonds' laptop had already been confiscated by the Company in April, roughly six months before the investigatory interview, and he must have realized that he was a suspect.

At the very minimum, the Grievant's misleading account to the Company precludes the award of any backpay in this case. Perhaps if he told the Company at the investigatory interview what he ultimately said at the follow up Step 2 meeting, the Company would have regarded him as misguided rather than dishonest, and would not have terminated his employment. But the Company cannot be faulted for concluding that an employee who is hiding something has something to hide. Of course, the false story that the Grievant provided to the Company also tends to undermine his credibility on factual issues under dispute in this case.

I return to the puzzling question of why Grievant agreed to help Steele with software for 4SP at all. The Union portrays Grievant Hillegonds as a somewhat naive individual who may have been manipulated by John Steele. Grievant Hillegonds is well educated and obviously highly intelligent, but highly intelligent people are victimized by scammers every day.

If in fact Hillegonds was merely trying to help on a project for the other arm of the Cleveland-Cliffs operation at Indiana Harbor, it seems odd that he never informed anyone at either 3SP or 4SP of his self-assignment.

In this regard, Hillegonds characterized his work on the PLC and Panel View for 4SP as a relatively small undertaking, comprising no more than 8 - 10 hours of his work time. This strikes me as a dubious estimate of the amount of time involved, in view of the hundreds, perhaps thousands — I have not attempted to count them — of files he opened, accessed or modified in the course of his endeavors.

The Grievant points out in his own defense that it would have been a simple matter for him to have used file names that did not include Belmont, and could have emptied the Recycle Bin, if he thought it necessary to hide the work he was performing for Steele. At the same time, Hillegonds worked in a private office and was largely unsupervised, so that he may have perceived no need to go through the extra effort of renaming files in any event.

If Hillegonds was merely a well-meaning but perhaps gullible patsy rather than partner, and if in fact the Company received a package that was at least as good as what it bargained for, and likely sooner, the question arises whether the Company suffered any harm at all.

This implicates whether Cleveland-Cliffs paid twice for what it received: once in the form of wages paid to Hillegonds and once in the form of the contractual payment to Steele/Belmont. It may be that Steele regarded Hillegonds' cooperation as a windfall, a savings in the cost he or Belmont would otherwise incur to an outside software engineer that could nonetheless be passed on to Cleveland-Cliffs. It could also be that the assumption of help from within Cleveland-Cliffs was a factor in the price for the project. This latter scenario seems unlikely however. Nothing in the contract suggests such a consideration, and the contracts between Belmont and Cleveland-Cliffs were entered into in March and April 2023, well before Steele could have known whether he could count on Hillegonds' assistance.

All of the uncertainties about Hillegonds' motivation for doing what he did, including his attempt to deceive the Company at the investigatory meeting, bring to the decision maker an unsettling maybe-yes-maybe-no uncertainty.

But three considerations in this case are highly troubling.

The first is one I have already mentioned, Hillegonds' minimizing the extent of his involvement at only 8 - 10 hours, which seems highly implausible to me.

The second is actually the first chronologically in the fact sequence in this case. This is Hillegonds' assistance to Steele on a project Steele had for NLMK. Unlike 4SP, NLMK is a competitor to Cleveland-Cliffs. Hillegonds should have had nothing to do with anything for the benefit of NLMK. Any time Hillegonds spent indirectly helping NLMK contravened his duty of loyalty as an employee of Cleveland-Cliffs.

The final consideration is the claim that Hillegonds provided Steele with a Panel View, that is an actual piece of hardware and not merely the software for the Panel View. This is one factual issue that must be resolved in this case.

Alisha Watts and Steve Keck both testified that at the Step 2 follow up meeting Hillegonds admitted that he had given a Panel View from 3SP to John Steele. Since Watts clarified by asking whether Hillegonds was talking about a physical piece of equipment and he said yes, it seems clear that they could not have merely

misunderstood his response. This is a two versus one credibility conflict, and in addition to the numbers there is a form of indirect corroboration of their testimony through the Step 2 minutes.

The Step 2 minutes prepared by the Company include the following in the Union Position section of the minutes:

> Although in the investigation he stated he did not know where the PanelView or PLC program was going, he admitted he knew it was going to 4SP. . . . Grievant also noted that he took a PanelView from 3SP to complete this work, gave it to Mr. Steele, and used the PLC in his office to launch the program.

Under the Basic Labor Agreement the Company prepares the Step 2 minutes and the Union is to identify anything with which it disagrees. The Union may not be bound by factual assertions the Company makes in asserting its own position, but I conclude that the Union would not let an assertion like this pass as part of the Union's position unless the Union considered it accurate.

For these reasons, I find, as testified to by Watts and Keck, that Grievant Hillegonds did give a 3SP Panel View to John Steele. The price paid by 4SP included a charge for a panel view, and so in this instance 4SP was in effect paying for something the Company already owned.

More than anything else, this factor supports the Company's claim that it had just cause to discharge the Grievant. An employee may not give away Company property, not to himself, not to a vendor, not even to a charity, without the Company's permission. Grievant Hillegonds had substantial discretion over the use of his own time, but not over hardware owned by the Company. Even if the Grievant's software assistance to Steele would not warrant termination (a point I do not decide) his misappropriation of the Panel View to Steele was fatal to his continued employment.

The Union suggests that by retaining Hillegonds for a lengthy period while conducting its investigation, the Company obligated itself under Justice and Dignity to continue to retain him until the discharge issue was finally resolved. But under Article Five Section I (9) (b) (2) the misappropriation of the Panel View to Steele and Belmont takes this case out of the coverage of Justice and Dignity.

Accordingly, I conclude that the grievance should be denied.

Award

The grievance is denied.

Issued June 3, 2024

Matthew M Franckiewicz