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 In the Matter of Arbitration Between: )  
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 CLEVELAND - CLIFFS, ) Grievance No. 23-133 – Lesoken  
 Coatesville ) Grievance No. 23-134 -- Townsend  
 ) Suspensions  
 and ) Arbitrator Docket No. 240802  
 )  
 UNITED STEEL WORKERS, ) Case 153  
 Local 1165. )  
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BEFORE ARBITRATOR JEANNE M. VONHOF

## APPEARANCES

### Company

Brett Whitehead, Labor Relations Representative

#### Witnesses:

Ibrahim Koudougou, Electrical Maintenance Engineer  
 Jay Nordstrom, Section Manager, West Side Maintenance  
 Marcus Valentino, Director, Human Resources and Labor Relations  
 Zane Frund, Senior Labor Relations Representative

### Union

Charlene Crawford, USW Staff Representative

#### Witnesses:

Charles Lesoken, MTM, Grievant  
 Daniel W. Townsend, MTM, Grievant

**Issue:** Did the Company violate just cause in the way it disciplined the Grievants?

If so, what is the appropriate remedy?

## **Background**

Mr. Ibrahim Koudougou testified that he had worked for the Company for a year and a month at the time of the arbitration hearing, working as a Maintenance Electrical Engineer. On December 2, 2023, he was meeting as a Manager with Maintenance Millwrights at a 6:15 AM morning meeting, assigning them work for the day. He assigned Grievants Charles Lesoken and Daniel W. Townsend to inspect a 1500 ton press and repair whatever they found needed repair.

According to Koudougou, after the meeting, Townsend asked to see the maintenance inspection checklist and Koudougou said that he went and printed one out. He said that Townsend then asked to see the checklist completed on the same machine two weeks earlier by another employee. Koudougou testified that he replied that he could not give that checklist to Townsend and when Townsend asked, "Why not?" Koudougou said that he replied, "I just can't." According to Koudougou, Townsend replied, "Because you don't fucking know what you are doing. Management don't fucking know what they are doing." Then Townsend allegedly said something like, "I thought when you started here you would be the solution but you are part of the fucking problem."

Koudougou said that at this point Grievant Lesoken joined in and said that Koudougou "should give him (Townsend) the fucking checklist he asked for." According to Koudougou, both men were using abusive language towards him. Koudougou testified that he told the two men that they could come to his office if they wanted to talk to him and said that he then began walking towards his office. He said that at this point Grievant Lesoken got up from his seat and followed Koudougou. Koudougou testified Lesoken continued to use abusive language towards him and said that at one point Lesoken was about a foot away from his face, yelling at him. He said that he told Lesoken, "Don't talk to me this way" and again said that if they wanted to talk to him, they could come to his office and do so. Koudougou said that Lesoken then said, "Don't point your fucking finger at me" and Koudougou said he replied, "I'm not pointing my finger at you. You started this." Koudougou said he began walking away again, and the two men continued to follow him and Townsend said, "You can fucking send us home." Koudougou testified that he replied, "I'm not going to do that. I'm going to talk to Mr. Nordstrom and he can decide."

Koudougou said that he then entered his office called Mr. Nordstrom at 6:27 and told him that he was having a problem with the two men. After Koudougou explained what had happened, he said that Nordstrom asked him if he had sent the Grievants home. Koudougou said that he told Nordstrom that he had not done so because he was not clear about the proper procedure for doing so. Koudougou remained in his office at that time until Nordstrom arrived.

Koudougou testified that it was not customary to distribute one employee's work, such as the completed checklist, to other employees. Also, the machine had been operated for two weeks after the first checklist was completed, suggesting that the condition of the machine may have changed during that period. Koudougou said that neither Grievant raised a safety concern or

exercised his contractual safety rights during this altercation. He said that any employee may pull a safety card at any time, as guaranteed by the collective bargaining agreement. Koudougou said that he was offended by this encounter. According to Koudougou, he believed this conduct affected his ability to perform his job as a supervisor. In answer to his advocate's question about whether he felt threatened, he said "yes."

According to Koudougou, at the Step 2 grievance meeting, Grievant Lesoken mocked the way Koudougou speaks. Koudougou said that he felt embarrassed and insulted at the meeting. Koudougou said that he told Nordstrom that he was thinking about leaving the Company. He had only been there four (4) months at the time of this altercation and he told Nordstrom that if he had to talk to the Grievants about a work assignment in the future he would like to have someone else present.

Under questioning from the Union, Koudougou testified that there wasn't time to complete a pre-job briefing before the incident in question. He said that on a two-person team, one bargaining unit person is designated as the Group Leader and typically conducts the pre-job briefing. He said that at the time the two Grievants were ordered to inspect the machine, there was safety tape around three sides of the machine which had faulty sensors that did not operate to shut down the machine if someone came too close. The fourth side, where the operator worked, had a working sensor. When asked whether the safety checklist the Grievants were requesting would have identified the three bad sensors, Koudougou stated that each of the three sides was blocked off with safety tape.

Mr. Jay Nordstrom, Section Manager West Side Maintenance, testified that he has worked for the Company for 36 years, and was the direct Manager over Koudougou. Koudougou called him at home after talking to the Grievants, and Nordstrom came into work to address the situation. Nordstrom said that Koudougou reported that when he was handing out assignments, the Grievants had been yelling at him and using profanity. Nordstrom called Security to calm things down as he was coming into work.

Nordstrom said that when he came in there were several guys standing outside the shop who said that things had gotten bad. He looked for the Grievants and they were not around the shop, so he called Grievant Lesoken and told him that he and Townsend needed to come to Nordstrom's office. When they arrived, Nordstrom told them he wanted to hear their side of the story. According to Nordstrom, the Grievants said that they would not talk without Union representation. Nordstrom called for Mr. Ken Rose, the Senior Operating Technician (SOT), a bargaining unit position which Nordstrom said aids in the management of the workforce. The two Grievants continued to refuse to talk about the incident or answer questions. Nordstrom told them that he was stopping their time and that they would be escorted out, and they were. Nordstrom testified further that Grievant Townsend has a history of being talked to about his conduct, and that Nordstrom has had to stop Townsend's time and send him home on several occasions.

Under questioning from the Union, Nordstrom acknowledged that SOT Rose is not on the Union Grievance Committee. He added that no one from the Committee was present in the mill when he was trying to discuss the incident with the Grievants. He testified further that Townsend had come to him the Thursday before this incident and asked for the inspection records from the prior inspection of the press. Nordstrom testified that he refused, telling Townsend that, "we don't give out employee records."

Mr. Marcus Valentino, Director, Human Resources and Labor Relations for this facility, testified that he was a Machinist in the airline industry for 25 years and a senior Union official, before joining AK Steel in 2018. Cleveland Cliffs bought this facility in 2020 and Valentino testified that he was sent to remediate a cultural problem at this facility. According to Valentino, Cleveland Cliffs has a defined view of how facilities should be run, with respect for others being a primary value, because without respect, a hazardous workplace can become a dangerous workplace. Valentino testified that after Cliffs took over, the Company posted notices at all the timeclocks stating,

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

Valentino testified that about a year and a half earlier, Townsend, Lesoken and others on the Maintenance Crew requested a meeting about scheduling. Senior HR, Mill Management and Union officials were in attendance. Valentino said that as soon as the meeting began, Townsend asked, "Why can't I just be myself at work? or "Why is respect required in the workplace." Mr. Zane Frund, Senior Labor Relations Representative, also attended this meeting and recalls Townsend saying, "Why can't I speak to people the way I want to anymore? Why did that change?" Valentino said that Lesoken was also "on this bandwagon."

Valentino testified that he explained "at length" during this meeting the Company's respect and civility policy. He said that he explained, for example, the policy towards using profanity at work, giving the example that saying, "The weather fucking sucks" is different from saying "Fuck you!" to someone at work. Valentino testified further that he said at the meeting that the policy requiring respect applies universally to management and hourly employees, a commitment included in the collective bargaining agreement. He said that he also reiterated that the Company has a legal commitment to provide a harassment-free workplace.

Valentino also said that the policy has not been applied harshly, with a single violation triggering discharge, because the Company recognized that there needed to be a cultural change at this location. He said that the Company was interested in changing behavior and saving

employees' careers through corrective rather than punitive action. The former progressive discipline system was replaced with one that generally progresses through Verbal Warnings 1 and 2, Written Warnings 1 and 2 and then a "Termination Warning Suspension." He said that Townsend received greater discipline than Lesoken because he already had Written Warnings on his record. In addition, Lesoken expressed some remorse for his behavior, while Townsend continued to say that he just was who he was. Valentino testified that the Company wants to retain experienced employees and the discipline in this case appears to have worked to correct the behavior.

Under questioning from the Union, Valentino testified that the Company could have imposed discharge in this case but instead imposed these suspensions as a last-ditch effort to get the attention of the Grievants and change their behavior. Valentino said that he was involved in the decision to discipline the Grievants. He said that the primary factor he considered was the gravity of the offense: failing to follow a manager's work orders and showing him disrespect. He also said that what the Company had tried was not working. He said that he did not understand the facts to be that the Grievants went to the worksite and performed the work.

Mr. Zane Frund, Senior Labor Relations Representative, has worked at this facility since 2021. He testified about the Rules of Conduct, which prohibit "Insubordination (including refusal or failure to comply with a Supervisor's directive or the use of profane, abusive or threatening language)." He presented the disciplinary record of Grievant Townsend. Via letter dated March 27, 2023 Mr. Townsend was assessed a Verbal Warning 2. According to the discipline letter, the Grievant had admitted making insubordinate remarks, and that he "blew up" and used a bad choice of words, but that his conduct was "in relation to frustrations of being assigned to redo other employee's work." The discipline was not grieved.

On May 30, 2023, Grievant Townsend was re-issued a Verbal Warning 2 for throwing rocks at geese near a pond on the Company's property. This was regarded as impermissible horseplay, according to Frund. The Grievant was warned that any further incidents "may result in corrective action up to and including discharge." The discipline was not grieved.

Under questioning from the Union, Frund acknowledged that in neither case of his earlier discipline was Grievant Townsend charged with insubordination, but rather with hostile behavior and profanity. He also acknowledged that throughout the investigation, there was no evidence that the Grievants were told that they were being insubordinate in their interaction with Koudougou.

Mr. Charles Lesoken, Grievant, testified that he had worked at this facility for nearly 29 years at the time of this incident. He discussed incidents that had occurred at the mill that made him particularly sensitive to safety issues, including the deaths of two co-workers whom he described as friends, from workplace safety issues. He said that he is passionate about safety and makes sure that he and everyone around him works safely.

Lesoken testified that he asked Koudougou for the previously completed inspection sheet. When asked if this was common practice, Lesoken said that it depends on the job. He said that he asked for it this time to see what work had already been done, what equipment and tools he needed to bring, in order to make sure everything was safe. He said that Koudougou said he could not give the sheet to the Grievant because someone else had signed it, which the Grievant said he thought was "inane." He acknowledged that he did stand up and approach Koudougou. He said he did so because Koudougou had the sheets in his hand and Lesoken wanted to see them. Lesoken said that he is hard of hearing and had a difficult time understanding Koudougou. He said that the conversation became more heated and Koudougou raised his voice and poked his finger at Lesoken. Lesoken said that he became angry because of the Manager's aggressive attitude towards him, as demonstrated by his raised voice and pointing his finger at him, and only then did he use profanity. Lesoken testified that it is common to use profanity in the workplace.

According to Lesoken, Townsend came up to them, having heard the conversation, and told Lesoken to calm down. Lesoken said that he went outside for a cigarette and to calm down and then went to the assigned machine to replace a bearing. He said that he was never told that he was being insubordinate in this situation or given a chance to stop before being sent home. He also said that he refused to answer Mr. Nordstrom's questions because he wanted a Union representative. He said that he did not use a safety stop card because he locked out the machine with his personal lock.

Grievant Daniel W. Townsend testified that he has worked at this facility for 27 years, 25 of them as an MTM. He said that he and Lesoken are work partners who watch each other's backs. Townsend said that he has had five Managers, three of them brand new to the facility. He also said that half of the employees are new and that having lots of newer employees makes the older employees more aware of and concerned about safety. He testified that he went to the Manager to complain about the safety of work practices and was told to work "by the book." However, Townsend said that "the book" does not contain the full procedures.

Townsend said that he talked to Nordstrom about the 1500 ton press on the Thursday before the date in question, because he saw "all kinds of things broke" on it. He believed a Manager's lock should have been placed on it. Nordstrom said that he had just sent someone two weeks earlier to perform preventive maintenance on it. Townsend said that he asked Nordstrom for the inspection sheet on it and Nordstrom told him that he couldn't give it to him because it was signed by another employee.

Townsend testified further that on the day of the incident, when Koudougou gave Townsend and Lesoken the job, Lesoken got in an argument with Koudougou. Townsend said that he asked for the worksheet for the machine and Koudougou gave him a three-page worksheet/checklist that was not filled out. Townsend testified that there were items on the worksheet/checklist that did not apply to this press and were from two other machines. In addition, the wrong manufacturer was listed, according to Townsend. Townsend said after he

read the checklist, he said to Koudougou, "You don't know what the fuck you are talking about." Townsend said that this was the only thing he said to Koudougou during this incident.

Townsend said that he went out the door, retrieved Lesoken and the two of them got on a golf cart, got their tools and traveled one and a half miles from the shop to the 1500 ton press. They began taking the bearing off and had been working for over an hour when Nordstrom called Lesoken. Townsend said that three vehicles arrived from Security and the Fire Department to follow them back to the shop. Townsend testified that he said at the time, "It looks like we are being sent home. We might need a Union Rep." When he arrived at the shop, another employee told him that it looked like they were being sent home. Townsend said that he asked for a Union representative and testified that he could not believe that someone from the Grievance Committee was not on the property.

Townsend testified that they usually do not get handed the completed worksheets. He said that he had never requested an inspection sheet before this incident. However, he wanted the inspection sheet to see what someone else had spotted as problems on the machine. Townsend acknowledged that he has a "rude, crude way of expressing myself." He said that is what he meant when he said during the investigatory meeting, "That's the way I am," when asked whether insults and inappropriate behavior are acceptable in the workplace.

Townsend said that he did not follow Koudougou after their discussion but was just traveling in the same direction. He said he probably should have pulled a safety stop card, especially since there was not a control lock on this machine. He was never told that he was being insubordinate during this incident or given the chance to correct his conduct before being sent home. He and Lesoken went to the job and worked on it for an hour and a half to two hours before they were called down to the office, according to Townsend. He said he refused to answer questions because it seemed like the decision had already been made to send them home.

The Company issued a 30 calendar-day suspension to Grievant Lesoken on December 12, 2023. Grievant Lesoken's discipline letter states, in part,

"You stated that you were requesting the inspection sheet during the job assignment portion of the morning meeting. You admitted to losing your temper and using inappropriate language as well as standing up and approaching your manager. It was reported that you stated, "you don't know what the fuck you are doing, management doesn't know what the hell they are doing" and continued to curse at your manager after coming into close proximity. We explained to you that the aggressive behavior and obscene language towards your manager was completely unacceptable and cannot be tolerated in the workplace. You understood and apologized for your actions in the meeting."

The Company issued a 30 workday suspension to Grievant Townsend. His discipline letter states, in part,

"During the investigatory meeting, we questioned you regarding the altercation with your manager Mr. Koudougou. You stated that you were requesting to see the inspection sheet during the morning job assignment meeting. You admitted to losing your temper and making inappropriate remarks toward your manager. You admitted to making vulgar remarks and saying, "You don't know how to do your job" and when asked if you thought this was an appropriate way to act in the workplace, you said, "It's the way that I am." We explained that Cleveland Cliffs has zero tolerance for workplace harassment and that this sort of behavior will not be tolerated."

Each Grievant filed a separate Grievance over his discipline.

### **The Company's Position**

The Company contends that there was just cause for the discipline assessed to both Grievants. According to the Company, the Grievants acted in a completely inappropriate manner towards Manager Koudougou. The Union is arguing that a steel mill is not a church and that the Company was assigning the Grievants unsafe work. Although the mill is not a church, the Company is bound by law and by the collective bargaining agreement to maintain a hostility-free work environment. The Company argues that the work being assigned to the Grievants on the day in question was not unsafe because it did not involve dangers greater than the normal dangers inherent in the work in the mill.

According to the Company, the Grievants' behavior on the day in question went way beyond what is acceptable. The Company argues that the Grievants violated another employee's rights and created a hostile work environment. The Company had made its policies clear and had especially addressed the concerns of these Grievants about its policies. When asked about their conduct, the Grievants refused to answer questions, and had to be escorted out of the facility by Security.

According to the Company, the Union agrees that some discipline is warranted in this case but disagrees about the level imposed. In addition, the Union is arguing that all discipline must be progressive, regardless of the violation, but by this logic an employee could steal, lie, destroy equipment or fight with other employees multiple times and only be issued progressive discipline. Corrective action is generally progressive, but not exclusively so, the Company argues. The employees here engaged in several serious violations, committed in rapid succession, including insubordination; refusal to give information during an active investigation; and engaging in hostile, threatening behavior that resulted in the Company having to call Security to escort them from the premises. This activity would typically result in discharge, the Company argues, but rather than impose discharge, the Company imposed serious corrective action in a last hopeful attempt to correct the Grievants' behavior.

The Company argues that it has a responsibility to maintain a hostility-free work environment. Despite the Grievants violating the rights of another employee, the Company



decided not to discharge the Grievants and instead followed the tenets of corrective and progressive discipline, as the Union requests. Despite the Company trying coachings, counselings and other corrective actions in the past, these did not correct the Grievants' behavior. In order to get their attention, the Company imposed corrective action that was severe, as the Company had exhausted all other avenues of corrective action. The level of discipline imposed on each employee was fair, given the seriousness of their conduct and the fact that the Company had tried to correct their behavior by lesser discipline. In addition, the Company did not violate the Grievants' Weingarten rights to Union representation. For these reasons, the Company argues that the grievances should be denied and the disciplines upheld.

### **The Union's Position**

Mr. Lesoken has suffered through seeing things in the mill that no one should ever have to see or go through. Both Grievants share a strong concern over seeing jobs done safely and correctly and frustration when that does not occur. Because there are so many new people in the mill, the senior employees feel more cautious and responsible for making sure that machines are repaired and run properly so that no one will be injured.

The two Grievants are work partners and have become close through their time of working together. Neither Grievant has denied that on the day in question there was a passionate discussion about the job they were to do that day, and their concerns over safety and that the machine be repaired properly. What they are disagreeing about is the level of discipline issued to them.

The Union argues that a passionate high-volume discussion should not be seen as harassment when dealing with these two maintenance men. One Grievant has dealt with the loss of life and other serious accidents in the workplace and the other Grievant has faced the safety issues that occur in a steel mill. They were frustrated with not being able to get the proper paperwork from a Manager to make sure that any safety accidents could be prevented, and to make sure that the machine is operational and safe. It was reasonable for them to ask what maintenance/repair work had been completed on the machine and what was not done, and for them to be given proper paperwork for the job that they were to do that day.

The Union requests that the Arbitrator sustain both grievances. For both Grievants, the Union requests that each be given the proper progressive discipline: for Grievant Lesoken, a Verbal 1 Warning and for Mr. Townsend, a Written 1 Warning. The Union requests that they be made whole for backpay and all other losses from the discipline imposed.

### **Findings and Decision**

The dispute in this case involves two separate grievances filed by the Union challenging suspensions issued to two Grievants, Mr. Charles Lesoken and Mr. Daniel Townsend, Maintenance Millwrights, regarding the same incident. The parties agree that on December 2, 2023 there was a heated discussion between the two Grievants and a Manager, Mr. Ibrahim Koudougou. The Union also concurs that some discipline is in order for the conduct of the two Grievants in this incident. However, the parties disagree about whether the level of discipline issued to each Grievant violates just cause.

The discipline letters issued to the Grievants do not state which Company rules their conduct allegedly violates. This complicates the examination of just cause in this case because whether there is just cause to uphold discipline depends in part upon what violations the Company concluded the Grievants were guilty of at the time the discipline was imposed. The Grievants and the Union have the right to know what violations they are being charged with, and the Company may not add charges after the discipline is imposed.

It is clear from the discipline letters that the discipline arose from the incident which occurred on December 2, 2023. The incident involved a discussion between the three men over a work assignment Koudougou gave to the two Grievants on the date in question. The assignment was to inspect a 1500 ton press and to repair anything they found that needed repairing. As described above, the incident occurred after the Grievants requested an inspection checklist filled out on the same machine by another employee two weeks earlier. Koudougou said that he could not give it to them. The exchange between the Grievants and the Manager continued and led to the discipline at issue here.

There is some confusion in the record about which Grievant made which comments – and when -- during the exchange with Manager Koudougou. He testified at the hearing that it was Grievant Townsend who first asked for the inspection checklist completed two weeks earlier, although both Lesoken and Townsend said that it was Lesoken who first asked for the filled-in checklist. Lesoken's discipline letter states that he said to Koudougou that Koudougou didn't know what he was doing and that he also made the comment that Management did not know what they were doing. However, Koudougou attributed these comments to Townsend at the arbitration hearing. There is evidence that Townsend requested and received from Koudougou an uncompleted maintenance checklist for the press.

The Arbitrator has considered all the evidence, including the testimony of the Grievants and Mr. Koudougou at arbitration, and the facts as determined during the investigation, as referenced in the discipline letters. The Arbitrator concludes that the Grievants both reacted angrily in their exchange with Koudougou, after he said he could not provide them with the filled-in checklist from two weeks earlier. There is also convincing evidence that in talking to the Manager about the checklist, the Grievants both used profanity and made disparaging comments

about Koudougou's competence as a Manager. The evidence also establishes that there were some differences between the conduct of the two Grievants, which will be addressed below.

The evidence thus demonstrates that this incident began as a disagreement between the Grievants and their Manager about how to perform an assignment the Manager was giving them. The evidence indicates that both Grievants believed that it would be helpful, in performing this assignment, to see the maintenance checklist on this machine that had been completed by another Maintenance Millwright two weeks earlier. The Manager declined to provide it for them. He testified at arbitration that it is not the Company's practice to provide to employees such forms completed by other employees.

The Company argues that the two Grievants were guilty of conduct that was so serious that Management could have discharged them for this incident but instead chose lesser progressive discipline in order to protect its investment in their experience and to provide them with another chance to retain their jobs. The Company argues that the Grievants were insubordinate. The discipline letters do not mention insubordination.

Employees may engage in a discussion with a Manager about the proper way to perform an assignment when they are given an assignment. Sometimes these discussions may become heated or passionate as employees express their points of view of how the work should be done. The Grievants are both very experienced Maintenance Technicians. The evidence indicates that they had strong feelings about obtaining the maintenance checklists for this machine. Lesoken testified that he wanted to see the checklist to see what problems had been found with the machine two weeks earlier, and to help determine what tools to bring to the job. This is not an unreasonable request from an employee assigned to check and repair a machine. It is not clear that Manager Koudougou explained to the Grievants at the time why he was denying their request, although he may not have had an opportunity to do so before the conversation quickly escalated into a heated exchange. In addition, Townsend found problems with the quality and accuracy of the unfilled-in checklist that Koudougou provided to him to perform the job that day.

The Union argues that the two Grievants were concerned about safety. The evidence establishes that neither one of them explicitly raised safety as an issue at the time. Neither Grievant "pulled a safety card," that is, told the Manager that they would not perform the assignment because they felt it was unsafe, even though the Grievants clearly understood how to invoke that contractual procedure. Nevertheless, in considering the altercation that occurred here, the Arbitrator also credits the evidence in the record that the Grievants, two very experienced maintenance employees, had safety concerns on their minds frequently at the time of this incident. They described, without contradiction, a workforce that consisted of many new co-workers and some new Managers, who had far less experience than the Grievants did in the mill. The Grievants testified convincingly that they believed that these newer employees were not as aware of the dangers in the mill as are the Grievants. In particular, Lesoken described the impact

on him of serious (and in one case fatal) accidents that had occurred in the past in this mill involving their co-workers, some of whom were friends.

In addition, Manager Koudougou testified that until he came, the press that the Grievants were supposed to check that day had not been inspected for years. Three sides of the machine were blocked off with safety tape because the sensors to shut down the machine when someone got too close to it were not operating. Grievant Townsend said that he thought a master or manager's lock should have been place on the machine. He had talked to Nordstrom the week before about the poor condition of the machine. The Arbitrator has considered this information with regard to the level of discipline imposed in this case.

Nevertheless, the Grievants also have enough years in the mill to know that they cannot simply continue to debate and argue with a Manager about how to perform an assignment, if they are not pulling a safety card. At some point the debate must stop, and the job must be done. They also know that they generally have a responsibility to express their concerns over an assignment in a calm and respectful way.

However, Management has a role to play to ensure that these discussions do not escalate into a situation that is likely to lead to discipline. When employees are discussing or disputing with a supervisor over how best to perform a job, at some point the supervisor should make clear to them that the discussion is over and that they must perform the work as assigned, or risk being insubordinate. Doing so provides notice to the employee that the employee must stop the back-and-forth discussion at that time and perform the work. If an employee refuses to perform the work once this notice has been provided, the employee risks being found guilty of insubordination, which under those circumstances may well be considered a dischargeable offense.

This pattern of events did not occur in this case and it is not entirely clear why not. The Manager walked away from the Grievants and toward his office while they were still talking about the checklist. He told them that they should come to his office if they wished to continue to talk about it. The evidence suggests that the Grievants continued to talk to him about the checklist as they all walked towards his office, but the Grievants did not enter the office. Koudougou did not warn them to perform the work or risk being charged with insubordination. Koudougou says that Townsend said Koudougou should just send them home, suggesting that the Grievants did not intend to do the job as assigned. But Townsend testified that he did not make a comment about going home until over an hour later, after Security arrived at their worksite. Lesoken said he went outside to cool down and have a cigarette. Townsend said he followed Lesoken out to calm him down. Arbitrator Franckiewicz found in his award that such conduct is intended to avoid a threatening situation and should be encouraged and not be used as the basis for discipline.

The Company argues, nevertheless, that there is sufficient evidence on this record to justify discharge for insubordination. There is evidence that the Grievants spoke disrespectfully

to their Manager about their concerns about the job, and at least Lesoken approached him in a way that made the Manager uncomfortable. The Union agrees that discipline is in order for their misconduct. However, insubordination was not mentioned in the Grievants' discipline letters and this is not a typical insubordination scenario that would justify termination. The Grievants were not warned that the discussion about the assignment had ended and that they should proceed to work or risk being charged with insubordination. Manager Koudougou's inexperience in dealing with such discussions may have influenced how the conversation concluded. In any event, Koudougou did not send them home for insubordination. They did not refuse to perform the work, although they also did not tell Koudougou they were going to perform it. They went on to the worksite after they left the discussion with Koudougou, after a brief break outside, and worked on the assignment for more than an hour. The Arbitrator concludes that there is not sufficient evidence on this record to establish that the Grievants engaged in insubordinate acts that would justify discharge.

The Company argues, however, that further grounds for discharge exist from the fact that the Grievants refused to answer questions about the incident when Section Manager Nordstrom arrived on the day in question. When the Grievants asked for a Union representative, Nordstrom contacted the bargaining unit Senior Operating Technician. The Grievants testified at arbitration that they did not consider this adequate representation, because they wanted someone from the Grievance Committee instead. It is not clear from the record that they made that request at the time, but in any event, they were provided with Union representation and still failed to answer questions. Grievant Townsend said that he believed they were already going to be sent home, no matter what they said, once Security arrived to accompany the two Grievants to the office. At that point, the Grievants left Management no choice but to send them home.

The Arbitrator cannot conclude, however, that the Grievants' failure to answer questions on that day provides grounds for discharge. It is clear from the discipline letters that the Grievants later participated in an investigation, answering the Company's questions, providing their side of the story, and admitting to certain misconduct, including becoming angry in the exchange with their Manager. Under these circumstances, discipline to the point of discharge would be excessive for their failure to answer questions on the day of the incident. Of course, they cannot expect to be paid for that day, after being sent home when they failed to answer questions.

The Arbitrator concludes that the Grievants' conduct on the date of the incident did not provide grounds for immediate discharge on the basis of insubordination. The discipline letters and Mr. Koudougou describe somewhat different conduct as the basis for discipline for each employee. In addition, the level of discipline assessed to each employee is different, based upon factors described by the Company. Therefore, at this point the Arbitrator will address each grievance separately.

### Grievant Lesoken

Management concluded, according to the discipline letter, that Grievant Lesoken had admitted losing his temper that day and using inappropriate language "as well as standing up and approaching your manager." Management also concluded, according to the letter, that Lesoken had said to Koudougou, "you don't know what the fuck you are doing, management doesn't know what the hell they are doing" and continued to "curse at your manager after coming into close proximity." The letter stated that the Grievant's "aggressive behavior and obscene language" towards his supervisor would not be tolerated.

As discussed by Arbitrator Franckiewicz' in his decision between these parties in Grievance No. 23-021, "a steel plant is not a church." Company Witness Valentino testified in this arbitration that there are different ways in which employees use profanity in the workplace, and only some are subject to serious discipline. Other uses of profanity fall into the category of everyday speech in a steel mill, not usually subject to discipline. Valentino said that he explained the distinctions "at length" in a meeting in which he discussed the Company's civility policy with the Grievants and other employees. Valentino said that he explained to them, for example, that saying, "The weather fucking sucks" is very different from saying "Fuck you" to someone at work.

In this case Lesoken's use of profanity falls somewhere in between the two examples given by Valentino. What he said was not as serious as saying "Fuck you" to Koudougou or calling him a name, actions which may provoke a serious reaction from the person to whom they are addressed. Nevertheless, it is serious misconduct for an employee to say to a Manager that, "You don't know what the fuck you are doing" and that "Management doesn't know what the hell they are doing." The comment was insulting and personally demeaning to Manager Koudougou, questioning his competence in a humiliating way as he was in the midst of performing his duties as a supervisor, assigning work to Lesoken and Townsend.

Lesoken admitted being angry in this conversation but said that he became angry only when Koudougou began pointing a finger in his face. However, the evidence establishes that Lesoken made his comment about Koudougou not knowing "what the fuck you are doing" before they got into an exchange about Lesoken pointing his finger at the Grievant. Using this phrase strongly suggests that Grievant Lesoken was already angry and supports Manager Koudougou's testimony that the Grievant was angry and raising his voice when talking to him.

The Arbitrator also has considered the Manager's testimony that Lesoken got up from his seat and approached Koudougou, following him as he began walking away. Koudougou said that Lesoken was very close to him at one point and making "abusive" comments to him. Koudougou said that he told both Grievants not to talk to him that way. However, he did not elaborate on what exactly Lesoken said at this point, other than that Lesoken told Koudougou to stop pointing his finger in Lesoken's face. According to Koudougou, Grievant's conduct, coupled with Grievant Townsend following him as well, made him feel insulted, offended, and made it

difficult to perform his job. In response to the Company's question about whether he felt threatened, he said yes.

Approaching and following a co-worker closely as he is walking away and angrily using the kind of language for which Lesoken was disciplined, would be offensive if used towards any employee. The Company's civility policy requires respect among all employees. At the very least, such conduct makes it more difficult to work cooperatively with the other person in the moment, which is important in the safety-sensitive environment of a steel mill.

However, such language is particularly a problem when an employee directs such comments to a supervisor who is assigning work to him. Respect must be shown to a supervisor who is in the process of performing his supervisory duties. To use profanity and forcefully challenge the supervisor's competence in this situation impairs the orderly and efficient operation of the workplace. It was humiliating and when the Grievant continued this conduct after Koudougou told him to stop and suggested they go to his office to discuss it, his conduct made the situation worse. This type of conduct raises the tension in any discussion with another person and may well have led to Koudougou wagging his finger in the Grievant's face as he told the Grievant not to talk to him that way. Koudougou testified convincingly that this conduct made it more difficult for him to perform his work as a supervisor.

As the Union acknowledges, issuing discipline for Lesoken based upon these facts does not violate just cause. The Union argues, however, that there are some mitigating circumstances here that demonstrate that the suspension assessed to Grievant Lesoken, which the Company's witness suggested places him one step away from discharge, is excessive.

Koudougou may have felt apprehensive about an employee talking to him in a raised voice and moving closer to him, with another employee nearby also chiming in and making negative comments about him. However, there is no evidence in this case that Grievant Lesoken made any kind of physical motion that would suggest that he intended to grab or strike the supervisor, or otherwise make physical contact with him. In considering the situation here, the Arbitrator concludes from the arbitration hearing that Lesoken is somewhat hard of hearing and that Koudougou typically speaks in a low tone in accented English. These factors may have hampered communication between the two men. On these facts there is not sufficient clear evidence that Lesoken was trying to physically intimidate or threaten the Manager when he approached him and continued talking about the checklist or even about his competence. The discipline letter does not charge the Grievant with threatening Koudougou, stating only that he "stood up and approached his Manager" and later refers to this conduct as "aggressive." Nor can the Arbitrator conclude that in this brief encounter Lesoken created a "hostile environment" for the Manager, as opposed to simply going somewhat too far in a single discussion over a work assignment, which the supervisor did not take action to end.

The Arbitrator notes that Section Manager Nordstrom did not testify as to exactly what Koudougou told him that led him to call Security before he even arrived at the facility.

Nordstrom said that he called Security to calm things down. That decision may have been influenced by the fact that Koudougou did not where the Grievants went after the conversation ended. He did not know that they went to the assigned worksite and began working the job.

The Arbitrator also notes that disrespect to a supervisor is significantly more serious if it is done in front of other employees. However, there is not convincing evidence in this record that any other employees were present to overhear the disrespectful comments made to Koudougou by the Grievants. Koudougou said that the conversation with Lesoken and Townsend began after the morning meeting. No other employees testified at arbitration that they overheard the exchange between Lesoken, Townsend and Koudougou.

Most importantly, the Company argues that it has employed progressive discipline with regard to the Grievants, in order to convince them of the need to provide respect to their co-workers. Witness Valentino discussed how the Company recognized that it was implementing a major change in the culture at this facility, taken over by Cleveland Cliffs only a few years before this incident. He testified that improving civility and respect among the workforce was one major focus of this change. Therefore, he said that the Company was generally employing a policy of progressive discipline for employees who act disrespectfully, even though the Company introduced at arbitration a posted notice stating that disrespect of any kind will result in immediate discharge. Grievant Townsend's case demonstrates the Company's approach of using progressive discipline to develop the change in culture.

The Company argues that this system of lesser discipline has failed with the Grievants, at least until the Company imposed the severe penalties at issue here. However, there is no evidence in the record that Grievant Lesoken has even been personally counseled about the Company's respect and civility policy, or been disciplined in any way with even a verbal warning before this incident. He has almost 29 years of tenure at this facility, through multiple owners, and during that time he has built up a reserve of good will and service to the Company that must be considered in regard to the imposition of discipline here. In addition, he apologized for his behavior at the investigation, according to the disciplinary letter.<sup>1</sup>

The Company has argued that it has followed this path of imposing lesser discipline with the Grievants here, but the evidence demonstrates that they have not done so in the case of Grievant Lesoken. Instead, they have moved directly to what the Company regards as the final step before discharge for what appears to be a first offense on his record.

In assessing whether a penalty violates just cause, the Company need not strictly employ all of the steps of progressive discipline. Employers may accelerate steps of discipline in some cases for more serious violations, without violating just cause. However, the penalty must still be proportionate to the facts of the employee's misconduct as established by the evidence and

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<sup>1</sup> The value of his apology for his conduct is lessened somewhat by his apparent mocking of Manager Koudougou's accent during the grievance procedure. This, however, occurred after the discipline was imposed.



proportionate to how other employees have been treated for similar offenses. The Arbitrator is not certain how the Company would have treated Lesoken's conduct if Townsend had not been disciplined for the same incident, as the Company is now making the same argument about unsuccessfully using lesser discipline for both Grievants, even though that argument applies only to Townsend.

The Company's disciplinary policy establishes penalties for certain violations. However, the Company has not cited any specific violations in imposing this discipline and has not introduced evidence of a specific workplace policy regarding creating a respectful work environment, other than the preamble language in the rules provided at arbitration. Nevertheless, any employer may expect their employees to speak and act respectfully towards each other, in order to work together to achieve the goals of the business. As Company Witness Valentino testified, "Without respect, a dangerous workplace can become a hazardous workplace." The Grievant used profanity to disparage his Manager's competence while his Manager was assigning work to the Grievant. Grievant rose from his seat and approached his supervisor with an angry tone and raised voice and then followed him closely, continuing to make comments as the Manager turned to leave. This is unacceptable conduct towards any employee, but especially towards a supervisor performing supervisory duties.

The Grievant's conduct is sufficiently serious to merit more than a written warning. However, considering his long tenure, the mitigating facts of this case, including the Arbitrator's conclusion that Grievant's conduct did not constitute a dischargeable offense, and the absence of any record of prior discipline of the Grievant, the Arbitrator concludes that accelerating discipline to the 30-day suspension issued by the Company is not supported by just cause. A 10-day suspension should be sufficient to impress upon the Grievant that he must speak and act respectfully in conversations with co-workers and particularly supervisors.

#### Grievant Townsend

According to Grievant Townsend's discipline letter, he admitted during the investigation to losing his temper and making inappropriate remarks towards his Manager, including making vulgar remarks and saying, "You don't know how to do your job." Townsend testified at arbitration that after reviewing the (uncompleted) checklist for the machine he was to check that Koudougou provided to him that morning, he told Koudougou, "You don't know what the fuck you are talking about."

Townsend testified at arbitration about items on the uncompleted maintenance checklist that were either wrong or irrelevant for the 1500 ton press he was assigned to check and repair that day. He testified, for example, that the wrong manufacturer was listed for the machine; that items for two other machines were included on this form; and that an entire section of the checklist regarding electrical components was irrelevant. He is an experienced Maintenance

Millwright and there was no evidence introduced to contradict this information. Nevertheless, Grievant Townsend should have approached Manager Koudougou and presented this information in a professional way, rather than just saying, "You don't know what the fuck you are talking about." If Manager Koudougou did not accept Grievant Townsend's comments about the form, and if Townsend believed it was unsafe to proceed without correcting the form, he could have pulled a safety card or brought the information to someone in upper Management, including Nordstrom. Evidence in the record indicates that he had talked to Nordstrom several days earlier about this machine. Instead, like Grievant Lesoken, Grievant Townsend made an insulting remark to Koudougou about his competence while Koudougou was performing his supervisory duties of assigning this work to him.

Grievant Townsend did not apologize for his conduct at the investigation. Instead, the evidence shows that he took the position, that "this is just the way I am" or "this is the way I talk." At arbitration he admitted to having a "rude, crude way of talking." Problems and disagreements are inevitable in the workplace. As discussed above, insulting a co-worker rather than trying to engage them in a reasonable discussion about the nature of a problem at work is not likely to lead to a good resolution of the underlying problem. Insulting someone may well anger the other person, likely escalating the tension and making cooperation more difficult, if not impossible, in the moment. In a dangerous workplace like a steel mill, discussing work issues with a cool head is even more important than in other workplaces. The Employer has a very reasonable interest in fostering a cooperative, calm work atmosphere, based upon mutual respect, in order to promptly and effectively address problems that arise in the workplace. This is especially true when an employee makes disrespectful comments to a supervisor, laced with profanity, while the supervisor is engaged in supervisory duties, including giving assignments.

The Arbitrator understands that Grievant Townsend has worked under several employers in the same facility over the past years. Company Witness Valentino's testimony suggests that there may have been different practices with regard to how employees treated each other or spoke to each other in the past under former employers. Nevertheless, whatever may have been the custom in the past in this facility, this Employer has made it clear to employees that they must treat each other respectfully, including how they speak to each other – or face discipline for not doing so. The evidence shows that the Grievant himself asked in a labor-management meeting why he could not simply "be himself" and speak however he wishes in the workplace. According to credible testimony from Valentino, he explained at that time the reasons for the Company's expectations of employees regarding civility and respect. He even explained that the Company recognizes reasonable differences in how employees use profanity, making clear that profanity that is directed towards a person in a disrespectful way is likely to merit discipline, even if profanity is used in the plant in other ways every day.

The Grievant has been counseled and disciplined in the past for this misconduct. The Grievant already had been issued two Second Written Warnings for conduct that showed disrespect either to co-workers or Company property. It is too late to argue that the Company


should have issued a Verbal Warning for one or more of these earlier incidents, since no grievance was filed over either discipline. The Arbitrator credits the Company's argument that it has tried lesser progressive discipline and that that discipline had not changed Grievant Townsend's behavior. His conduct – and his comments made during the investigation – suggest that at least at the time of this incident, he had not fully accepted this Company's policies about respect in the workplace. The Grievant must decide whether speaking however he pleases at work is more important than following the Employer's rules so that he can keep his job.

Therefore, the Arbitrator cannot conclude that a suspension issued to Grievant Townsend violates just cause. Once a violation of Company policies has been established, in many cases arbitrators provide deference to the level of penalty chosen by an employer. However, as discussed above, Company Witness Valentino testified that generally a 30-day suspension follows verbal and written warnings, as the Company is working to change the culture at Coatesville. A 30-day suspension normally means 30 calendar days, since thirty workdays is more like a 45-day suspension. It is not clear to the Arbitrator why the Company imposed a longer suspension. In particular, it is not clear whether the Company would have done so if Grievant Lesoken had not been involved in the same incident. The Arbitrator concludes that having decided to impose a 30 calendar-day suspension on Grievant Lesoken, the Employer may well have decided that Townsend should have a longer suspension for the same incident, because of his past discipline. However, the Arbitrator has determined that the 30-calendar day penalty for Grievant Lesoken is excessive.

Furthermore, although Grievant Townsend engaged in some of the same verbal disrespect as Grievant Lesoken, the evidence demonstrates that he did not engage in the same level of misconduct during this incident. Grievant Lesoken got up and approached his Manager, coming close to him and raising his voice at him. There is not convincing evidence that Grievant Townsend engaged in this same conduct, or if he did anything beyond the single disrespectful comment he made to Manager Koudougou and most likely following behind the two men. For the reasons set forth above, this conduct did not constitute insubordination, for which discharge might have been appropriate. In addition, there is no convincing evidence that Townsend made his comments in front of other employees. Under the circumstances, the 30-workday suspension, amounting to a six-week suspension, issued to Townsend is not supported by just cause, even considering his past record. Reducing his discipline to a 30 calendar-day suspension takes into account the Grievant's long tenure with the Company, and the actual facts surrounding his participation in this incident, as well as the Company's legitimate concern over the Grievant handling disagreements in a respectful way.

### AWARD

The grievances are sustained in part. There was just cause for the discipline of both Grievants. However, the Arbitrator concludes that the lengthy suspensions issued to the Grievants do not meet the standards of just cause. Grievance No. 23-133 of Grievant Charles Lesoken is reduced to a 10-day suspension. Grievance No. 23-134 of Grievant Daniel Townsend is reduced to a 30-calendar day suspension. The Grievants shall be made whole for all losses resulting from the longer suspensions originally issued to them. The Arbitrator shall retain jurisdiction solely over the remedy portion of this award. If the parties have questions about the remedy, they shall raise them with the Arbitrator within 30 days of this Award or agree to extend that period and notify the Arbitrator.

Signature 

Jeanne M. Vonhof, Labor Arbitrator

Decided this 26<sup>th</sup> day of June, 2025.