

IN THE MATTER OF THE ARBITRATION BETWEEN

ARCELORMITTAL USA

And

ArcelorMittal Case No. ~~31~~ 32
Peter Julien Discharge

UNITED STEELWORKERS
INTERNATIONAL UNION AND
LOCAL UNION 1010, USW

OPINION AND AWARD

Introduction

This case concerns the discharge of Grievant Peter Julien for threatening a supervisor in violation of Plant Personal Conduct Rule 2-R:

The following offenses are among those which may be cause for discipline, up to, and including suspension preliminary to discharge:

...

R. Use of profane, abusive, or threatening language/behavior towards supervisors or other employees or officials of the Company or any non-ArcelorMittal personnel.

The case was tried in the Company's offices in East Chicago on July 8, 2009. Robert Cayia represented the Company and Bill Carey presented the Union's case. Grievant was present throughout the hearing and testified in his own behalf. There are no procedural arbitrability issues. The parties stipulated that the issue is whether there was just cause for discharge and, if not, what the remedy should be. The parties submitted the case on closing arguments.

Background

Grievant had been employed for about six months at the time of his discharge, and was assigned to pugh ladle repair. Rita Ohlson, Grievant's second-level supervisor, testified that on December 30, 2008, she heard Grievant and another employee talking outside her office. Ohlson said at the time she was talking with another bargaining unit employee. Ohlson said Grievant and the employee he was with asked if they were on Supervisor John Cortez' crew. Grievant commented that if he ended up on Cortez' crew, Cortez would end up in a pugh ladle at the dump site and would never be seen again. Ohlson described Grievant's comment as "odd," but said she did not take it seriously because Grievant and his coworker had been laughing and joking when they arrived at her office, and Grievant did not seem to be angry when he made the comment. She described him as "goofy."

Ohlson said she encountered Grievant again on Friday, January 2, 2009, in the company of two other bargaining unit employees. As he had done on December 30, Grievant asked if he was going to be on Cortez' crew; Ohlson replied that she didn't know. Ohlson said Grievant told her, "If I ever see him on the outside I will bash his face. You have no idea how much I hate him." Ohlson said Grievant's voice was stern, unlike his demeanor on December 30. Ohlson described Grievant as usually being "happy go lucky," and said his January 2 comments were out of character. Ohlson said she thought maybe there had been some incident between the two men, so she checked to make sure they would not be assigned together over the weekend because she thought they needed some time apart. Ohlson said she made a note to talk to her supervisor on the following Monday. She did not notify Cortez of Grievant's comments.

On Monday morning, January 5, 2009, Ohlson said she was in her office when she heard Grievant outside saying he was certain that Cortez would assign him as a janitor. Ohlson said

she told Grievant that the off-going supervisor prepared the lineup, not Cortez, to whose crew Grievant was assigned that day. At 12:43, Ohlson said, Grievant came into her office and was “very upset.” He threw his hard hat on the floor and then leaned over the desk until he was a couple of feet away from her and yelled at her, Ohlson testified, saying he was “done with the fucker” and that he “wasn’t going to take his shit anymore.” He told Ohlson that he knew how to clean a bathroom and said, “I swear to God I’m going to kill the fucker.” Ohlson described Grievant as “very mad” and “enraged.” She said he was, “like a crazy person – mad, screaming, shaking.” She denied Grievant’s subsequent claim that he simply dropped the hard hat harder than he thought – she said he slammed the hat to the floor and it made a loud bang.

Ohlson said she told Grievant to sit down and told him she would call her supervisor, Area Manager for Shop Services Mike Morley. She said Grievant sat on the edge of the chair and was “shaking.” Ohlson said she called Morley and told him she needed him right away. Morley called back in a few moments and asked Ohlson if she needed Plant Protection, and Ohlson said she did. Ohlson testified that she had never seen Grievant as angry as he seemed on that morning and it scared her. When she hung up the phone she noticed Grievant was gone. Another bargaining unit employee who had been there throughout the incident told her Grievant had left to have a cigarette.

Area Manager Morley’s testimony confirmed Ohlson’s call to him on the morning of January 5, and his subsequent call to her. He said when he approached Ohlson, she seemed very scared, threatened, and intimidated. Morley said he asked Grievant what had happened, and Grievant said, “nothing.” Morley instructed the Plant Protection officers to escort Grievant from the plant. After speaking further to Ohlson, Morley called Cortez to his office and told him about the threats. Morley said he began the investigation, and procured statements from

management and bargaining unit employees. Subsequently, Morley suspended Grievant preliminary to discharge.

Jim Norris, a supervisor in the mason department, testified that on January 5 he was in his office, which was about 10 feet from Ohlson's office. He said he heard a "loud noise," which was Grievant's hard hat hitting the floor of Ohlson's office. He said it was very loud and distinctive. That drew his attention, Norris said, and he then heard "yelling and screaming" from Ohlson's office. Norris said he heard Grievant yell that if he had to stay on Cortez' crew, he was going to kick Cortez' ass.

Cortez testified that he first became aware of Grievant's threats when he spoke to Morley about them on January 5. He said he was "shocked and distressed" at the severity of the threats, and was concerned that they had been going on for some time. Cortez said he and Grievant had not been on the same crew at the time of the December 30 and January 2 incidents. But Grievant was assigned to Cortez' crew on January 5. He said he gave out the assignments at the morning toolbox meeting, and that he told Grievant the janitorial assignment had been made by the previous shift's supervisor. Cortez said he tried to rotate the assignment among employees who were not in training at the time. Grievant had been assigned to the job twice in December 2008, fewer times than some other employees.

Cortez said he passed Grievant later on the morning of January 5, and simply greeted him by saying, "All done Pete?" to which Grievant replied, "No, not yet." About two hours later the two men said hello when they passed each other. At about 12:20, Cortez said, he was looking for two employees he needed, and checked for them in the locker room. Cortez said he noticed some things that needed to be done in the wash room and he told Grievant about them later. These included a "blob" of tobacco on the urinal that had been there since early in the morning.

Grievant responded by saying let's go look at them right now. Cortez pointed out his concerns and, he said, Grievant became "visually upset," and told Cortez, "we're going to Ohlson's office." Cortez continued to look for the two employees and did not accompany Grievant to the office.

On cross examination, Cortez said he sometimes changed assignments at the tool box meeting. On January 5, another employee had suggested that Grievant help him. Cortez said he considered doing that, but ultimately decided not to change the lineup. Cortez said he does not swear at employees, or "talk down to them." He agreed that another employee had claimed Cortez grabbed him, but Cortez said that was a mischaracterization of what happened. Cortez said he had tried to get the employee's attention and, when he did not respond, Cortez reached out and grabbed the flap of his jacket between thumb and finger. Alex Ochoa, a bargaining unit employee, said he saw the incident and that Cortez had grabbed the employee and "stopped him in his tracks."

The Company also offered two statements from bargaining unit employees to which the Union objected. I will deal with the objection below. The first statement was a memo prepared by Morley after his interview with Walt Schultz. Schultz did not write the memo. He said at some point before the January 5 incident he had heard Grievant tell Ohlson that he wanted to kill Cortez and that he would kill Cortez if he got in his face. Schultz said he was in the area on January 5 and heard a loud bang when Grievant threw his hard hat on the floor. Schultz told Morley that Grievant was a "time bomb waiting to go off."

The other statement is from Paul Ward, a bargaining unit planner in pugh ladle repair. Ward prepared a statement and sent it to Morley at Morley's request. Ward said he heard Grievant curse when Cortez made the lineup assignment and say, "that motherfucker better stop

fucking with me,” and a few other similar comments. Ward said he was present on January 5 when Grievant went to Ohlson’s office after his encounter with Cortez. Ward said Grievant was shouting and breathing heavily. He threw his hard hat so hard it bounced 2 or 3 feet. At that point, Ward said he thought he should stay in the office as a safety precaution. Ward said Grievant told Ohlson that he was “Done being the fucking janitor,” and that he was going to kill Cortez. He also told Ohlson that she had better do something about this. Ward said Ohlson was visibly shaken by the incident.

The Union called Tom Warren, an MTM in pugh ladle repair, who described incidents with a supervisor named Gootee that included yelling, finger pointing, and profanity. Some of this was directed at other supervisors and took place in front of bargaining unit employees. Warren also related an incident between Cortez and Grievant when Grievant’s shirt caught on fire. Warren agreed that Cortez did not curse at employees, but he said Cortez was “very adamant.” On cross examination, Warren agreed that he had not heard Gootee threaten employees in the way Grievant was alleged to have done in this case. Adam Martin, an Operating Technician in pugh ladle repair, testified that he was sitting next to Grievant when Cortez made the janitorial assignment on January 5. He denied that Grievant “mumbled” or that he said anything Cortez or another bargaining unit employee could have heard. Martin also said he had a confrontation with Cortez once when he was working an overtime assignment. Bob Convery, an MTM, said he used the restroom on January 5 at about 11:30. He said it looked good and that he did not see any tobacco on the urinal.

Josh Tolson, a Service Technician, said Grievant worked with him on January 2, and was with him the entire turn. They did not take lunch or breaks. Tolson also related an incident in which a shift supervisor “freaked out” at Grievant. He said Grievant told the supervisor to calm

down and then see him in five minutes. Grievant walked away. Lou Cadillo also testified that Grievant worked on the track mobile the entire night of January 2. Pete Marjanovich testified that he was with Grievant on December 30 when Grievant went to Ohlson's office. He testified that he and Grievant asked Ohlson if they would be working for Cortez and she replied that she hadn't made up her mind. Marjanovich said he and Grievant left, and that Grievant did not make any comments about putting Cortez in a pugh ladle. He also said he was there with Grievant on January 2 and did not remember hearing Grievant say he wanted to kick Cortez' ass. Bob Osborne testified about an incident involving Gootee where Gootee threw a hard hat, and another incident where Gootee yelled at an employee for 5 minutes.

Matt Beckman, Secretary of the Grievance Committee, testified about his conversation with Paul Ward, a bargaining unit employee who was in Ohlson's office during the January 5 encounter between Ohlson and Grievant. He also identified a separate statement from Ward, which was much shorter than the one submitted by the Company. This apparently was Ward's original statement. It says Ward saw Grievant throw his hard hat on the floor, that Grievant was upset, and that he leaned over Ohlson's desk shouting at her. Ward said Grievant used profanity and threatened to kill Cortez. Beckman said Ward told him that he prepared a statement because Morley told him to. Ward also told Beckman that Grievant did not threaten Ohlson. On cross examination Beckman acknowledged that he had asked Ward to write a clarifying statement, but that Ward refused, saying that he would stand by his original statement. Dennis Shattuck, Chair of the Grievance Committee, testified that in the 1980's a supervisor named Shattuck (no relation) reportedly told another employee that if the two were related, he would put Dennis Shattuck in a bag and drown him. Shattuck said about a year later he asked the supervisor about the comment and the supervisor replied that he was kidding.

Grievant said he went to the office with another employee on December 30 to ask whether he would be on Cortez' crew. Ohlson told him it didn't really matter because Grievant would be in training. He said he agreed with Ohlson and that he left without making comments about Cortez. Grievant denied talking to Ohlson about Cortez on January 2. He acknowledged that he was upset when he went to Ohlson's office on January 5, and he twice said he threw his hard hat on the floor, but also said he had simply set it down hard. According to Grievant, this was his second trip to Ohlson's office that day; the first time he said he told Ohlson that Cortez was "bird dogging" him and she needed to do something. He went back to the office later, after Cortez accused him of not cleaning the restroom. Grievant said he asked Cortez to go with him to Ohlson's office to resolve the matter and Cortez said he was looking for two employees, and would meet Grievant there. Grievant said he was upset when he got to Ohlson's office and he told her that Cortez was "disrespecting me" and "I should have kicked his ass." Grievant denied threatening to kill anyone. Grievant said he told Ohlson he was going out to have a cigarette, and while he was out he thought he should call for a Union representative. At about that time, Morley appeared and sent him home.

On rebuttal Morley testified that the Union had unfairly characterized the culture in the plant, and the kind of actions tolerated by management. He said another supervisor had gotten into a dispute with Cortez, had thrown his hard hat to the floor, and had yelled and tried to intimidate Cortez. Morley said he investigated the case and discharged the supervisor.

Positions of the Parties

The Company notes that Grievant had only 6 months service at the time of the events at issue here, and it questions what kind of employee Grievant would have been in the long term. The three incidents on December 30, January 2, and January 5 show a progression of threats. Grievant's conduct on January 5 was outrageous, the Company says, and of itself justified discharge. The Company notes that while it was not able to call Schultz and Ward to testify, the Union could have done so to try to have them disown their statements. The Union did not do so, the Company says, because the statements accurately reflected Grievant's conduct. There are no mitigating factors here, the Company says – Grievant was a very short service employee and Cortez did not do anything to provoke Grievant's outburst. The Company also says the Union cannot defend Grievant by focusing on Ohlson. She explained why she did not contact Cortez or her supervisor following the December 30 and January 2 events. Nor, the Company says, can the Union defend Grievant by claiming that the culture of the department condoned such activity. Whatever Gootee may have done, his conduct was not an issue in the case, the Company argues, and nothing Gootee or other supervisors had done would justify Grievant's conduct in this case.

The Union argues that short service employees like Grievant are entitled to the full protection of the just cause requirement in the Agreement. The Union questions the veracity of the statement from Ward, pointing out that his initial statement was quite short and that the one he prepared a month later had details not included in the first statement. In addition, the memo summarizing the interview with Schultz referred to something that happened about 2 weeks before the January 5 encounter. The Union also questions Ohlson's claim that she made a note in her planner to talk to Morley after the incident on January 2, or her claim that she had sent him a note. Had those things happened, the Union says, the Company would have put them into

evidence. Also, the Union points out that when Cortez called Morley on January 5, she said she had something to go over with him, but did not mention any death threats.

The Union also points to the culture of the department, where the Company tolerated abusive conduct by supervisors. If Grievant's conduct was inappropriate, the Union says, part of that was because the tone had been set by management. In addition, the Union points out that Grievant never made any threats to Cortez.

Findings and Discussion

As noted above, the Union contests the admissibility of statements made by bargaining unit employees, whether written by them personally or documented as a result of an interview by a manager. The contract has long prohibited the Company from calling members of the bargaining unit, and the Union from calling members of management. But this doesn't necessarily preclude hearsay testimony about what witnesses have heard or seen. Presumably, part of the reason for the restriction is to prevent bargaining unit members from being forced to testify against coworkers, which did not happen here. Employee statements and testimony about interviews with employees have been allowed in other industry relationships, including the USS-
USW Board of Arbitration, and the IOI Board of Arbitration. The evidence is obviously hearsay and may not be entitled to the same weight as non-hearsay testimony, or to any significant weight at all. But given the restriction about calling witnesses, the evidence can be submitted for consideration by the arbitrator, especially in a case like this one, where it was offered to corroborate direct testimony.

Like the Union, I have some concern about Ohlson's reactions to Grievant's conduct on December 30 and January 2. Her explanation about December 30 was plausible – Grievant

seemed to be joking with a coworker and, in context, his statement did not seem to be a serious threat. But the same thing cannot be said of January 2. I believed the employees who testified that they worked with Grievant on January 2 and that he spent the entire shift with them. But it is not reasonable to think they were with him for every moment of the turn. There was testimony that the heater did not work in the track mobile, so it is reasonable to believe that Grievant went inside to warm up, or that he was separated from his coworkers for rest room breaks. His encounter with Ohlson would not have taken long and I believed her testimony that he spoke to her about Cortez.

But I have some difficulty believing that Ohlson took Grievant's January 2 comments very seriously. She testified that she had been at the Company for only a short time and that there had been no such incidents at her previous place of employment, so she wasn't used to dealing with death threats. But at a minimum, one would think that hearing a credible death threat would cause her to inform her supervisor or, at least, to tell Cortez. This is not to suggest that Grievant's conduct on January 2 was acceptable. I find that he did make disparaging remarks about Cortez and did so in an inappropriate manner. But this conduct apparently was not sufficiently serious to justify prompt action by Ohlson and, accordingly, would not, of itself, be cause for significant discipline. However, the same thing cannot be said of Grievant's conduct on January 5.

Frankly, I have some difficulty believing that the Union's witness could remember whether there was tobacco on the urinal at 11:30 a.m. on January 5, 2009. But even if he could, and even if Cortez exaggerated the defects in Grievant's work, that would not justify what Grievant did. I credit Ohlson's account of what happened that day, since it was buttressed by

Ward¹, Schultz, and, Norris, the mason foreman. I believe that Grievant was very angry when he went to Ohlson's office, that he slammed his hard hat on the floor, and that he yelled at Ohlson while leaning over her desk. Ohlson described him as acting like a "crazy person" who screamed at her and threatened to kill Cortez. She said Grievant yelled, "I swear to God I'm going to kill the fucker."

Ohlson described the effect this had on her, and said she was still shaking after talking to Morley. In addition, something about the telephone call must have alerted Morley to a more serious problem because he called Ohlson back and asked if she needed Plant Protection. I reject the Union's claim that Ohlson must not have been frightened by Grievant's conduct because she did not tell Morley on the telephone that there had been a death threat. When she began talking with Morley, Grievant was still in Ohlson's office and she did not realize Grievant had left until she completed her call. It was prudent for Ohlson not to accuse Grievant of serious misconduct on the telephone in the presence of a very angry man who had just threatened to kill a coworker.

I reject the Union's claim that Grievant's conduct was consistent with or, perhaps, caused by the culture of the pugh ladle repair area. Supervisor Gootie was not involved in the incidents at issue here. But even if the allegations against him are true, and even if Cortez has been abrupt with employees, that would not justify Grievant's conduct in this case. Indeed, it is hard to imagine what a supervisor could do that would justify a death threat. The disagreement in this case involved whether Grievant had adequately cleaned the rest room. It is not hard to understand that an employee would be upset by having his work criticized, especially if he thought the work was satisfactory. But Grievant stormed into the office of his second-level

¹ The Union questions the veracity of Ward's statement because his second one was made a month after the incident and appears to contain information that is not in the original statement. But even the original statement says Grievant threw his hard hat, leaned over Ohlson's desk and shouted at her, and threatened to kill Cortez.

supervisor, threw his hard hat on the floor, and then screamed at Ohlson and made threats against one of her supervisors. Even if Grievant had not threatened Cortez, his treatment of Ohlson was inappropriate. I can understand why Grievant was upset and I would not expect him to remain completely calm while he spoke to Ohlson. But there was no way to justify the way he approached her or the things he said to her.

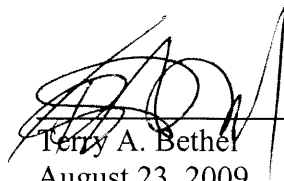
I do not find it determinative that Grievant did not make his threats directly to Cortez. Grievant did not simply make an idle comment to a coworker. Rather, he burst into Ohlson's office and told her that he intended to kill one of her subordinates. She had heard him say such things before, but not when he was in a rage, as he was on January 5. The Company was entitled to take these threats seriously, even if Ohlson was not the immediate target of the threat. Grievant cannot escape the consequences of his conduct by arguing that he threatened Cortez through his boss rather than face-to-face, and he cannot excuse his conduct toward Ohlson because he did not threaten to kill *her*.²

I agree with the Union's claim that Grievant is entitled to the full protection of the just cause provision. But unions frequently argue that arbitrators should apply mitigating factors, with long service being the one most frequently advanced. That clearly does not apply in this case. Nor can I find that there was any provocation for Grievant's conduct. In these circumstances, I find that Grievant's actions on January 5 were just cause for his discharge. The grievance will be denied.

² I have read the cases tendered by the Union. The one most like this case was Inland Award 653, where the arbitrator reinstated an employee who had told a foreman, "I'll kill you." Importantly, the arbitrator found that the words were spoken out of frustration and were not intended to be taken seriously. The grievant in that case apparently had not uttered previous death threats against the foreman. Moreover, the arbitrator seemingly took account of some mitigating factors, including the mental and physical state of the grievant after working a shift in an un-airconditioned crane cab, and some provocation from the foreman's manner of disciplining the grievant. The same factors do not exist in this case.

AWARD

The grievance is denied.



Terry A. Bethel
August 23, 2009