

DAVID A. PETERSEN, ARBITRATOR

In the Matter of Arbitration)	Arbitrator's Opinion
between)	and Award
)	
)	
ArcelorMittal)	Grievance 11-3010
)	
and)	Award Issued:
)	March 13, 2013
United Steelworkers)	Case 60
Local Union 6787)	

Subject: Discipline – Alleged Gross Insubordination

Appearances of Representatives:

**James W. Bellamy, Manager Labor Relations
William Koch, Senior Labor Relations Representative
On behalf of the Company**

**Rick Bucher, Staff Representative
On behalf of the Union**

BACKGROUND

11-3010

In this grievance from the Steel Producing Division it is claimed that Grievant was suspended without just cause in violation of the September 1, 2008 Basic Labor Agreement.

Grievant, a Labor Grade 3 Operating Technician with a 1974 service date and no cited discipline history, received a Notice of Intent to Discharge on June 16, 2011 for "Gross Insubordination (No Justice and Dignity)". The Company discharged Grievant on June 30, 2011. Subsequently, however, the Company converted Grievant's discharge to a time-served suspension and returned him to work during the week of August 21, 2011. At issue now is whether Grievant's suspension was for just cause and, if not, what the remedy should be.¹

According to the evidence offered at the arbitration hearing Grievant was originally scheduled to work a #2 ROT Secondary Operator position on the 12-8 shift on June 15, 2011, but due to a vacancy on the #2 ROT Primary Operator position on the same turn a Shift Manager reassigned him to work the #2 ROT Primary Operator position. Grievant objected to this reassignment. Grievant represented that he was scared to perform the #2 ROT Primary Operator position with the new control system that had been installed in connection with an October 2010 torch machine upgrade project at #2 Caster. Grievant maintained he was not qualified on the #2 ROT Primary Operator job as it existed on June 15, 2011 and he expressed that he was uncomfortable and fearful due to his lack of familiarity with the new control system (i.e., a panel view control system with computerized/electronic buttons rather than mechanical buttons and switches) and that he felt it would be unsafe for him to accept this reassignment. Grievant told the Shift Manager he would use his Stop Work card rather than accept this reassignment to the #2 ROT Primary Operator position.² The Shift Manager believed Grievant was qualified on the #2

¹ Article Five, Section I-9-e of the 2008 Basic Labor Agreement provides: "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."

² The Stop Work card, as described by a Local Union President during the hearing, was developed jointly by the Company and the Union and was implemented at the plant in early 2011. The Stop Work card, which is personalized with the employee's name and signed by the Company President & CEO, reads as follows:

ArcelorMittal

I am responsible for my safety and the safety of fellow employees.

Employee Authorization to STOP Work

As an ArcelorMittal employee, you have the authority, without fear of reprimand or retaliation, to immediately stop any work activity that presents a danger to you, your co-workers or contractors. You have the right to get involved by questioning and rectifying any situation that is identified as not in compliance with our Health and Safety Standards. If you don't feel the issue is addressed adequately, you have the right to raise the issue higher.

The Local Union President stated that if an employee utilizes their Stop Work card and a disagreement still exists over whether the work activity presents a danger then the parties are to

proceed with the negotiated process set forth in Article Three, Section C of the 2008 Basic Labor Agreement as follows:

ARTICLE THREE – HEALTH, SAFETY AND THE ENVIRONMENT

* * *

Section C. The Right to Refuse Unsafe Work

1. If an Employee, acting in good faith and on the basis of objective evidence, believes that there exists an unsafe or unhealthful condition beyond the normal hazards inherent in the operation (Unsafe Condition), s/he shall notify his/her immediate supervisor. The Employee and the supervisor will make every attempt to resolve the condition in the interest of safety. Thereafter, s/he has the right, subject to reasonable steps for protecting other Employees and equipment, to be relieved from duty on that job and to return to that job only when the Unsafe Condition has been remedied. The Company may assign the Employee to other available work in the plant, consistent with this Agreement and without displacing another Employee.
2. If the Company disputes the existence of the allegedly Unsafe Condition, the Grievance Chair and the Plant General Manager or their designees will immediately investigate and determine whether it exists.
3. If after the investigation it is determined that the condition existed, the Employee will be made whole for any lost time in connection with the condition. If after the investigation the Company does not agree that an Unsafe Condition exists, the Union has the right to present a grievance in writing to the appropriate Company representative and thereafter the Employee shall continue to be relieved from duty on the job. The grievance will be presented without delay directly to an arbitrator, who will determine whether the Employee acted in good faith in leaving the job and whether the Unsafe Condition was in fact present.
4. No Employee who in good faith exercises his/her rights under this Section will be disciplined.
5. If an arbitrator determines that an Unsafe Condition within the meaning of this Section exists, s/he shall order that the Condition be corrected and that the correction occur before the Employee returns to work on the job in question and the Employee shall be made whole for any lost earnings.

The Local Union President noted that the Article Three, Section C process was not used here and, thus, the issue of whether an unsafe condition within the meaning of Article Three, Section C actually existed is not before the arbitrator in this grievance.

ROT Primary Operator position, based on a conversation with the Manager of Training and Standards, and after confirming that Grievant was refusing to work the #2 ROT Primary Operator position even though he was needed there and his refusal to accept this reassignment as directed would basically shut down #2 Caster and result in a loss of production, the Shift Manager decided to cite Grievant for insubordination and have him removed from the plant. The Shift Manager denied having advised Grievant on June 15, 2011 that he would be fired if he used his Stop Work card. The Shift Manager insisted he would never ask an employee to work where an unsafe or unhealthful condition existed.

The Company offered exhibits to establish that Grievant had been qualified on the #2 ROT Primary Operator position in August 2010, before the panel view control system was installed during the October 2010 upgrade outage, and that Grievant had worked overtime shifts in the ROT area in October and November 2010 at which time, according to the Manager of Training and Standards, the Caster was not in operation and Grievant could only have been training which would have included becoming familiar with the new control system. The Company also offered testimony from a Process Manager who said he recalled having observed Grievant being refreshed on the #2 ROT Primary Operator position sometime in February or March 2011 while the Caster was in operation. A Division Manager testified that a loss of production and business in excess of \$750,000 resulted from Grievant's refusal to work the #2 ROT Primary Operator position on the 12-8 shift on June 15, 2011.

Grievant testified that he had thirty-seven years of service and no discipline record when this case arose, and that at the time he was reassigned to work the #2 ROT Primary Operator position rather than a #2 ROT Secondary Operator position on the 12-8 shift on June 15, 2011 he was not qualified to perform the #2 ROT Primary Operator job and therefore he was scared he would be endangering himself and co-workers and plant equipment if he accepted this reassignment. Although Grievant acknowledged he had been formally qualified on the #2 ROT Primary Operator position prior to the October 2010 upgrade at the #2 Caster and the installation of the new control system, he insisted he had not been formally qualified or retrained or refreshed on the #2 ROT Primary Operator position with the panel view control system. Based on his lack of familiarity and experience with the new control system Grievant believed safety was at stake and that it would be dangerous for him to accept this reassignment on June 15, 2011. Grievant said he told the Shift Manager that he would use his Stop Work card if ordered to work this #2 ROT Primary Operator vacancy and the Shift Manager told him that he would be fired if he did so.

The Company contends it had just cause to suspend Grievant for gross insubordination in light of his conduct during the 12-8 shift on June 15, 2011. The Company notes that, under the Plant Rules and Regulations, an employee who engages in insubordination is subject to discipline including suspension and discharge. The Company urges that Grievant's suspension here properly reflects the seriousness of his offense. The Company asserts that Grievant was qualified on the #2 ROT Primary Operator position and that there were no legitimate safety issues at the time which would have authorized him to refuse this assignment. Grievant would have performed the #2

ROT Primary Operator work from inside the Run Out Pulpit; the work would have been basically the same as Grievant had performed on occasion when filling in on the #2 ROT Primary Operator position before the installation of the panel view control system, the work was not unsafe beyond the normal hazard inherent in the operation, and the work would not have presented a danger to Grievant or his co-workers. Grievant was told he was needed on the vacant #2 ROT Primary Operator position on this 12-8 shift on June 15, 2011, and Grievant knew production would be lost if he did not accept reassignment to the vacancy, yet Grievant refused to accept this reassignment. The Company suggests that Grievant's refusal to work this position on June 15, 2011 and/or Management's inability to successfully accommodate Grievant's expressed concerns and have this vacancy covered might have been related to the fact the Zone 3 Griever had been notified on June 14, 2011 of Management's decision to reduce the crew in Caster operations by three positions per shift the following week. In any event, the Company insists that under all the circumstances Grievant's refusal to accept this reassignment on June 15, 2011 was wholly unreasonable and constituted an act of gross insubordination. The Company requests this grievance be denied.

The Union maintains the Company lacked just cause for Grievant's suspension in this matter. The Union asserts that Grievant did not accept this reassignment to the #2 ROT Primary Operator position on the 12-8 shift on June 15, 2011 because Grievant had a good faith belief it was unsafe for him to do so. Grievant had not qualified on the #2 ROT Primary Operator position since the installation of the new control system and he was afraid that accepting this assignment could endanger himself and other employees and plant equipment. The Union insists that, in these circumstances, Grievant was not insubordinate and in fact did no more than exercise his rights as recognized by the parties in the Stop Work card and in Article Three, Section C of the 2008 Basic Labor Agreement. The Union objects that the Shift Manager refused to accord Grievant his rights in this regard and instead chose to discipline him. The Union requests this grievance be sustained and Grievant be made whole.

FINDINGS

Grievant was disciplined for allegedly engaging in "gross insubordination" during the 12-8 shift on June 15, 2011 when he did not accept reassignment from his originally scheduled #2 ROT Secondary Operator position to a vacancy on the #2 ROT Primary Operator position on the same shift. At issue is whether just cause existed for the suspension Grievant ultimately served.

Insubordination is a serious offense, and no doubt should exist that an employee who commits such misconduct is subject to appropriately significant discipline. That said, every grievance protesting discipline imposed for alleged insubordination must be assessed and decided on its particular facts and circumstances.

In this case Grievant was scheduled to work a #2 ROT Secondary Operator position on the 12-8 shift on June 15, 2011. After reporting for this shift Grievant was advised by a Shift

Manager that he was being reassigned to work the #2 ROT Primary Operator position to fill a vacancy there. While Grievant was undisputedly qualified on the #2 ROT Secondary Operator position and on the #2 ROT Primary Operator position as it existed before the new control system was installed in connection with the #2 Caster upgrade project in October 2010, Grievant testified that as of June 15, 2011 he was not qualified on the #2 ROT Primary Operator position with the new control system. Grievant insisted he had not been trained or refreshed on this position since the panel view control system was installed. Grievant said he therefore felt it would be unsafe for him to accept reassignment and perform this work on June 15, 2011 for fear of endangering himself and other employees and plant equipment. Grievant, a long service employee with no cited discipline record, was a credible witness in this regard. The evidence that Grievant was qualified on the #2 ROT Primary Operator position as of June 15, 2011 was not as persuasive; the testimony and exhibits reflecting that Grievant worked in the ROT area in October and November 2010 while the Caster was not in operation, and the testimony of a witness that Grievant was observed being refreshed on the #2 ROT Primary Operator position sometime in February or March 2011 while the Caster was in operation, did not convincingly establish that Grievant actually had been qualified on this position subsequent to the installation of the panel view control system. In contrast to Grievant's qualification on this job prior to the installation of the new control system, there was no document presented here to confirm Grievant's qualification on this job subsequent to the installation of the panel view control system. The weight of the credited evidence is determined to support a finding that Grievant was not qualified on the #2 ROT Primary Operator position with the panel view control system as of the 12-8 shift on June 15, 2011.

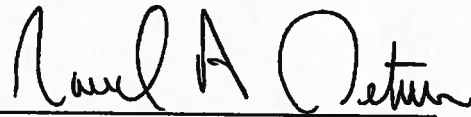
Based on the finding that Grievant was not qualified on the #2 ROT Primary Operator position (with the new control system) on June 15, 2011, and crediting Grievant's testimony that he was scared and feared putting himself and others and plant equipment in danger if he accepted this reassignment, Grievant is concluded to have acted in good faith in not accepting this reassignment. There was no evidence that Grievant acted as he did on June 15, 2011 for any other or improper motive.

It was persuasively established on this record that Grievant had an honest belief safety was at stake if he accepted reassignment to the #2 ROT Primary Operator position on the 12-8 shift on June 15, 2011. That is considered to be determinative in the context of this grievance. Under all the circumstances Grievant is not found to have engaged in insubordination and therefore his suspension is concluded to have lacked just cause.

The grievance will be sustained and the Company will be directed to remove this discipline from Grievant's records and to make him whole.

AWARD

The grievance is sustained, and the Company is directed to remove this discipline from Grievant's records and to make him whole.

A handwritten signature in cursive script, reading "David A. Petersen". The signature is written in black ink and is positioned above a horizontal line.

David A. Petersen, Arbitrator