

DAVID A. PETERSEN, ARBITRATOR

In the Matter of Arbitration
between

ArcelorMittal
Indiana Harbor West

and

United Steelworkers
Local Union 1011

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Arbitrator's Opinion
and Award

Grievance S-14-19

Award Issued:
April 21, 2015

CASE 71

Subject: Discipline – Property Protection Employee – May 21, 2014 - July 20, 2014
Suspension for Submitting an Allegedly False Security Report

Appearances of Representatives:

Christopher B. Schneider, Senior Labor Relations Representative
On behalf of the Company

Rick Bucher, Staff Representative / Sub-5 Director
On behalf of the Union

BACKGROUND

S-14-19

This grievance from the Security and Emergency Services Department at Indiana Harbor West claims Grievant was disciplined in violation of the September 1, 2012 Basic Labor Agreement.

Grievant, a Security Officer (Labor Grade 3 Operating Technician) with approximately fourteen years of service, was suspended for five days subject to discharge on May 21, 2014 for having submitted an allegedly false security report. Grievant was said to have refused to provide a detailed written statement of what she witnessed on April 6, 2014 relating to another Officer's failure to have made a proper security check of an alloy storage area. Grievant was considered to have thereby failed to fulfill the Property Protection employees' special responsibilities and duties, including giving entire obedience and loyalty to the Company, and therefore she was discharged. However, Grievant was later returned to work on July 21, 2014, with the Company converting her discharge to a time-served suspension. At issue, here, is whether there is sufficient evidence on this record to show that Grievant was guilty of the offense charged¹ and thus whether her May 21, 2014 – July 20, 2014 suspension was justified.

The Company offered a Process Manager for Security and Emergency Services and a Labor Relations Representative as witnesses.

The Process Manager testified that Security Officers are responsible for maintaining the safety and security of the mill and are to make observations and prepare written reports on all security incidents so that Supervisors are in a position to take or direct whatever action may be necessary. The Process Manager referred to a March 11, 2011 document setting forth Job Requirements and Duties for Operating Tech - Security/ Scale LOP, and he noted that among the listed duties was: "The employee ... will be expected to respond to all security incidents and to complete all associated security reports." The Manager expressed his opinion that, in the present case, Grievant failed to fulfill her responsibilities as a Security Officer by refusing to confirm to him in writing that she had observed another Officer's misconduct on April 6, 2014 and by thus filing what he considered to be a false security report relating to this incident.

¹ Appendix B of the Basic Labor Agreement includes a letter from the Company's Vice President Labor Relations to the Union's Director, District 1, which reads in part as follows: "This letter will confirm our understandings, reached during the 2008 negotiations, concerning the Property Protection employees at Indiana Harbor West. Except as otherwise provided by this letter, all terms and conditions contained in the Basic Labor Agreement (BLA) between ArcelorMittal USA ("Company") and the United Steelworkers ("Union") shall be applicable to all Property Protection employees except superintendents, captains, lieutenants, sergeants, and confidential clerks. The Union agrees that Property Protection employees are expected to abide by the rules of the Company as set forth in the Company's published rules outlining the special and unique duties and responsibilities of the Property Protection employees, as amended from time to time. The Union recognizes and agrees that the special responsibilities of Property Protection employees ... are of the greatest importance to the Company, and that failure to fully and diligently carry out these special responsibilities and duties, including giving entire obedience and loyalty to the Company, shall be grounds for discipline or discharge, in the sole discretion of the Company; provided that no discrimination will be exercised against any member of the Union because of such membership. In any grievance or arbitration which relates to discipline or discharge alleged to be based upon failure of an employee to fulfill his or her responsibilities to the Company or to carry out his or her duties or to give entire obedience and loyalty to the Company, the sole issue shall be whether there is sufficient evidence to show that the employee in question was guilty of the offense charged."

The Process Manager related that one-half million dollars of alloy material was stolen from the mill in March 2014 and, as a result, Management directed that the level of security at the alloy storage area be increased. The Manager recalled that Security and Emergency Services Turn Leaders were instructed to have their employees conduct hourly patrols and to radio-in after each such eyes-on security check of the alloy storage area.

The Process Manager said he was advised by a Turn Leader that on April 6, 2014 Grievant reported having seen another named Officer, with whom Grievant was working on April 6, 2014, step out of the Fire Station momentarily and radio-in that the alloy storage area had been checked even though this Officer had not actually made an eyes-on inspection as required. The Manager referred to the Turn Leader's written report on this matter, dated April 9, 2014, which reads in part as follows:

At approximately 6:10 a.m. [on April 6, 2014] I received a phone call from [Grievant]. [Grievant] called to inform me that [another named Officer] did not do his security checks. I did not request this information or ask her if he completed the checks. She informed me that [this other Officer] stepped out of the Fire Station at 3:30 a.m. and called his security check and stepped right back in without actually making his checks.

The Process Manager stated that he received the Turn Leader's written report on April 9 or 10, 2014, and that on April 11, 2014 he met with a Grievanceman and the Officer identified as the one who failed on April 6, 2014 to properly perform a security check. The Manager said the Officer admitted he had not performed the security check as required and the Officer claimed he was suffering from what the witness characterized as mental issues. The Manager recalled that the Officer then went off work on emergency vacation the entire following week. The Manager decided to get a written statement from Grievant in the event the other Officer later recanted his admission of his April 6, 2014 misconduct.

Copies of email exchanges between the Process Manager and Grievant as well as copies of the written reports Grievant submitted in this case were offered as exhibits. The emails and reports read in relevant part as follows:

Email from the Process Manager to Grievant on April 21, 2014:

On April 6, 2014, [another named Officer] was working 101 and you were working Squad 1. It was brought to my attention, that [the other Officer] did not complete his assigned check at 0330 hrs. The Turn Leader report indicated you discovered [the other Officer] had called in his security check from the fire station.

Please write a detailed report with what you witnessed that morning.

Email from Grievant to the Process Manager on April 24, 2014:

I would love to write a report for you, but I don't recall the incident.

Email from the Process Manager to Grievant on April 29, 2014:

This report must be completed and sent to me prior to the end of your 1 turn shift on April 30, 2014.

Report from Grievant to the Process Manager on April 29, 2014:

I worked overtime in fire service as a fire tech/Emt on April 18/19, 2014 at the above times [2pm-10pm & 10pm-6am]. I am being directed by [the Process Manager] to write a report, and from what I can recall, I performed all assigned job(s). I started work on Friday April 18, 2014 (2pm-10pm) and finish working on Saturday April 19, 2014 at 6am.

I responded to an earlier email from [the Process Manager] informing him that I have no recollection of what happen on the above turn(s).

PS [The Process Manager] continued to harass me to write a report when we had a turn leader that was in charge of the crew.

Email from the Process Manager to Grievant on May 2, 2014:

It appears you entered the wrong dates on your report. As listed below the date of the incident was April 6. I am instructing you to write the report with the correct dates and the information I requested. I am aware you talked to [your Turn Leader] on the day you reported [the other Officer] calling his security check from the fire station. I am also aware of your conversation with [your Turn Leader] after I instructed you to write the report. Please remember as a plant protection employee you have special responsibilities

and duties, including giving entire obedience and loyalty to the company.

Report from Grievant to the Process Manager on May 6, 2014:

After reviewing past schedules, the dates I had on the previous report were wrong but I cannot add any more information to the statement I already made because I have no recollection of what took place.

The fact is I have no recollection and this is evidence when I could not even remember the dates that I worked with this individual. I refused to bear false witness on my co workers.

Email requesting a report was dated April 21, 2014, almost three (3) weeks later. It is the policy in the Security and Emergency Department to have reports done within twenty four hours.

The Process Manager said he did not believe Grievant had no recollection of the April 6, 2014 incident. The Manager referred to both an audio recording of a call Grievant made to Fire Services at 6:11 am on April 24, 2014, during which she was heard to say she was not going to write a report on another employee and was prepared to be terminated rather than do so, and to a report written by the Turn Leader on April 30, 2014 reading in part as follows:

On 4-24-14 at approximately 6:15 a.m., [Grievant] contacted me on my personal cellular phone. She informed me she had received an email from management requesting her to write an incident report about [the other named Officer] not completing his security checks. She sounded as if she was angry with me and questioned me as to why I included her name in the report. I informed her that I had to include her name because she was the officer who informed me that [the other Officer] called in his completed security check but he never left the fire station. I asked her if she felt it was fair that [the other named Officer] did not complete his assignment, but she completed her assignment. She responded that it was not fair, but I was just informing you what had taken place that night. She also added, "They are trying to turn us against each other and we need to stick together". She also told me that I had to talk to management about the report and that she did not want to be involved.

[Grievant] never denied reporting the incident and never stated that she did not remember what had happened.

The Process Manager acknowledged that the Officer who failed to make a proper security check of the alloy storage area on April 6, 2014 as well as another Security and Emergency Services employee who failed to perform a security check as required received 3-day suspensions for their offenses, while Grievant was initially suspended and discharged for her conduct in this case. The Manager explained that the other two employees had essentially been lazy and had no prior discipline on their records but Grievant had been defiant, had not given her entire obedience and loyalty to the Company, and had previously received a 1-day plus balance of the turn suspension in April 2013 for refusing to accept a work assignment and a 3-day suspension in November 2013 for disregarding a directive to relay security checks via radio rather than via cellular phone. The Manager said he discharged Grievant because he needed to make it clear he had to be able to count on Officers being truthful and filing honest reports in order for the department to fulfill its function. The witness said he brought Grievant back to work about sixty days later because he decided he did not want to end her career based on this incident.

On cross-examination the Process Manager agreed he came to the conclusion on April 11, 2014 that the other named Officer had not performed a security check of the alloy storage area as required on April 6, 2014 and yet he did not ask Grievant to prepare a detailed written statement of what she had witnessed until April 21, 2014. The Manager acknowledged that Grievant consistently denied any recollection of the specifics of the April 6, 2014 incident and that none of the records provided to the Company substantiate the statement in the Turn Leader's written report dated April 9, 2014 that Grievant telephoned him on April 6, 2014. The Manager also acknowledged that while the Turn Leader's written report dated April 30, 2014 indicated that Grievant contacted him on April 24, 2014, records provided to the Company reflect that the Turn Leader called Grievant. On re-direct, the witness recalled that the Turn Leader was interviewed again in May 2014 and represented he had called Grievant on April 6, 2014 in response to a text message he received from her and that he had called Grievant on April 24, 2014 because she telephoned him while he was engaged on another call.

The Labor Relations Representative testified that Security and Emergency Services or Property Protection employees have been disciplined in accordance with the Appendix B letter (quoted above in Footnote 1) and have been denied retention on the job under the Justice and Dignity provision of the contract for offenses which endanger the safety of employees or the plant and its equipment.² The Representative said Officers' failures to conduct required security checks and the falsification of reports relating to such serious misconduct have been treated in this manner. The witness stressed that Grievant's case arose in the context of a heightened focus on

² Article Five, Section I-9-b of the Basic Labor Agreement, titled Justice and Dignity, provides that affected and eligible employees suspended or discharged may "remain on the job to which his/her seniority entitles him/her until there is a final determination on the merits of the case." This provision, however, does "not apply to cases involving offenses which endanger the safety of employees or the plant and its equipment".

security checks due to a recent theft of one-half million dollars of alloy material from the plant, and the witness urged that Grievant's case should be assessed in that context.

The Representative acknowledged that the 1-day suspension and the 3-day suspension issued to Grievant in April and November 2013, respectively, were still technically under challenge in the grievance procedure. The witness asserted that those prior suspensions had not been a basis for Grievant's discipline in this case but were cited for the purpose of assuring that Grievant's credibility was assessed in light of her total record.

The Union offered Grievant, the Chair of the Grievance Committee, and an International Union Staff Representative / Sub-5 Director as witnesses.

Grievant testified she was originally discharged in this case, despite her fourteen years of service, for having submitted an allegedly false security report relating to an April 6, 2014 incident. Grievant said her Supervisor did not ask for a detailed written statement on this April 6, 2014 incident until April 21, 2014, and by that time she no longer had any recollection of the specifics of this incident. Grievant noted that her last day of work prior to her discharge was May 20, 2014 and that she was returned to work on July 21, 2014. She claimed she was unjustly discharged and was improperly denied her Justice and Dignity rights to be retained on the job pending final determination of her case on the merits.

Grievant stated that in response to her Supervisor's April 21, 2014 email request for a detailed written report relating to the incident on April 6, 2014 where another Officer did not properly complete an assigned security check, she sent the Supervisor an email dated April 24, 2014 and maintained she did not recall the incident. Grievant noted that on April 29, 2014 the Supervisor again requested her to submit a report, and on the same day she submitted a written report in which she expressed that she had no recollection of what happened and suggested the Turn Leader should be contacted. Grievant freely admitted she made an error in this report in referring to her work shifts on April 18 and 19, 2014 rather than on April 6, 2014. She attributed this date mistake to her confusion, and she noted that when the Supervisor emailed her on May 2, 2014 and brought this mistake to her attention she submitted another written report, dated May 6, 2014, in which she acknowledged her error but maintained for the third time that she had "no recollection" of the incident and further asserted that she "refused to bear false witness" against a co-worker. Grievant insisted that by April 21, 2014 she could no longer recall the specifics of her conversation with the Turn Leader concerning the April 6, 2014 incident and that contrary to the Turn Leader's representation in his April 9, 2014 written report she had not telephoned the Turn Leader on April 6, 2014. Grievant further insisted that contrary to the Turn Leader's representation in his April 30, 2014 written report that she had contacted him on April 24, 2014 the Turn Leader actually telephoned her that day. Grievant's telephone records supported her testimony.

On cross-examination Grievant said she did not know why the Turn Leader would make false allegations relating to her involvement with this matter although she suggested the Turn

Leader might have simply been trying to minimize his responsibility for turning-in the other Officer for not properly performing a security check on April 6, 2014. Grievant acknowledged the Turn Leader telephoned her on April 24, 2014 and that during their conversation she had expressed to him that she was upset her name had been used in his report of the other Officer's misconduct. Nonetheless, Grievant flatly denied having told the Turn Leader "we need to stick together"; she maintained she merely made it clear to the Turn Leader that she no longer had any detailed recollection of the April 6, 2014 incident and would not agree to make a false accusation against the other Officer.

The Chair of the Grievance Committee testified and confirmed that, contrary to the Turn Leader's claim in his written report dated April 9, 2014, Grievant's telephone records reveal that Grievant did not telephone the Turn Leader on April 6, 2014. And the witness recalled the Company produced no records to establish that Grievant had telephoned the Turn Leader on April 6, 2014. The witness also confirmed that, contrary to the Turn Leader's claim in his written report dated April 30, 2014, Grievant's telephone records reveal that she did not telephone the Turn Leader on April 24, 2014; rather, the Turn Leader called her. The Chair noted that when the Turn Leader was interviewed again on May 28, 2014, a week following Grievant's discipline, the Turn Leader represented that he had suspected the other Officer of not properly completing all of his security checks before the Turn Leader received a text message from Grievant and had a telephone conversation with her and heard that the other Officer had stepped outside of Fire Services at about 3:30 am on April 6, 2014 and had called-in a security check he had not actually made. The Turn Leader further represented that on April 24, 2014 he returned a call Grievant made to him while he was on the phone with another Officer. On cross-examination the Chair agreed the Turn Leader is a bargaining unit employee and that the Company is contractually precluded from calling bargaining unit employees as witnesses in arbitration.³

The Staff Representative / Sub-5 Director testified and confirmed that the 1-day suspension Grievant received in April 2013 and the 3-day suspension she received in November 2013 are the subject of grievances which have not been withdrawn or resolved.

In rebuttal, the Labor Relations Representative stated that the Turn Leader was re-interviewed on May 28, 2014 because during the processing of this grievance an issue arose as to whether Grievant had telephoned the Turn Leader on April 6, 2014 or whether the Turn Leader had telephoned her. The Turn Leader was said to have clarified that he had received a text from Grievant about the other Officer not completing his security checks and that the Turn Leader then telephoned Grievant. The Representative recalled the Turn Leader insisting he would not have known the other Officer had only stepped outside of the Fire Station momentarily to make his report at about 3:30 am on April 6, 2014 if Grievant had not told him. The Representative acknowledged that the Turn Leader could produce no hard records of this April 6, 2014 text from Grievant or of his April 6, 2014 telephone conversation with Grievant, but the witness explained those records were no longer retained by the Turn Leader's cell provider. The witness noted that

³ Article Five, Section I-8-c of the Basic Labor Agreement provides in part: "The Company agrees that it shall not in an arbitration proceeding subpoena or call as a witness any bargaining unit Employee or retiree."

the Company requested Grievant's text messages on May 28, 2014 and yet they were not provided.

On this record the Company contends Grievant's May 21, 2014 - July 20, 2014 suspension was proper and should be upheld. The Company considers Grievant to have defiantly refused to provide a detailed written statement relating to her witnessing another Officer's failure to make a proper security check of an alloy storage area on April 6, 2014, and to have thereby submitted a false security report. The Company stresses that, as a Property Protection employee occupying a position recognized by the parties as having special and unique duties and responsibilities, Grievant is obligated to fully and diligently perform her job and to give her entire obedience and loyalty to the Company; yet, here, in the Company's view Grievant consciously chose to be insubordinate by disobeying an order to provide the requested information and by being disloyal in an attempt to protect another bargaining unit employee. The Company does not credit Grievant's claims that she could not recall the specifics of the April 6, 2014 incident from and after April 21, 2014 when Management first requested her to prepare and submit a detailed written statement on this matter. The Company does not find Grievant's denials of wrongdoing to be credible, and it notes that only the Union could have called the Turn Leader as a witness in arbitration to explain the inconsistencies between statements made by Grievant in her testimony and emails and reports and the statements made by the Turn Leader in his reports and interview. The Company insists there was sufficient evidence offered on this record to establish that Grievant was guilty of the offense charged. The Company further insists Grievant's Article Five, Section I-9-b Justice and Dignity rights were not violated. The Company requests this grievance be denied.

The Union maintains that the May 21, 2014 – July 20, 2014 suspension imposed on Grievant in this case was improper and should be set aside. The Union asserts the Company failed to offer convincing proof that Grievant was guilty of filing a false security report, as charged. The Union recalls that since April 21, 2014, when Management first asked Grievant to prepare and submit a detailed written statement relating to the April 6, 2014 incident involving the admitted misconduct of another Officer, Grievant has consistently denied having any specific recollection of the matter. And the Union asserts that during the arbitration hearing Grievant offered credible testimony in support of her position that when first asked for details in writing more than two weeks after the incident she could no longer recall the specifics. The Union urges that no persuasive testimony or evidence contrary to Grievant's position was presented on this record. The Union also maintains that Grievant was improperly denied her Justice and Dignity rights under Article Five, Section I-9-b. The Union requests that this grievance be sustained and that the Company be directed to remove this suspension from Grievant's records and to make her whole.

FINDINGS

Grievant, a Security Officer, was suspended on May 21, 2014 and was discharged based on Management's determination that she had submitted a false security report. Management was convinced Grievant had defiantly refused to provide a detailed written statement of what she had witnessed on April 6, 2014 in connection with another Officer's failure to have properly made a required security check of an alloy storage area. Management later decided to return Grievant to work as of July 21, 2014, with her discharge then effectively being converted to a suspension from May 21, 2014 through July 20, 2014.

As a Property Protection employee Grievant is undeniably expected to abide by the rules of the Company and she clearly has the obligation to fully and diligently carry out the special responsibilities and duties of her position, including giving the Company her entire obedience and loyalty. In her capacity as a Security Officer Grievant is not free to ignore observed misconduct by another bargaining unit employee or to refuse to participate in the Company's investigation of such misconduct. No doubt should exist that if the record evidence was found to establish that Grievant falsely represented she could no longer recall the specifics of the April 6, 2014 incident as of April 21, 2014 or so, such that she intentionally withheld information, Management's decision to discipline her would be upheld.

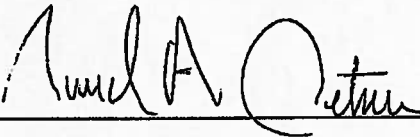
Grievant was said to have observed another Officer fail to properly make a required security check of an alloy storage area on April 6, 2014 and to have notified a Turn Leader of her observation the same day. Shortly thereafter this other Officer admitted to Management that he had in fact engaged in this misconduct and this Officer received discipline for his offense. Grievant testified in arbitration that from and after the point at which Management first asked her on April 21, 2014 to prepare and submit a detailed report of the April 6, 2014 incident she could no longer recall the specifics of the incident. Her failure to provide details as requested from and after April 21, 2014 is not found to have constituted an insubordinate refusal to assist in the Company's investigation of the other Officer's misconduct or to have constituted an act of disloyalty or an attempt to protect that employee who had already admitted to his April 6, 2014 misconduct. Grievant, who possessed approximately fourteen years of service at the time this case arose in 2014 and had no cited discipline record other than a 1-day suspension and a 3-day suspension still under challenge in the grievance procedure, was a credible witness and her testimony to the effect she could not recall the specifics of the April 6, 2014 incident when first asked for a written report on April 21, 2014 is credited. While a reasonable basis would exist to question and/or discredit Grievant's consistent denials of being able to recall details of the April 6, 2014 incident if she had been asked to prepare this written statement in a more timely fashion, the passage of more than two weeks between the incident and the first request for her to submit this report is found to lend support to her denials. That she was upset her name had been used in Turn Leader's report and that she had expressed her willingness to be terminated rather than submit a report not supported by her present recollection are not found to undermine her testimony. And, to the extent statements made by the Turn Leader are at variance in any meaningful way with

statements made by Grievant, errors or inconsistencies in certain of the statements made by the Turn Leader provide a basis for the determination that Grievant's evidence was more credible.

It is concluded that there was insufficient evidence on this record to convincingly establish that Grievant was guilty of the offense charged. Therefore, this grievance will be sustained and the Company will be directed to remove the May 21, 2014 – July 20, 2014 suspension from Grievant's records and to make her whole. Given this resolution of the grievance it is determined that no need exists to address the alleged violation of Article Five, Section I-9-b.

AWARD

The grievance is sustained. The Company is directed to remove the May 21, 2014 – July 20, 2014 suspension from Grievant's records and to make her whole.

A handwritten signature in black ink, appearing to read "David A. Petersen", written over a horizontal line.

David A. Petersen, Arbitrator