IN THE MATTER OF THE ARBITRATION	)	OPINION AND AWARD
	)	
Between	)	**RONALD F. TALARICO, ESQ.**
	)	**ARBITRATOR**
ArcelorMittal USA	)	
WEIRTON STEEL	)	Grievance No.: 12SS80105
	)	
and	)	**CASE: 74**
	)	
UNITED STEEL WORKERS,	)	
LOCAL 2911	)	

GRIEVANT

Frank Pope

ISSUE

Disqualification as Crane Operator

HEARING

August 10, 2015
Weirton, WV

TELEPHONIC HEARING

August 25, 2015

APPEARANCES

For the Employer
Peter D. Post, Esq.
OGLETREE, DEAKINS, NASH
SMOAK & STEWART, P.C.

For the Union
Peter S. Visnic, Esq.

ADMINISTRATIVE

The undersigned Arbitrator, Ronald F. Talarico, Esq., was mutually selected by the parties to hear and determine the issues herein. An evidentiary hearing was held on August 10, 2015 in Weirton, West Virginia and a telephonic conference call on August 25, 2015 at which time the parties were afforded a full and complete opportunity to introduce any evidence they deemed appropriate in support of their respective positions and in rebuttal to the position of the other, to examine and cross examine witnesses and to make such arguments that they so desired. The record was closed at the conclusion of the hearing. No jurisdictional issues were raised.

PERTINENT CONTRACT PROVISIONS

ARTICLE FIVE – WORKPLACE PROCEDURES

. . .

Section J. Management Rights

The management of the plants and the direction of the working forces, including the right to hire, transfer and suspend or discharge for proper cause, and the right to relieve employees from duty, is vested exclusively in the Company.

In the exercise of its prerogatives as set forth above, the Company shall not deprive an Employee of any rights under any agreement with the Union.

BACKGROUND

The Employer is ArcelorMittal USA, a steel manufacturer, with one of the plants located in Weirton, West Virginia. The Union, United Steelworkers Local 2911, is the exclusive representative of a bargaining unit made up of production, maintenance, office, technical,

clerical, and rail road employees. The Employer and Union are parties to a collective bargaining agreement which became effective September 1, 2012. The Grievant, Frank Pope, was hired in June, 1978 and over his many years of service utilized his seniority to obtain various crane bids.

Larry Mazzella, the Plant Engineer, testified that in 2009 while the Grievant worked under his jurisdiction operating the No. 6 crane he dropped and damaged coils. An Employee's Activity Report was generated on June 9, 2009 describing that incident as follows:

> **"Originating Supervisor's Statement of Incident:**
>
> **Employee stated he was putting coil down on wooden racks – he missed setting coil down squarely on rack - edge of coil went down between sides of rack – coil was leaning badly and employee did not know what to do.**
>
> **Supervisor's Statement of Incident:**
>
> **So he lowered coil completely down and coil was then setting on wooden rack on its side – employee has only been running this crane for three days."**

In response to that incident lead person, Frank Tittle, was instructed to watch the Grievant run the No. 6 crane because of what was believed to be his unsafe practices. Ed Hosey actually observed the Grievant on June 10, 2009 and issued the following report:

> **"June 10 '09 Frank Pope**
>
> **I talked to Mr. Pope Wednesday June 10 and observed him running the crane #6.**
>
> **After talking for just a few minutes Mr. Pope explained he had 4 days of break in the week before, and that he wasn't aware of the fact that he had to go down the floor to #3 dock. He said he heard the speaker "Jake Jones" ask for a crane to load inter mill, but he thought the crane down the floor #5 crane had a crane operator in it. I explained to him that it is his crane #6 and his obligation to proceed to #3 dock when he has time – I explained that his 1st obligation is to the skin mill – but he also has to load and unload rico trucks – help when needed at #3**

dock unload rolls and coils off of transfer cars and basically do whatever is requested of him.

Mr. Pope explained to me that the numbers on the board were blurry – too small. This was confirmed by a man on the floor.

I asked Mr. Pope about his crane experience and he said he ran slab yard cranes – he loaded and unloaded #7 - #9 tandem – worked with mechanic.

He seems very nervous to me. I told Mr. Pope that we used to have an Orientation Program in the Tin Mill for new cranemen. Part of that training package was when breaking in on #6 crane or #10 crane the trainee was to go down on the floor and introduce himself and ask the people on the floor what is needed of him.

I watched Mr. Pope work with the mechanics and he seemed to have no problems – a little slow – is all.

Basically, I think Mr. Pope should calm down. And, that he need a little more break-in time on 6-2 turn to see more operations going on with a seasoned craneman 'Dave Benedict' or whoever.

On night turn they are required to run the transfer car – get it loaded and unloaded.

Over all I believe Mr. Pope needs to calm down and learn the floor better."

The bottom line of Mr. Hosey's report is that the Grievant needed coaching but he should not be disqualified at that time. Later that summer the Grievant again caused damage while operating a crane. This time it was to the roll rack. However, not only was equipment damaged but there was a loss of operating time associated with that incident. On August 13, 2009 the Grievant again was involved in yet another operating incident in the Tin Mill. He caused damage to the No. 1 stand roll change sled which was described in the accident report as follows:

"Appears that either the cables or rolls contacted the roll change sled and caused the sled to come off track resulting in a

65 minute delay to get the sled back on track so that the rolls could be changed."

At the Millwrights regular safety meeting held on August 19, 2009 safety issues were brought up regarding the Grievant running the No. 6 and No. 10 cranes and the consensus was that they wanted him off of the crane. On that same day Larry Mazzella sent the following memo to Frank Tittle regarding the Grievant:

"Frank we will need to meet about this issue,

Activity report 8/12/09

Concerning: Recent equipment damage at the skin mill.

Background: At the 7 am maintenance meeting safety meet this morning it was brought up that the operator on 6 crane has hit and damaged the roll change sled on two separate occasions. Most recently last night the rail was hit with the crane load. Frank Pope was operating the crane at the time. Comments about Frank up ending several coils from 10 crane were made as well.

Activities in process:

- **Verification of damage and operator involved (Dave Trikones)**
- **Investigate the validity of up ended coils. (Dave Trikones)**
- **Review the information discovered with his supervisor. (11 am meeting)**
- **Review his recent crane activity for additional issues."**

As a result of the above-several incidents management ordered the following corrective action for the Grievant:

"Require employee to go through crane operator training (classroom and hands-on training) to ensure he is capable to safely operating a crane."

At the within Arbitration hearing Mazzella was quite clear in his assessment of the Grievant as a crane operator. Mazzella testified that the Grievant lacks the physical skills to

safely operate a crane and he poses a serious danger to his co-workers and that he is only marginally adequate to operate a crane.

Sometime in 2010 the Grievant sustained an injury and was off for a considerable period of time. In 2011 the Grievant utilized his seniority to obtain a new crane bid. Gary Hinchee, who is now retired, had 47½ years of service and in 2012 was the Manager of Logistics. Mr. Hinchee testified that in 2012 the Grievant bid into the strip steel crane operator position running No. 32 and then No. 64 cranes. Mr. Hinchee testified he was short a craneman in this Department and very much wanted the Grievant to succeed. However, Grievant was again involved in several operational incidents such as allowing the pickler line to run out of the material he was responsible for supplying. Other incidents in June of 2012 had Tubman Rick Drennen informing Hinchee that he did not feel comfortable with the Grievant operating the No. 2 crane while placing new bands into the banding machine safely. Steve Moore complained to Hinchee that the Grievant had upset two coils in the band ware room on the night turn. And Gary Means, the Process Manager, complained to Hinchee that he had to use another crane operator to change the Scale Breaker rolls because they felt the Grievant would not be able to perform the job safely.

On July 25, 2012 Steve Moore, the Crane Trainer who had been assigned to watch the Grievant operate the No. 64 crane for two days, issued the following report:

> **". . . He seems to keep up if he has a full floor of steel, when he gets behind he can't get caught up by himself.**
>
> **After 132 hr. on #57 crane his ability is even less. When pressured he crumbles and his operating suffers.**
>
> **Training on the computer has been fatal. Day 1 I showed him abcd in order to do Day 11. He still could not do ABCd. His unability to take direction was my biggest fear. When the Tub**

Man signaled down for his lift he proceeded west. The same for the computer ABCD he did BCD or BC and no D."

On August 13, 2012 Steve Moore issued another observation report regarding the Grievant which again detailed operational short comings and concluded as follows:

"Could not take directions. Unsure of himself. 132 hours of training he couldn't do three basic steps on the computer."

On July 25, 2012 Greg Blankenship, the Division Manager of the Strip Mill, issued the following Activity Report disqualifying the Grievant from operating all cranes:

"Originating Supervisor's Statement of Incident:

After numerous concerns voiced from hourly employees I called Frank Pope down out of #57 crane and disqualified him from running cranes. He has been breaking in on 57 crane for 3 weeks with the crane trainer Steve Moore. Steve told me not to waste any more time on Frank breaking him in. Steve.

Supervisor's Statement of Incident:

Gave me a report that we filled out on Frank. I went to Gary Hinchee on 2 other occasions about hourly employees complaints about Frank. Gary Hinchee filled out 2 reports on the incidents. At this time I felt I had to take Frank out of the cranes."

On August 23, 2012 Craig Herron, the Operational Manager of the Strip Mill, issued the following Activity Report disqualifying Grievant from the bundler hook-up job:

"Originating Supervisor's Statement of Incident:

"Frank Pope was working his last day after breaking in for (4) weeks on the 9 Tandem Bundler/Hook Up Job. I talked to Rich Cernansky (74903) about how Frank was doing on the job and he said he is lost. He said he cannot do the job. He said he can't do A- B- C. I talked to Clyde (?) (74560) (?) Helper) and he said the same thing about Frank. I talked to Ed Bursbey (74804) Assistant Roller and he said the same thing about Frank. Frank has been breaking in with

several other employees in his (4) week break in and they all said he could not do the job."

On September 18, 2012 the following grievance was filed challenging the Company's right to disqualify the Grievant from operating cranes:

"Complaint:

The Union charges the Company with a specific violation of Article(s) Five, Section J. Management's Rights and any other provisions of the Agreement that may be found to apply.

State What Happened:

On July 25, 2012, Management made a decision to disqualify employee Frank Pope from operating cranes. In an Employee's Activity Report signed on July 25, 2012, Supervisor Gary Means and Superintendent Craig Herron disqualified employee Pope from operating cranes citing that employee Pope had been breaking in for approximately three (3) weeks and was still not able to operate the crane. Allegations were made that numerous concerns from hourly employees had been voiced concerning employee Pope's ability to operate a crane. It was alleged that discussions had been held with Rick Drennen, Team Leader/Tub Man, B.J. Waskevich, and Lou Povich concerning employee Pope's ability to run a crane. None of these statements were signed by the above-referenced employees. The Union feels that employee Pope had not been given a sufficient amount of training time to become a crane operator.

Remedy Requested:

The Union demands that employee Pope be permitted more break-in time to learn how to operate the cranes and that he be trained by someone other than employee Moore to see if he can learn to operate the crane. The Union demands that the Company cease and desist from violating the collective bargaining agreement, that the incident(s) be rectified, that proper compensation, including benefits and overtime, at the applicable rate of pay, be paid for all losses, and further that those affected be made whole in every respect, including interest on any monies owed."

ISSUE

Whether the Employer abused its discretion when it disqualified the Grievant from operating cranes?

POSITION OF THE EMPLOYER

This case deals with whether or not Mr. Pope was properly disqualified from operating the crane at the Weirton Steel Works. Now the prior testimony showed that he was given two chances to operate the crane safely. In 2009 he was given an opportunity in the Tin Mill and as you recall the testimony was that he was removed from the crane for damaging product and machinery. And that damage, as you may recall, was reported by the hourly millwrights and then Company had an investigation and that lead to Mr. Pope being removed from the crane. In 2012 Mr. Pope was given another chance. However, during the several months when he was operating the crane in the strip steel area employees as we heard from Mr. Means employees complained that Mr. Pope was unsafe and/or incompetent. And the names of the employees, some of these names are listed in the notes as Mr. Hinchee and Mr. Moore. Mr. Moore was listed in Exhibit 14 and Hinchee was in Exhibits 10 and 12. After some of these complaints Mr. Pope was given additional training. He was followed by the crane trainer, Mr. Moore, but he was ultimately removed in August, 2012 based upon the comments of the hourly crane trainer and the other employees. The serious complaint being that he did not follow directions. Later he was denied a third chance on the crane and that is why we are here today. Some years ago the Company had the discretion to make this decision under the Management Rights Clause.

We believe the Company's case is being very compelling and included the testimony of five very experienced management Operators and the notes of the hourly Crane Trainer. We

couldn't call Mr. Moore. We are not allowed to do that. So our case is compelling. With all respect we do not believe the Union's case was at all persuasive. Most importantly, Mr. Pope did not testify. Frankly, this was his chance to sell the Company and the Arbitrator on the abilities. But instead Mr. Pope declined to testify. Mr. Pope did not prove his competence by testimony of Jeff Daluski. According to his testimony, Mr. Daluski only spent one day with Mr. Pope in the crane either in 2010 or 2011. Of course, this was before 2012 when Mr. Pope was disqualified after the comments regarding lack of safety. Now, interestingly and importantly Mr. Daluski testified that Steve Moore is a certified Crane Trainer, is honest and trustworthy. And it was the honesty and trustworthy of Mr. Moore who did assess Mr. Pope's crane abilities in 2012 and found that he should be disqualified from the job. Now the argument that Mr. Pope could perform adequately if only he had more training does not withstand scrutiny. Mr. Pope operated a crane in the slab yard for years. He obviously knew how to operate a crane that carried slabs from Point A to Point B. Albeit not many people being around. When he was assigned to areas where there were people underneath that he had problems, very severe problems. He assigned to the cranes in the Tin Mill for much of 2009 unsuccessfully as it turned out and damaging products and equipment. He was trained on different cranes in the Strip Steel Department for four months in 2012 and demonstrated to the Crane Trainer and Management that he was unable to take direction. Hourly employees complained about Mr. Pope's lack of competence. As far as the insinuation of Mr. Moore was somehow prejudice against Mr. Pope, please bear in mind, as showed at the last hearing, that Mr. Pope was disqualified from another job and Mr. Moore had nothing whatsoever to do with that disqualification. Of course, the Union could have called Mr. Moore as a witness and asked him why he considered Mr. Pope a safety risk. They failed to do so. The Arbitrator should infer Mr. Moore's testimony would have supported the Company.

The Arbitrator should also make a similar inference that the other employees mentioned in testimony that complained about Mr. Pope's crane operations would have supported the Company. Mr. Drennen also testified and largely confirmed the notes specifically on the incident on June 14th, indicated that in fact the load was swinging, that he did speak to Mr. Means about it that Mr. Pope had failed to follow directions on that day and that he had to get out of the way of the load. Now he does say he wasn't pinned down by the load but that he considers the situation unsafe.

So that testimony really buttresses the Company's case. Other incidents Mr. Drennan testified that he couldn't remember or didn't think it happened the way the notes were written. However, he did say Mr. Means who reported the situations was a good supervisor and was honest and trustworthy. Now at the end of the day, Mr. Talarico, this case does not involve whether or not Mr. Pope was a decent guy and the Union's two witnesses seem to agree that he is a nice fellow. The issue is whether Mr. Pope can safely operate a crane. On that score it would seem the opinion of the Crane Trainer is most important. Mr. Moore was chosen as from among the senior and most experienced Crane Operators to be the trainer. He received outside training to obtain certification. In this case Mr. Moore was sought to train Mr. Pope but after some months his opinion was that Mr. Pope should be disqualified because he does not follow directions. Incidentally, as far as Exhibit 13 referring to safety. Mr. Moore describes the inability of Mr. Pope to take direction and he also indicated as far as safety is concerned that when pressured, Mr. Pope, who it must be remembered is in the cab of a crane overhead with a heavy load essentially and when he's pressured he crumbled and the operations suffered. That is the concern about safety.

Now, the comment that Mr. Moore makes regarding the failure to follow directions is entirely ominous. There are ways on the floor to direct a Crane Operator with signals and it is unsafe to have a load of many, many, tons on that crane going in unexpected directions one from what they anticipated and from what they signaled.

The Company accepted the opinion of the Crane Trainer and rightfully so. Now the Company is responsible not the Union or anyone else, the Company is responsible for operating a safe steel mill. We must have discretion to disqualify employees it deems unsafe. The contract gives the Company the exclusive right and I'm quoting "the right to relieve employees from duty is vested exclusively in the Company." That is from the bargaining agreement Article 5, Section J. That means when there is an unsafe activity, the Company has the right to relieve the employee and we would say they have the duty to relieve as well. We request that the Arbitrator deny this grievance and uphold Management's rights to disqualify Mr. Pope in the Crane position in their case.

POSITION OF THE UNION

In our opening statement a few weeks ago and by reiterating first the Grievant is a very long service employee. He has approximately 37 years of service. The Union's position is that is an extremely important factor in any case involving discipline or disqualification and deserves the benefit of the doubt because of his years of service in this case. Second, Mr. Arbitrator the Grievant has a long history of operating overhead cranes. He operated 1985-89 and again from 1997-2012. So we are not dealing with someone who has never been able to do it or simply can't catch on. To the contrary we got a long history with this guy in this kind of work. In that regard, Mr. Arbitrator, we didn't decide the testimony that was given on the Union's behalf by

Mr. Gillipsee has been a Crane Operator himself for more than 40 years. More importantly, Mr. Gillipsee was a Crane Instructor from 1999-2005 and in fact he was the Crane Instructor for Mr. Moore. I think I heard somewhere in the earlier part of this closing today. Mr. Daluski was only with Mr. Pope for one day but I understand in light of Mr. Gillepsee's testimony that he was his Crane Instructor. More importantly, he observed Mr. Pope for approximately six months to one year prior to the grievance. So Mr. Gillepsee's testimony was not based on some long ago observation of Mr. Pope. He testified that he saw him run the crane as recently as six months to a year prior to the grievance. It is also worth noting Mr. Arbitrator that Mr. Gillepsee's testimony confirmed what the Union had said all along. Basically, Mr. Moore had a grudge against the Grievant. Perhaps it was a personality conflict but it was clear to us by Mr. Gillepsee confirmed that Mr. Moore had a grudge against the Grievant. It seems that the biggest problem the Grievant had in running the crane was the computer assigned to one of these cranes and Jimmy noted that Mr. Pope becomes more of a burden. The Company's evidence in the opinion of the Union, was fairly weak at best. The prior incident that the Company brought up first was six years ago. The incidents from six years did not result in any discipline. In fact, all the Company documents you saw on the first day reflect that no action was taken. No one brought this to his attention. Particularly it is from six years ago and it shouldn't be that important now. Further, Mr. Arbitrator the Company attempted to use evidence which is totally irrelevant. Specifically, it attempted to demonstrate Mr. Pope's capability to do a job after his removal from the crane which was totally unlike this crane position had nothing to do with the position from which he was removed. I would ask that you disallow this irrelevant evidence. Finally, Mr. Arbitrator we have a few incidents that we discussed prior to his removal and again none of which are significant to justify the removal of a craneman who has been doing the job for many

years. The evidence that we heard today Mr. Drennen with respect to Company Exhibit "10" that the Company's interpretation of this meeting that Mr. Pope had no means of operating this crane safely is entirely wrong. Mr. Drennen clarified for us that the difficulty in running the No. 2 Crane had to do with the equipment the crane operators are forced to run and not Mr. Pope personally. He did not tell Mr. Moore about this and it did not get to the ground as the Company indicated. Mr. Drennen clarified that he merely ducked or moved out of the way when Mr. Pope's crane went in a different direction than he anticipated it to be. With respect to Company Exhibit No. 12 we also emphasize that this basically never happened. They never had a conversation like that. Never dealt with Mr. Pope.

We have testimony following that by Mr. Garrity that he had no qualms or qualifications with respect to Mr. Drennen's reputation as a truthful person. Further, we submit to you that Mr. Garrity debated the very important question. First of all in Company Exhibit "13" Mr. Means evaded the question of whether this document establishes the support that Mr. Pope was incapable of running the crane. The Union's position Mr. Arbitrator is that the plain language of Company Exhibit "13" nowhere does it contain a direct or clear reference of anything indicating that Mr. Pope was operating a crane unsafely. The main problem is that Mr. Pope has difficulty when he gets behind but he can keep up well with a full force and deal with their problems but he has difficulty getting caught up by himself. Nothing in this document, Mr. Arbitrator, establishing that Mr. Pope was not operating this crane in an unsafe manner and we believe Mr. Means' testimony deliberately evaded that question.

Mr. Means was asked on cross-examination if he would be supportive of the additional break in for Mr. Pope and to determine whether he can return to the crane position safely and successfully. He evaded that question merely stating it was not his call. Interestingly, Mr.

Means had all kinds of opinions with respect to Mr. Pope and the operation of the equipment and the documents he was asked about in the Company's examination. But when asked this important question he felt he evaded it and felt it wasn't his call. Mr. Arbitrator, the Company has the burden of proving in a case like this involving the Management Rights clause and the removal of an employee for alleged inability to perform a job. The remedy requested by the Union in this case Mr. Arbitrator is simple and has virtually no monetary aspects on behalf of the Company. It presents no danger to the Company's employees or equipment. The Union simply requests that the Grievant be given one additional fair opportunity to break in and operate overheard cranes. We are not asking you to award any back pay. We simply want to see the Grievant get one further opportunity in this matter under the auspices of both the Company and the Union. We believe that Mr. Pope's seniority and past work record and proposed remedy would be the optimum resolution of this case. We urge you to grant this grievance under these circumstances.

FINDINGS AND DISCUSSION

The essential underlying facts in the within grievance are not in dispute and the issue is a straight-forward matter of contract interpretation. The rule primarily to be observed in the construction of written agreements is that the interpreter must, if possible, ascertain and give effect to the mutual intent of the parties. The collective bargaining agreement should be construed, not narrowly and technically, but broadly so as to accomplish its evident aims. In determining the intent of the parties, inquiry is made as to what the language meant to the parties when the agreement was written. It is this meaning that governs, not the meaning that can possibly be read into the language.

Article Five, Section J. of the collective bargaining agreement is a very typical and broad based management rights clause which specifically reserves to the Employer all inherent management rights unless specifically restricted by a term or provision of the agreement. It should be noted, however, that while this provision attaches a "proper/just cause" standard to the Employer's right to suspend or discharge employees, it separately vests in the Company the exclusive right to relieve employees from duty. As such, the Company's decision to disqualify the Grievant from operating cranes will not be reviewed under normal "just cause" standards. Rather, this analysis will focus on whether the Company abused its **discretion** to relieve the Grievant from operating a crane.

Pursuant to such discretionary powers the Employer is entitled to make the initial determination of whether the Grievant could safely and reasonably operate cranes, subject to challenge by the Union on the grounds that its decision was unreasonable under the facts, or capricious or discriminatory. The determination of ability is by no means susceptible to any set formula applicable to all circumstances. The precise factors and criteria applicable to one job classification may not be proper or sufficient in another situation involving another job classification.

In this case one must keep in mind that operating cranes in a steel mill is a very dangerous activity that can put not only the operator but also other employees in harm's way. An unsafe crane operator also creates the potential for substantial damage to plant equipment as well as production delays, all of which can be very costly to the Employer. However, any fair and objective evaluation of the record evidence within clearly establishes that the Employer "bent over backwards" to give the Grievant chance after chance to reasonably demonstrate that

he could safely operate various cranes. The evidence was also overwhelming that the Grievant failed to demonstrate that he possessed such ability.

I would note that I found the witnesses presented by the Employer to be more credible than those presented by the Union on the issue of Grievant's demonstrated lack of ability. Moreover, the reasonableness of the Employer's decision to disqualify the Grievant was bolstered by the fact that most of the complaints about his inadequacies came from his co-workers. However, that should not be surprising because employees who work alongside the Grievant would be directly in the sphere of harm created by an employee who could not safely perform his job functions.

There is no question that the Grievant was given adequate retraining, coaching and break-in time to demonstrate whether he had the ability to safely operate various cranes. It must also be remembered that the Grievant had been operating cranes for many years and should have had a vast reservoir of knowledge, skills and familiarity with various types of cranes. This was not a new employee who for the first time bid into a crane operators' position. Yet despite all of this the Grievant still could not adequately demonstrate the ability to safety operate cranes.

I also found it surprising that in this case the Grievant did not testify on his own behalf. This would have been an excellent opportunity to fully explain to the Arbitrator just why he believed he could, in fact, safely perform his job duties, and to perhaps explain away the operational incidents that occurred in the past. Instead, the Grievant chose not to testify. Moreover, the attempt by the Union to discredit the statements of Steve Moore, a certified crane trainer, fell woefully short. There was no credible evidence of any animosity or ill-will between Mr. Moore and the Grievant. The Union could have also called Mr. Moore as its witness and subjected him to close examination as to the reasons why he considered the Grievant to be a

safety risk. The Union failed to call Mr. Moore. The Union likewise could have called those employees who were referenced in various Company documents as having complained about the abilities of the Grievant. However, none of those employees were called to discredit those assertions. I must therefore infer that the testimony of all of these individuals would have supported the Employer's case.

Finally, I find no merit to the Union's suggestion that the Grievant simply be given yet another chance to demonstrate his ability to safely operate cranes in the Mill. The Grievant was trained on different cranes for four months and according to the crane trainer and various management witnesses was unable to take direction. Would another four months using other observers and trainers result in a different outcome? I don't know the answer to that question with any certainty. However, in the opinion of those who have been vested with the exclusive right to make that determination the answer is unquestionably NO! More importantly, I have no reasonable basis to even challenge let alone overturn that determination.

Based upon all of the above, I readily conclude that the Employer did not abuse the discretion specifically vested in it by the collective bargaining agreement when it disqualified the Grievant from operating cranes. The grievance must therefore be denied.

AWARD

The grievance is denied.

Date: Oct. 16, 2015
Pittsburgh, PA

Ronald F. Talarico, Esq.
Arbitrator