************************************)
In the Matter of Arbitration Between:)
)
ARCELORMITTAL,)
Cleveland, Inc.)
)
and)
)
UNITED STEELWORKERS,)
DISTRICT 1, LOCAL 979.)
)
****

Grievant: Jagielski
Issue: Termination
Arb. Docket No. 150902

CASE: 75

INTRODUCTION

The undersigned arbitrator was appointed according to the rules of the applicable collective bargaining agreement. The hearing was held on September 11, 2015, in Pittsburgh, Pennsylvania.

Mr. Aldo Nardiello, Labor Relations Representative, represented ArcelorMittal Cleveland, hereinafter referred to as the Employer or the Company. Sergeant Thomas Lanning, Security Specialist within the ArcelorMittal Cleveland Police Department; and Ms. Janet Jordan, Manager of Labor Relations at ArcelorMittal Cleveland; testified on behalf of the Employer.

Mr. Patrick Gallagher, Sub-District 1 Director, represented the United Steelworkers Union, Local 979, hereinafter referred to as the Union or the Local. Mr. James Jagielski, Grievant; and Mr. Michael W. Deighton, Grievance Committeeman; testified on behalf of the Union.

Each Party had a full and fair opportunity to present evidence at the hearing. Both parties made closing arguments on September 11, 2015, at which time the hearing was declared closed.

Issues:

Was the Grievant suspended and discharged for just cause? If not, what shall the remedy be?

Did the Company violate the Basic Labor Agreement when it failed to provide the benefits of the Justice and Dignity clause to the Grievant? If so, what shall the remedy be?

Relevant Contract Language

Article 3, Section G

1. Alcoholism and drug use are recognized by the parties to be treatable medical conditions. The Company and the Union agree to establish an Employee Assistance Program (EAP), administered and funded by the Company, to facilitate the rehabilitation of Employees afflicted with alcoholism or drug abuse. The EAP will utilize professional and Employee peer counselors and will operate under conditions of strict confidentiality.

2. The Company may require an Employee to submit to a medical evaluation performed by qualified personnel, which may include a drug or alcohol test, only where there is reasonable cause, based on objective evidence, to believe that the Employee is legally intoxicated or impaired by drugs on the job. Employees involved in an accident will be tested only when an error in their coordination or judgment could likely have contributed to the accident. In addition, any Employee who incurs an extended leave of absence (except Union leave) of greater than ninety (90) days may be required to submit to a drug and alcohol test as a part of a return to work physical.

3. Employees will not be required to submit to drug or alcohol testing for any other reason, unless such testing is required by law.

...

5. Employees who are found through testing to have abused alcohol or drugs will be offered rehabilitation in lieu of discipline. However, this provision does not affect the right of the Company to discipline Employees for violation of plant rules or for working or attempting to work while knowingly impaired.

Article 5, Section 9(b)(1) & (2)

(1) In the event the Company imposes a suspension or discharge, and the Union files a grievance within five (5) days after notice of the discharge or suspension, the affected Employee shall remain on the job to which his/her seniority entitles him/her until there is a final determination on the merits of the case.

(2) This Paragraph will not apply to cases involving offenses which endanger the safety of employees or the plant and its equipment, including use and/or distribution on Company property of drugs, narcotics, and/or alcoholic beverages; possession of firearms or weapons on Company property; destruction of Company property; gross insubordination; threatening bodily harm to, and/or striking another employee; theft; or activities prohibited by Article Five, Section K (Prohibition on Strikes and Lockouts).

Background:

Sergeant Thomas Lanning, Security Specialist with the ArcelorMittal Police Department, testified about the incident that led to the Grievant's termination. The Company's Police Department is certified as a police agency by the State of Ohio. Lanning had 17 yeas of experience in law enforcement and special training in drug enforcement before joining Arcelor's Department. He has been employed by ArcelorMittal since 2013.

Lanning testified that on the morning of March 3, 2015, he and Sergeant Douglas Pellini were conducting an inspection of the Hot Mill men's locker room in response to continued complaints of graffiti. When Sgt. Lanning passed the area containing locker A29, he detected a strong odor of marijuana. Lanning testified that he did not doubt that the odor was in fact marijuana. He said that he determined its location in part due to the locker room's ventilation system, which actually passes through the lockers. When the fans turned on, the smell became much more prevalent. Had the ventilation system not been engaged, Lanning stated that he may not have detected the smell; he was simply in

the right place at the right time to make this discovery. Lanning sniffed various lockers until he traced the scent to locker A29. He stated that he was no more than two feet away from the locker when he first detected the smell of marijuana.

Lanning testified further that, after detecting the smell, he called his supervisor, John Zacarro, Emergency Services and Security Manager. Lanning stated that he was then met in the locker room by Janet Jordan, Labor Relations Manager; Joe Palmer, Hot Strip Mill Division Manager; Bob Pavli, Hot Strip Mill Operations Manager; and Tony Pasquale, Union Grievance Chairperson. Lanning testified that at the instructions of Joe Palmer, he cut the lock off of locker A29. He testified that the Union representative present did not object to this, and that this was not the first time Lanning had removed a lock from an occupied locker.

Sgt. Lanning stated that when he opened the locker, he saw a metal marijuana smoking pipe, a closed white pill bottle, a lighter, and a grey hoodie, among other items. He stated that the pill bottle was then opened, and that he saw a small amount of green leafy vegetable-type matter inside. Lanning testified that he handled the metal pipe, that it weighed a few ounces, and that it contained burnt black residue. He further testified that he is certified in three types of marijuana odor identification: burnt, burning, and raw—each of which has distinct odors. Lanning testified that when he first smelled the marijuana, he was smelling the burnt residue in the pipe. Sgt. Lanning went on to say that the hoodie in question was made of thin sweatshirt material, and that, had he been wearing it, he would have been able to feel the pipe and bottle in his pocket.

Rick Thompson, Hot Mill Shift Manager, brought the Grievant into the Hot Mill conference room. Jordan explained the situation to the Grievant, who admitted that the locker was in fact his, and that the items inside belonged to him.

The Grievant spoke privately with Pasquale, and was then escorted by Lanning and Pellini to the Dispensary for a drug/alcohol screening. The Grievant took an alcohol breath test, the results of which were negative. He also took a urine test which was submitted to the lab for analysis. The results confirmed that the Grievant tested positive for marijuana.

Officers Lanning and Pellini next conducted a search of the Grievant's vehicle, accompanied by the Grievant and Thompson. They did not locate any form of contraband in the vehicle.

Lanning then performed a Narcotics Identification Kit (NIK) test on the substance found in the Grievant's locker. The substance was confirmed to be marijuana. Jeremy Grabowski of the Cayahoga Heights Police Department also later performed a NIK test on the marijuana, with the same result.

Sgt. Pellini transported the Grievant to his home in Brooklyn, Ohio. Later that same day, the Grievant was suspended. On April 2, 2015, this suspension was converted to discharge. The Company discharged the Grievant for bringing illegal drugs and drug paraphernalia onto Company property with the intent to consume.

Lanning testified that in his tenure, no illegal drugs or drug paraphernalia had ever been found on Company property prior to this incident. He also testified that bringing or using drugs on Company property constitutes a safety risk, due to the dangerous

environment. He also testified that the possession of drug paraphernalia and of marijuana in any quantity is illegal in the state of Ohio.

Ms. Janet Jordon testified that she has worked as Manager of Labor Relations at the Company's Cleveland operations for the past 14 years. According to Jordan, the Grievant was discharged for bringing marijuana onto Company property with the intent to consume it. She said that Management made the decision to terminate based in large part upon the the fact that the Grievant had the marijuana, the pipe and the lighter together in his locker. If one of these items were missing, then the Grievant would not have been able to consume the marijuana at work, but because all three were found together, this led to the conclusion that he intended to do so. In addition, Management concluded that if he did not intend to consume the marijuana at work, he would have hidden it, thrown it away or brought it back to the car.

The Grievant, James Jagielski, testified that he has been employed at ArcelorMittal and predecessor companies for thirty-four years. He testified that he had always been employed in Cleveland, that he had never been disciplined, and that he worked as an Operating Technician.

The Grievant testified that on March 3, he was aware that he was going to be moved up to the Senior Operating Technician/Assistant Roller position. This was to be his first day taking over that position for someone on vacation. It was also his first day back to work after a long weekend. The Grievant testified that he had smoked marijuana over the long weekend. He testified further that he did not smoke marijuana on his way to work on March 3, 2015, and that he has never smoked marijuana while at work.

The Grievant stated that on that morning he was running late to work. He said that when he took off his sweatshirt in the locker room, he realized he had the marijuana and pipe in his pocket. He testified that he put the materials in his locker quickly and hurried off to the mill. The Grievant has another locker in the pulpit of his workstation. He testified that when he discovered the marijuana in his pocket, he knew not to take it into the mill. When confronted with the items, the Grievant immediately admitted that they did belong to him.

The Grievant testified that he did sought help after his termination for his marijuana habit. He testified that he has quit smoking marijuana and drinking alcohol. He said that got an AA sponsor, Walt Podgorski, a recovering addict who holds meetings for other reformed addicts at his home. The Grievant began attending sessions Podgorski runs. These are weekly sessions and the Grievant began attending these meetings a couple times a month. The Union presented documents confirming that the Grievant has attended meetings with Podgorski, as well as AA meetings. The Grievant testified that he sought drug testing independently, in May 2015, which confirmed his sobriety at the time.

The Grievant further testified that he contacted the Company's Employee Assistance Program, Ease at Work, after his suspension. He testified that he met with a woman at Ease at Work for a couple of hours on one occasion, but she told him that she could not do anything further until she received the results of his tests from Janet Jordan.

Under cross-examination, the Grievant acknowledged that he had not sought help for his addiction problems prior to March 3, 2015. The Company drew attention to the

Grievant's negative drug test, noting that the most recent date of testing was May 23rd. The Grievant testified that he paid for the drug testing himself. When asked whether he was still using marijuana at all, the Grievant testified that he was not. He testified that he had stopped because his use had put a significant damper on his life and his ability to care for his family.

Mr. Mike Deighton has been employed at ArcelorMittal Cleveland for 43 years, and is serving his fifth term as Grievance Committeeman in the Hot Mill. Deighton testified that he has known the Grievant for approximately six years, and that in that time, the Grievant has not had any discipline problems and has gotten along well with everyone in the plant. Deighton presented about 16 letters from the Grievant's co-workers supporting him.

Deighton testified that he is very familiar with the Grievant's job—Assistant Roller, Senior Operating Technician—because he has been doing it for thirty years. The position is a Labor Grade 5 job, the highest level of responsibility in the plant. Deighton testified that this job is the most demanding in the entire Hot Mill, and that it requires one's attention at all times. The Assistant Roller must remain in the pulpit nearly all the time. If the Assistant Roller needs to use the restroom, the Assistant Roller must request that the Roller, a Management person, take over for a few minutes while he or she uses the restroom. Lunch is eaten on the job. The only pause in the workday occurs during roll changes; however, because the Assistant Roller is responsible for the roll change, he or she does not take even this break.

Deighton testified that it takes at least five minutes to walk from the pulpit to the locker room. He testified that there would be no chance for an Assistant Roller to walk back and forth between the locker room and the pulpit during a shift. When asked if he had returned to the locker room even once during a shift throughout his thirty-year tenure as an Assistant Roller, Deighton said that he had not.

Deighton stated further that due to the placement of the cameras in the plant, the Grievant would have been captured on camera in the hallway outside the locker room, had he returned to the locker room during his shift. Deighton testified that the Company did not present any camera footage of the Grievant returning to the locker room. Deighton said that he did not condone the use of drugs in the workplace and that "everywhere in the steel mill is a dangerous place."

The Position of the Employer:

- Arcelor had just cause to terminate the Grievant for bringing drugs and drug paraphernalia onto Company property with the intent to consume.
- At about 8:00 am on March 3, 2015, Sergeant Lanning detected a strong odor of burnt marijuana coming from the Grievant's locker. This prompted the Company's decision to cut the lock from the locker.
- The decision to cut the lock from the locker was within Management's rights, and was done in the presence of a Union representative who did not object.
- Once the lock was cut, a lighter, a marijuana pipe, and a pill bottle containing marijuana were found on the top shelf of the Grievant's locker. These items were in plain sight and easily accessible.

- The Grievant confirmed that the locker in question was his locker and confessed to bringing the illegal drugs and paraphernalia into the workplace. The Grievant was given a drug and alcohol test, and tested positive for marijuana.

- The reasons for the Grievant's discharge included, among other things, the bringing of a hallucinogen onto Company property with the intent to consume.

- The fact that the Grievant had marijuana, a pipe, and a lighter all present together is telling. Without any one of these things, he could not consume the drug. By carrying all three of them into the worksite and placing them together on the shelf in his locker, the Grievant could easily do so.

- The items were unconcealed and accessible. It would not have taken significant effort for the Grievant to retrieve the supplies and consume the marijuana at an opportune moment during the workday.

- At most, the odor of burnt marijuana and the failing of a drug test indicate that the Grievant did in fact consume marijuana while at work. At the very least, they indicate that the Grievant has a habit of consuming the drug.

- If the Grievant does have a habit of marijuana consumption, that must be considered in determining whether he intended to consume the drug while at work. While past practices do not guarantee future actions, they are certainly suggestive.

- The burden of proof the Company must meet with regard to the Grievant's intent to consume is "more likely than not." The facts listed here make the Grievant's intent to consume marijuana in the workplace a reasonable and likely conclusion.

- In addition to the facts cited above, the sweater the Grievant used to transport the items was not made of very thick material. The weight of these three items would certainly have been noticeable when transported in the pockets of the sweater. It is therefore not plausible that the Grievant did not realize that he was transporting these items before he reached the locker room.

- The Grievant was carrying a small amount of the drug: .8 grams, which is not of great value. The Grievant could have thrown the substance away or flushed it down a drain. Instead of destroying the substance, he placed it in an area where he could access it quickly.

- Bringing drugs to work with the intent to consume is a very serious instance of misconduct. Doing so created an immediate risk to the Grievant, his coworkers, and to Company property.

- Based upon the Grievant's positive drug test and his intent to consume marijuana while at work, the Company was correct in denying him Justice and Dignity. Employees who endanger the safety of their colleagues and of Company property do not deserve to remain on the job while the final merits of their cases are decided.

- The Company recognizes and commends the Grievant's decision to seek treatment for his marijuana use. However, this effort was made too late. If this was a long-term problem, the Grievant had ample opportunity to seek Company-sponsored help prior to his discharge.

- The BLA clearly indicates that the Company is not obligated to offer an opportunity for rehabilitation if an employee violates a Company rule. Because the Grievant violated the Company's work rules, the Company is not obligated to offer him an opportunity to correct his behavior.

- Until this point, Cleveland has not had a problem with Employees bringing illegal substances to work. If an Employee brings illegal substances or paraphernalia onto Company property, he or she will be discharged, regardless of the specific amount. That is and should remain the Company's policy.

- The Company asks that the grievance be denied.

The Position of the Union:

- The Grievant has explained that he was running late and in a hurry to arrive at work on the day in question. He was new to this position and wanted to arrive on time. He realized that he made a mistake by carrying marijuana with him to the workplace, and left it in his locker.

- Had the Grievant wanted access to the pipe or marijuana during work hours, he would have kept them on his person or in his locker in the pulpit. Storing the pipe or marijuana in either of these locations would have made them much more accessible to him.

- The Company never reviewed the camera footage in the hallway outside the bathroom to see if the Grievant had been returning to the locker room at points through his shift on prior days; nor did the Company consider the time it takes to get from the pulpit to the locker room and back. In the position held by the Grievant on the day in question, there was not time for him to return to the locker room during his shift.

- No substance nor odor was found in the Grievant's car. There was no evidence found that he had ever smoked at work.
- The Company has not proven that the Grievant had the intent to consume marijuana on Company property during working hours.
- To prove intent, there must be a witness who overheard the Grievant stating his intent to consume. In this case, there was no such witness.
- The Company had disciplinary options short of termination. According to Article 3, Section G, Paragraph 5, the Company could have offered the option of rehabilitation to the Grievant.
- This is further supported by the McCall letter in the Step 3 Minutes, which indicates that employees who are not found impaired at work may be offered rehabilitation. The Company provided no evidence that the Grievant was impaired at work.
- The Company denied the Grievant Justice and Dignity. Article 5, Section I, Paragraph 9, subparagraph B states that the Company does not have to offer Justice and Dignity to employees who distribute or use drugs on Company property. In this case, the Grievant did neither, and was thus entitled to Justice and Dignity.
- The Grievant had been a recreational marijuana smoker for a long time, but came to realize its costs. One mistake has cost him his job, despite having been a conscientious employee with an impeccable work record, well-liked by Management and his colleagues. The Grievant has come to realize that he must quit this recreational habit to continue in the workplace.
- The Grievant has demonstrated independently that he is committed to his sobriety. He has used his own time and his own funds to attend rehab sessions and take tests to prove that he is no longer using marijuana. He realizes the value of his job and has demonstrated a desire to return to work.
- The Union believes that the Company erred by not offering Justice and Dignity and rehabilitation to the Grievant.
- The Union contends that the grievance should be sustained, and that the Grievant should be made whole including all benefits to which he is entitled.

Findings and Decision

There is little dispute over the facts that led to the Grievant's termination. A small amount of marijuana was found in the Grievant's locker at work, along with a pipe and lighter. The Grievant admitted immediately that the items in the locker belonged to him. He underwent a drug test that resulted in a positive finding for marijuana consumption.

The Grievant has admitted that he smoked marijuana during the weekend before the day in question. However, he has denied that he smoked it before coming into work or at work that day, or that he was in any way under the influence or impaired. He stated that he realized that he had the marijuana in his hooded sweatshirt when he arrived at work, and since he was running late, he put it in his locker.

The Grievant was discharged for violating the Company's drug and alcohol rule, which states,

> Employees are forbidden to report for work under the influence of alcoholic beverages, hallucinogens, or narcotics. Any Employee who violates this rule will be subject to suspension with intent to discharge. Employees that bring alcoholic beverages, hallucinogens or narcotics onto Company property with the intent to sell/distribute/consume shall be subject to immediate suspension and discharge.

The Parties also have negotiated over "the right to a reasonable policy on alcoholism and drug abuse" in Article 3G of the collective bargaining agreement, which will be discussed in more detail below.

Although the Company cited the entire rule regarding drug and alcohol abuse in the termination letter, the evidence presented at arbitration does not demonstrate that the Grievant was terminated for being under the influence of drugs or alcohol at work, even

though he tested positive for marijuana that day. There is no evidence that the Grievant exhibited any signs of being under the influence or impaired that day; the drug testing here did not come about as a result of any such observations, or because of an accident. In the third step minutes, the Company conceded that "there is no evidence as to whether [the Grievant] [was] under the influence, although he did test positive for marijuana." Furthermore, HR Manager Jordan confirmed in her testimony that the Company did not discharge the Grievant for being under the influence of drugs or alcohol at work, despite his positive drug test.

Instead, the Company has argued that the Grievant violated the second part of the rule, which prohibits bringing drugs onto Company property with the intent to consume, sell or distribute them. The Company has not argued that the Grievant intended to sell or distribute the very small amount of marijuana involved. However, the Company points to a number of facts in the record which it argues makes it more likely than not that the Grievant did bring the marijuana onto Company property with the intent to consume it at work.

In this case there is no convincing evidence that the Grievant actually smoked the marijuana on Company property; therefore, the Employer must prove that he had the intent to do so, which was thwarted only by the Company's detection and confiscation of the marijuana in his locker. The Union argues that unless someone overheard the Grievant saying that he intended to consume the marijuana at work, there is no way for the Arbitrator to conclude that he had such intent. A clear verbal statement of intention may provide the most convincing evidence of such intent. Nevertheless, intent also may

be inferred from an employee's clear course of conduct, or other strong circumstantial evidence.

The Company relies strongly upon the placement of the marijuana, pipe and lighter in close proximity to each other on the locker shelf as convincing evidence that the Grievant intended to use them at work. The Company further questions the Grievant's explanation for the presence of the marijuana in the locker. According to the Company, the Grievant should have known that the marijuana and paraphernalia were in the pocket of his sweatshirt when he left the house or when he came into the plant. In addition, the Company argues that if the Grievant did not intend to use the marijuana at work, he would have thrown it away in the trash can, or dumped it in the toilet in the locker room, when he found it in his pocket. In addition, the Company relies upon the positive drug test as further support for the likelihood that the Grievant brought the marijuana into the locker room so that he could smoke it at work.

The Grievant's positive drug test and his testimony about his addiction problems with marijuana demonstrate that he had a propensity to abuse marijuana at the time in question, even though the Company has not relied upon these facts as a separate basis for discipline. The question before the Arbitrator is whether this habit or propensity to smoke marijuana at that time, along with the evidence about his conduct that day, provide convincing evidence that he intended to smoke marijuana at work, as the Company argues.

In considering this question, the Arbitrator notes the inherent problems with smoking marijuana at work. As Officer Lanning's testimony makes clear, there is a

significant odor to burning marijuana. He testified that he could smell the burnt residue of marijuana in a pipe from outside the Grievant's locker, at least with the ventilation system pumping air through the locker. Smoking itself is even more odorous. The high risk of detection while smoking marijuana at work makes it less likely that this was the Grievant's intent.

In addition, the Union presented uncontradicted evidence that the Grievant was working in a job that week in which it was very difficult to leave the worksite at all. The Union's Witness, who has worked in this position for thirty years, reported that while everyone else involved in the operation may take a break while the roll is being changed, the Grievant's position required him to participate in changing the roll. The Assistant Roller typically eats his lunch on the job; even bathroom breaks in this position are provided by a supervisor on a "catch as catch can" basis. Under these circumstances it is highly unlikely that the Grievant would have had any time to travel to the locker room, and find a secure place away from everyone in which to smoke marijuana. Furthermore, if he did wish to smoke marijuana at work, it would have been much more accessible if he kept it on his person or stored it in the locker in the pulpit where he was working, given his hectic schedule, and the distance from his worksite to the locker room. Furthermore, the videos from the cameras in the hallway outside the locker room probably would have shown whether the Grievant had a habit of going to the locker room during his shift, but they were not examined.

These facts significantly weaken the Company's conclusion that the Grievant brought the marijuana into the plant with the intent to consume it there. The Company has the burden of proof on this point and the Union has raised significant practical

difficulties surrounding the Grievant smoking marijuana at work. The Arbitrator cannot conclude that the facts relied upon by the Company are sufficiently convincing to establish that it is more likely than not the Grievant had the intent to smoke marijuana at work. Management relied upon its conclusion that he had this intent as the basis for immediate suspension and discharge. There is not just cause for the termination of the Grievant without establishing that he intended to consume the marijuana at work, especially given his long tenure and good record with the Company.

The Company has cited *U.S. Steel v. United Steelworkers, Local 1299*, Grievance No. GLW-04-1030 (Das, Arb. 2005) for the view that even a long-term employee with a good record may be terminated for bringing marijuana into the plant. That case involves a different employer and some different language in its rules and collective bargaining agreement. Furthermore, unlike the Grievant here, the grievant in that case admitted smoking marijuana at work. That conduct involves a significantly higher safety risk than the conduct established by the evidence in this case. In addition, Arbitrator Das noted that under the Agreement at issue in that case, if the Arbitration Board found that there was proper cause for discipline, the Board had no authority to modify the penalty, which is not the case under this Agreement.

Nevertheless, the Arbitrator concludes that the Company has established a basis for significant discipline of the Grievant here. The Hot Mill is a dangerous worksite, and Employees must be mentally alert to prevent dangerous situations from arising. The Grievant brought an illegal mind-altering drug into the plant and stored it in his locker. This conduct constitutes a threat to the safety of the Employees and the plant because it introduces drugs into the workplace and creates the possibility that they will be used at

work, even if the risk of the Grievant using them that day was not high. Furthermore, the risk was easily preventable. If the Grievant brought the marijuana into the plant accidentally, he did not take the opportunity to immediately destroy it once he discovered it, thereby maintaining the risk that it could be consumed by someone in the plant. Even taking the marijuana back to his car would have reduced the risk of him or someone else using it in the plant.

The rule states that those who bring such drugs onto the premises with the intent to consume, sell or distribute them are subject to immediate suspension and discharge. Even where there is not proof of such intent, however, the Arbitrator cannot conclude that the policy is intended to permit Employees to bring illegal drugs into the plant and store them there without any penalty. The Grievant's conduct introduced illegal drugs into the plant and created the risk that they would be consumed there. The Employer has a strong interest in preventing this risk. Employees, including the Grievant, know that they have an obligation not to bring illegal drugs into the Arcelor workplace, and that they may expect significant discipline for doing so. The ban on bringing contraband into the plant, and the general obligation of all Employees to maintain the safety of their co-workers and the plant also supports discipline for bringing and keeping illegal drugs in the workplace.

A significant penalty is warranted for such conduct. However, the Grievant has a very good long record of employment with the Company. He admitted his misconduct immediately and has sought treatment for marijuana addiction since his termination. Article 3 G recognizes that alcohol and drug abuse are treatable medical conditions, and generally requires rehabilitation rather than discipline for a positive drug test. Considering all the circumstances, the Arbitrator concludes that a 30-day suspension is

appropriate. This should be sufficient to impress upon the Grievant and others in the plant the safety risks of bringing in and storing any kind of illegal or mind-altering drugs in the workplace, while also recognizing the Grievant's long tenure and good record of service. In addition, the Employer may require the Grievant to undergo an evaluation for substance abuse problems by the Employee Assistance Program after reinstatement, and to comply with any recommendations they make.

The Union also argues that the Grievant should have been permitted to remain at work under the Justice and Dignity clause of Article 5, Section I(b)(1) of the Agreement. That clause permits an Employee to remain on the job after a suspension or discharge, once a grievance is filed, until there is a final determination on the merits of the case. However, the following paragraph in that section recognizes an exception for cases "involving offenses which endanger the safety of employees or the plant and its equipment." The section goes on to list examples of such offenses, including "use and/or distribution on Company property of drugs, narcotics, and/or alcoholic beverages." The Grievant's conduct did not constitute use or distribution of drugs on Company property. Nevertheless, the Arbitrator concludes that the general safety language at the beginning of the section is not limited only to the specific examples listed. For the reasons discussed above, the Arbitrator concludes that bringing and storing illegal drugs on Company property endangers the safety of employees and the plant and its equipment, causing the Grievant to lose the protection of the Justice and Dignity clause in this case. A similar decision was reached about the scope of the Justice and Dignity clause in *ArcelorMittal USA, Indiana Harbor Long Carbon Plant v. United Steelworkers, Local 1010*, Case No. 70 (Bethel, Arb. 2015).

AWARD

The grievance is sustained in part. There was not just cause for the termination, and it shall be reduced to a 30-day suspension. The Grievant shall be reinstated with full backpay and made whole for all lost wages and benefits resulting from his termination, except for the 30-day suspension period. The Employer may require the Grievant to undergo evaluation for substance abuse problems and comply with any recommendations resulting from such evaluation. The Arbitrator shall retain jurisdiction solely over the remedy portion of the Award.

____

Jeanne M. Vonhof
Labor Arbitrator

Decided this 23rd day of November, 2015.