

Award No. 862
In the Matter of Arbitration Between:
Inland Steel Company
and
United Steelworkers of America,
Local No. 1010.
Grievance No. 19-T-121
Appeal No. 1473
Arbitrator: Jeanne M. Vonhof
August 26, 1992

REGULAR ARBITRATION
INTRODUCTION

The Undersigned Arbitrator was appointed according to the rules of the applicable collective bargaining agreement. This hearing was held on Thursday, July 23, 1992 at the Company's offices in East Chicago, Indiana. The Company filed a pre-hearing brief and the Union filed a pre-hearing memorandum in the case.

APPEARANCES

For the Union:

Presenting the Matter:

J. Robinson, Chairman, Grievance Committee

Appearances:

M. Mezo, President, Local 1010

A. Jacque, First Vice Chairman, Grievance Committee

L. Aguilar, Second Vice Chairman, Grievance Committee

Bill Carey, Griever

James Wilder, Grievant

For the Company:

Presenting the Matter:

W. Peterson, Project Representative, Union Relations

Appearances:

R. Vela, Section Manager, Union Relations

R. Nanney, Senior Investigator, Protection Services

W. Stallard, Manager, Material Handling Services, EMM

R. Hynes, Section Manager, Material Handling Services, EMM

W. Samardzich, Senior Analyst, Material Handling Services, EMM

A. Thompson, Administrative Clerk, Material Handling Services, EMM

P. Washington, Personnel Clerk, Material Handling Services, EMM

K. Pokrajac, Specialist Associate, Legal, Union Relations

RELEVANT CONTRACT PROVISIONS and PERSONAL CONDUCT RULES:

RELEVANT CONTRACT PROVISIONS:

ARTICLE 3

PLANT MANAGEMENT

Section 1. Except as limited by the provisions of the Agreement, the Management of the plant and the direction of the working forces, including the right to direct, plan and control plant operations, to hire, recall, transfer, promote, demote, suspend for cause, discipline and discharge employees for cause, . . . and to manage the properties in the traditional manner are vested exclusively in the Company. . . .

ARTICLE 8

Discharges and Disciplines

Section 1. In the exercise of its right to discharge employees for cause, as set forth in Article 3, the Company agrees that an employee shall not be peremptorily discharged, but in all instances in which the Company may conclude that discharge is warranted, he shall first be suspended for five (5) days and notified in writing that he is subject to discharge at the end of such period. A copy of such notice shall be furnished to such employee's grievance committeeman and the Chairman of the Grievance Committee promptly. During such five-day period, if the employee believes that he has been unjustly dealt with, he may request and shall be granted during this period a hearing and statement of his offense before the Manager of Union Relations, or his designated representative, with the employee's grievance

committeeman and officers of Union present if the employee so chooses. At such hearing, facts and circumstances shall be disclosed to and by both parties.

If, at the suspension hearing, the Company reads the full text of or excerpts from a Plant Protection report or supervisor's statement into the record, the Union will, upon request, be provided a copy of such statement or report at the conclusion of the hearing, provided that the employee has fully disclosed the facts of which he is aware surrounding his suspension.

PERSONAL CONDUCT RULES AND REGULATIONS:

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

1. Stealing or malicious conduct, including destroying, damaging, or hiding any property of other employees or of the Company and the destruction, damaging or pilfering of vending machines or any equipment made available to employees for the purposes of in-plant feeding.
- p. Neglect or carelessness in the performance of duties assigned or in the care or use of Company property.
- r. Use of profane, abusive, or threatening language towards supervisors or other employees or officials of the Company, or any non-Inland personnel.

BACKGROUND:

This is a case involving the discharge of a long-term employee for violation of certain Company rules. The incidents giving rise to the discharge involved the employee's conduct in regard to the Fleet Management section of the Equipment Maintenance and Management (EMM) Section of the Material Handling Services Department (MHS).

According to the evidence the Fleet Management Department experienced a series of thefts in late 1991 involving their computer equipment. On October 5, 1991 two computers and a laser printer were stolen from the Fleet Management offices during the off-turn hours. After the following night turn, a television set belonging to Fleet Management was found in a stairwell. Management concluded from its location that it was abandoned in the process of being stolen.

Plant Protective Services were brought in to investigate the thefts and within a few days changed the locks to the Fleet Management offices, and kept a list of employees who were issued keys. After the locks were changed, employees in Fleet Management reported that someone was accessing their computers and one employee reported that diskettes containing backup files had been taken from his office.

At that point management decided to install a surveillance video camera in the area. The Fleet Management department is locked after the last employee from the department leaves, normally between 5:30 and 6:00. The janitorial staff has access to the offices after that period of time.

The camera gave a wide angle view of a narrow corridor. From this vantage point the camera could view a person entering the main door of the Fleet Management office; the office of Mr. Robert Hynes, the Section Manager; a corridor leading to the office of Mr. Wayne Stallard, the Manager of EMM; and a doorway leading to open offices of EMM. The corridor to Mr. Stallard's office also leads to a door leading to a stairwell which goes to the first floor and to the outside parking lot. According to the evidence the camera was installed during the first week of November, 1991 and remained on twenty-four (24) hours per day until March 9, 1992.

The camera recorded the Grievant engaging in certain conduct which management considered a violation of its rules. A Plant Protection representative questioned the Grievant, and he admitted to certain conduct. A further investigation by management led to the discovery of other conduct by the Grievant. By letter dated March 16, 1992 the Grievant was informed that he was suspended subject to discharge for violating three Company rules involving the following conduct: neglect in the performance of his duties; the production and circulation of threatening, abusive and profane materials; and malicious conduct including but not limited to his unauthorized entry into other employees' desks and offices, and the unauthorized accessing and use of privileged and confidential materials. The Grievant's suspension was changed to a discharge.

At the time of his discharge the Grievant had worked for the Company for approximately twenty years. No record of past discipline was presented to the Arbitrator. The Grievant worked in the Mobile Equipment Field Forces area for about twelve years, according to his testimony. On November 17, 1991 the Grievant began filling temporary vacancies as an hourly foreman for the Mobile Equipment Maintenance (MEM) Area. At the time of his discharge he was working as the hourly foreman for the MEM area on the A turn, i.e. the 11:00 p.m. to 7:00 a.m. turn.

As the hourly foreman his primary job duties were located on the first floor of the building in question. The testimony indicates that the Grievant's duties included determining what work had not been completed from

the previous turn, assigning jobs to mechanics and supervising their work. Some of the maintenance and repair work is performed in the shop adjacent to the Grievant's first floor office, and other work is conducted at satellite locations. The Grievant is also charged with supervising these satellite locations and making sure that the mechanics in all locations have the parts and supplies they need to perform their work. The Grievant also is charged with taking breakdown calls and prioritizing jobs, and performs several other miscellaneous duties as well.

The evidence establishes that the Grievant had keys to and was authorized to enter part of the second floor of the building in question in order to perform several duties associated with his job. According to his immediate supervisor he was required to go to that floor to check his mailbox nightly, to use the FAX machine occasionally, and to leave notes for the Expeditors, who order parts. His supervisor also testified that the Grievant occasionally would need supplies or forms such as work orders from the second floor. Mr. Hynes testified that the Grievant normally would be required to spend ten to fifteen minutes per night on the second floor.

Mr. Hynes testified further that the Grievant was authorized for a period of time to use a computer on the second floor to conduct an inventory of emergency parts. In addition, Mr. Hynes testified that he knew the Grievant was doing his homework on a computer on the second floor. The Grievant testified that he had some other reasons to be on the second floor, such as checking for parts on the expeditors' computers. The evidence indicates that the Grievant was not authorized to enter the Fleet Management section of the second floor. The Grievant testified that at about the time the locks to the Fleet Management office were changed he received a letter telling him that employees on his turn would be held responsible for any thefts in the Fleet Management offices. The Grievant never produced the letter.

According to the Grievant the note also told him the whereabouts of a key to the Fleet Management offices. The Grievant testified that he retrieved the key nightly from a "multicolored red" toolbox in his department and used this key to open the Fleet Management Department and check the equipment every night; his nightly entrances are confirmed by the videotapes. The Grievant never produced the key or identified the toolbox from which he retrieved it.

The Parties dispute the amount of time which the Grievant spent on the second floor during the relevant time period. Specific evidence regarding this issue will be discussed as necessary in the body of the opinion.

The Company also disciplined the Grievant for producing and distributing abusive and threatening materials at the plant. The first document to be found was a notice posted by an employee in Fleet Management advertising a dog he wanted to give away; the notice was altered on the bottom with typed statements suggesting that the dog owner was wasting Company time in producing the document. For example, the document stated,

**THIS IS THE RESULTS YOU GET FROM AN ALBATROSS DEPARTMENT WITH TOO MANY EMPLOYEES WITH NOTHING TO DO!!!
FOOLS; F/M NEEDS MORE MONEY TO WASTE ON HIRING MORE JACK-OFFS LIKE THIS!!!
MAYBE THAT WAY YOUR SHOP CAN BE SHUT DOWN NEXT CONTRACT!!!**

The altered notice was found in this altered state in the offices of Messrs. Wayne Stallard and Bob Hynes and in Fleet Management the morning after it was initially posted in its unaltered state.

The second document was circulated about two weeks after the first. It is a document which appears to have been produced on a computer and contains the names of several managers in the department, complaining about the way in which the department was being managed. A portion of the document stated, The people who run this department are a bunch of ass-holes if they think we are going to become one big happy family!

Wayne Stallard, Bob Hines, and Jack Enright

Go fuck yourself, we are tired of you fucking us all the time!!!!

See if your suck-ass trucking heat and beat hammer heads can fix your end-loaders and cranes when we fuck you back!!!

SIGNED YOUR REAL MECHANICS

The Grievant denies producing this document but acknowledges anonymously posting it on a wall in Mr. Stallard's office, which he contends was open on the night in question. Mr. Stallard testified that he consistently locked his door before leaving at night. The Grievant also admitted leaving the document in Mr. Hynes' office, which the evidence indicates was left unlocked. He contended that he left these documents in order to alert management about dissatisfaction among employees in the department.

The third set of documents were lists of jobs to be accomplished by Mr. Wayne Samardzich which were taken from his desk in Fleet Management and altered with comments written about the jobs. The comments suggested that some of the work was a waste of money or violated Company policies, priorities or cost reduction goals. The Grievant claims no knowledge of these documents.

The Union presented evidence that there was considerable tension among various groups of mechanics in the department, because two additional distinct groups of mechanics had been added over time to the original group in the department. There was also testimony regarding a concern among the employees about persistent rumors of layoffs and cutbacks at the time these incidents occurred.

Company witnesses testified about the confidential and privileged nature of information kept in the department, which will be discussed in more detail as necessary in the Opinion section. The Grievant testified that he did look at papers on employees' desks in the department, but the only time he saw something that he considered to be confidential he quickly turned away.

The Grievant also admitted accessing employees' computers in the Fleet Management Department, in order to look for games during his break, and to look at the kind of programs they had. He testified that he looked only at programs, not document files. He also testified that he looked at a "Windows" program on Mr. Samardzich's computer in order to compare it with a "Windows" program he had received from another employee.

The Grievant admitted that he did copy one computer program for his personal use from a secretary who offered it to him, after he was unsuccessful in locating a place from which it could be purchased. He testified that that was the only computer program he ever took from the office. Company witnesses testified that he appeared on the video camera carrying computer diskettes out from the Fleet Management offices on more than one occasion.

The Grievant also admitted that he did enter the locked desks of several secretaries. He testified that he did so in order to obtain supplies or keys to a locked supply area. One secretary testified that she had keys in her desk to other offices in the complex, including the office Mr. Stallard's office, the manager for the entire Equipment Maintenance and Management section, which included the Grievant's department and Fleet Management.

THE COMPANY'S POSITION

The Company contends that the grievance should be denied and the discharge upheld, for the following reasons. First, the Company argues that the Grievant's admissions that he entered into other employees' offices and desks and accessed their computers and privileged information, all without authorization, constitutes a violation of the plant rule proscribing malicious conduct.

The Company asserts that it is undisputed that the Grievant performed these actions. And the Company asserts that these actions constitute malice, which it has defined as a wrongful act done intentionally without legal justification or excuse. Although the Company contends that the Grievant's actions would violate Indiana law, the Company notes that is charging the Grievant only with a violation of its rules. The Company asserts that these actions, admitted by the Grievant, establish such a gross breach of acceptable conduct that they constitute just cause for dismissal in themselves.

The Company also argues that the totality of the circumstances surrounding the Grievant's actions further supports his discharge. The Company points to evidence that the Grievant was out of his work place for much longer than his job duties required, and argues therefore that his malicious conduct must be coupled with his gross neglect of his job duties. The Grievant's malicious conduct is magnified, the Company asserts, by the fact that he knew he had no legitimate reason for being in the Fleet Management offices and by the privileged and confidential nature of the material kept there.

The Company contends that employees have a fundamental right of privacy to the information contained in their work area, including the right to not have their desks or computers entered by other employees. Because so much of the data at issue here is confidential, employees would have to take home all their information every night if employees were permitted to act as the Grievant here acted, the Company asserts.

In addition, the Company argues that when the Grievant has been given an opportunity to explain his actions, he has only magnified the offense with his lack of veracity. The Company notes that the Grievant changed his position regarding certain events throughout several investigative interviews. In addition the Company challenges the Grievant's credibility regarding how he received a key and why he began to enter the Fleet Management Department. According to the Company, the Grievant's lack of credibility regarding certain issues affects his overall credibility.

The Company contends further that the evidence establishes that the Grievant did produce as well as distribute the abusive and profane literature which appeared in the offices of several management personnel. According to the Company there was evidence on several occasions that only the Grievant had access to the materials being produced and to Fleet Management on the nights they were distributed. The Company suggests that it was justified in not disciplining the Grievant as soon as he was seen entering Fleet Management. The Company defends its use of the video camera over several months on the grounds that it had a serious theft problem and was trying to catch the thief. The Company further defends its discharge of the Grievant without progressive discipline on the basis of the serious nature of the offenses he committed.

THE UNION'S POSITION

The Union contends that the grievance should be upheld and the discharge overturned, for the following reasons. First, the Union cites the Grievant's long work record and the citations he received for good work performance. The Union contends that there was no reason to believe that the Grievant was neglecting his work or that there was anything wrong with his performance prior to the Company's investigation.

The Union suggests that the Grievant's justifications for his actions are credible and reasonable. The Union asserts that the Grievant's behavior regarding the anonymous letter he received and his method of obtaining a key are reasonable. The Union contends further that the alternative way in which the Company suggested he may have obtained a key was never raised before the arbitration hearing, and the Grievant's explanation for how he treated that key is credible.

In addition, the Union contends that his argument that he had only looked at a "Windows" software program in order to compare it to his own is reasonable and there is no evidence that he ever took any other program, except for the one he admits a secretary allowed him to copy. The Union argues further that the Company has not charged the Grievant with stealing any specific privileged and/or confidential information, including the only information missing, one employee's backup diskettes. The Company has not established that the Grievant in fact accessed any of this information, or that any has been misused, the Union asserts.

The Union argues further that the Grievant's reasons for entering other employees' desks, i.e. to obtain supplies, or keys to obtain supplies, is reasonable. According to the Union there has been no suggestion that the supplies were used for the Grievant's personal use. In addition the Union argues that there is no evidence that the Grievant used the keys he found anywhere else in the office.

As for the neglect of duties charge, the Union states that there has been no allegation of any work under the Grievant's supervision that was not performed or not performed correctly. Furthermore, the Union takes issue with the Company investigator's conclusion that the Grievant was on the second floor for an average of four (4) hours per night, because the video camera did not cover the only exit from the second floor. According to the Union there is no hard evidence to support the charge that the Grievant produced the materials with which he is charged. The Grievant's explanation that he circulated the material in order to make management aware of it is reasonable, the Union suggests. Furthermore, the Union argues that the alleged "threat" in the second document is not a threat of sabotage, as the Company witness suggested, but rather at best a threat to slow down work.

Finally, the Union suggests that nothing the Grievant did provides grounds for discharge. According to the Union, management could remove the Grievant from his position as an hourly foreman and the Union has no right to grieve that action but the Company may not discharge him for cause on the basis of the proven facts regarding his conduct in this case.

OPINION

The instant case involves the discharge of an employee with nearly twenty (20) years of service for violating certain Company rules, including prohibitions against malicious conduct, the use of threatening or abusive language, and neglect of duties. After several thefts of equipment in its Fleet Management Department, the Company installed a video camera in a hall outside the main door of Fleet Management. The Company has not charged the Grievant with the thefts of the computer equipment or any other equipment or supplies. However, the Company has charged the Grievant with certain other conduct which was discovered through the use of the video camera and through the Grievant's own admissions in the Company's ensuing investigation.

As a preliminary matter the Union has not challenged the Company's use of the video camera for surveillance per se. The Arbitrator notes that the Company previously had attempted unsuccessfully to curb unauthorized entrance to Fleet Management by using less drastic means, i.e. by changing the locks.

Much of the Union's case here rests upon the credibility of the Grievant and the reasonableness of the justifications he gave for his admitted conduct. The Arbitrator concludes that there are serious problems with the Grievant's credibility. The method in which the Grievant says that he obtained a key to the Fleet Management Department presents a major weakness in his version of the events. He did not produce either the warning letter he allegedly received, the key itself or the toolbox from which he allegedly took it. It does not seem likely that he would try to protect the identity of the alleged owner of the toolbox at the expense of his own job. Furthermore, he has named an employee whom he thinks owned the toolbox, so it is not clear whose identity he is trying to protect. That employee states that he never owned a multicolored red toolbox and the evidence indicates that he transferred out of the department while the Grievant claims he was still going to the toolbox nightly to obtain the key.<FN 1>

In addition, if the Grievant received a letter warning him that his crew would be held to blame for any losses in Fleet Management, the Grievant should have taken the issue and the letter to management. He did not offer any reason why he failed to do so. As the Company points out, the course of action the Grievant chose was one which would cast more suspicion on him if anything else were stolen.

In addition, the Grievant's statements regarding his reasons for going into Fleet Management vacillated. The Grievant claimed initially that he was going in for supplies and at a later point that he was going in to check the equipment to make sure that nothing was stolen. He contends that the changes in his story were prompted by the fact that he knew he was not supposed to be in Fleet Management. This candid admission does not nullify the damage to his credibility caused by the contradictions in his testimony, however. The admission that he knew he was not supposed to be in Fleet Management at all weakens his testimony that he felt justified in entering there every night to check equipment. In addition, the amount of time he spent in Fleet Management is inconsistent with his claim that he was going there only to check the equipment.

As the Union has suggested, some of the alleged contradictions in the Grievant's later testimony may have resulted from the Company's representatives asking different and/or more specific questions at that time.

And it is possible that the Grievant remembered things more clearly and in more detail in the later investigations. However, the Arbitrator concludes that not all the contradictions can be explained away by these factors. For example the Grievant's initial response to Mr. Nanney that he did not have keys to the Fleet Management office is not a very truthful response to the question, "(d)o you have keys to all the shops and the main office complex?" The Grievant was not forthright in explaining the whole truth that he had entered Fleet Management with a key, until after he was told that there were videotapes of his activities. His lack of candor hurts his overall credibility and weakens his claim that his activities in Fleet Management were completely harmless.

A similar lack of candor characterizes the Grievant's activities with regard to the posting of the documents criticizing management. His failure to mention that he circulated them, until after he was told that there were videotapes, indicates a lack of forthrightness that suggests he was trying to conceal something. The Grievant also stated that he discussed at least one of the documents with one of his supervisors at the time it was circulated, and this was confirmed by Mr. Hynes. However the Grievant did not admit at that time that he had circulated the documents to the offices of Messrs. Hynes and Stallard. If his intent had been only to notify management of tension and ill-feeling among the employees on the shop floor, as he stated, why not do so directly by bringing the documents himself to Mr. Stallard or Mr. Hynes or to some other supervisor? The anonymous and clandestine way in which the Grievant "notified" management about the documents suggests that he had other motives than the one he has offered.

In addition, the Grievant testified that he found Mr. Stallard's door unlocked on both occasions in which he circulated these documents. However, there was credible evidence that the door was locked on the morning on which at least one of the documents was found, and that Mr. Stallard generally locked his office.

In these basic details the Grievant's story does not ring true. His overall lack of credibility affects the Arbitrator's consideration of other issues where there is not as much evidence to contradict the Grievant's testimony. For example, the Grievant's general lack of credibility makes it more difficult for the Arbitrator to conclude that the Grievant looked only at programs and not at document-files when he accessed employees' computers in Fleet Management. Similarly, the Grievant's testimony that he entered the locked desks of Ms. Washington and Ms. Thompson only to obtain supplies and the keys to the supply room is suspect. Ms. Thompson had in her desk keys to the entire office, including a key to Mr. Stallard's office and the evidence suggests that the Grievant had obtained a key to Mr. Stallard's office.

The Grievant's credibility problems also affect the Arbitrator's conclusions regarding whether he produced the documents criticizing management. There is other circumstantial evidence that the Grievant was the employee who produced the documents. For example, the evidence indicates that the dog advertisement

was altered and circulated the very day it was posted. The Grievant admits that he circulated it in its altered form. The short time lapse between the posting of the document and the Grievant circulating it in its altered form makes it more likely that it was the Grievant rather than someone else who altered it. (There also was testimony that the videotapes showed him carrying the document in its unaltered state on the second floor and emerging shortly thereafter with it in its altered condition. The Arbitrator is not convinced from her viewing of the videotapes that they are clear enough to reach that kind of conclusion. However, the Grievant's activities on the second floor that night would have given him the opportunity to alter the document, a greater opportunity than employees on other shifts who would have had more people working nearby).

In the case of the other two documents it is not clear when the documents were produced, so there is less evidence that it was the Grievant who produced them on the nights they were circulated, rather than just distributing them. However, the Grievant admits having at least one of them in his possession, and he had greater access to the means to produce them unnoticed at work than other employees.

The Company's rule prohibits the "use" of abusive, profane or threatening language. Here the Grievant's circulation of these documents, including posting at least one on the wall in Mr. Stallard's Office, reasonably could be interpreted as "using" the language contained in the documents against these supervisors. This is especially true because the Grievant did not attach any disclaimer to the documents, or talk to the supervisors to indicate that he did not agree with the contents of the documents, and only posted them in order to keep management informed.

The Arbitrator accepts the Union's view that the alleged threat in the document signed "YOUR REAL MECHANICS" was not a threat of sabotage to the plant, but rather at best a threat to slow down work. And presumably management wants to keep open lines of communication with employees to hear complaints, including dissatisfaction about the topics alluded to in these documents. However, these missives are not a legitimate way to express dissatisfaction. The fact that they were produced and posted anonymously, and some were distributed in locked offices, makes it very difficult for management to deal with them or constructively address the issues they raise. On the basis of all the evidence the Arbitrator concludes that the Grievant was not innocently informing management of employee dissatisfaction and did violate Rule 132(r) prohibiting the use of profane, abusive, or threatening language to supervisors.

The charge that the Grievant neglected his duties is more problematical. The Company did not produce evidence that specific work under the Grievant's control was not being performed or was not being performed properly during the relevant time period. The Grievant even eliminated a backlog of inventory parts orders during this period. Furthermore, his supervisor, Mr. Hynes, knew that the Grievant was doing homework for his classes on a computer during his shift, and permitted it to continue, and therefore tacitly agreed to this arrangement.

The Company argues that the possible "underutilization" of the Grievant during this period does not ameliorate the fact that he was on the second floor for an average of four (4) hours per night. The Arbitrator concurs with the Union's view that the Grievant's appearance on the videotape at a certain time on a particular day, and his final reappearance four hours later does not necessarily mean that he was on the second floor for the entire period, because another exit on the floor was not visible to the camera.

Nevertheless, the Grievant himself admitted at the arbitration hearing that he often spent two (2) hours per night on the second floor. The evidence further established that he was not spending all this time doing his homework or the parts' inventory. The fact that the Grievant was almost never seen in his hard hat and boots on the videotape also suggests that he was not spending much time on the shop floor.

It was undisputed that the Grievant's primary duties were located on the first floor. Part of those duties involved being readily available to the employees he was entrusted to supervise. The Arbitrator concludes that, under the circumstances, there was some neglect of duty, although not as extensive as the Company suggested.

As for the "malicious conduct" charge, the Arbitrator notes, as did Arbitrator McDermott in Inland Award No. 807, that malicious conduct is a general charge. The Company has lumped under this charge a variety of the Grievant's offenses. The Grievant has admitted many of them, including: 1) entering into the Fleet Management Department on numerous occasions, even though he was not authorized to enter and his access to the key was unauthorized; 2) entering the locked desks of certain employees, and removing keys and supplies from the desks; 3) entering the offices of several supervisors and of employees in the Fleet Management Department; 4) looking at papers on the desks of employees in these offices; 5) accessing the computers of various employees in Fleet Management; and 6) copying a computer program from a

secretary. The Company also presented uncontroverted testimony at the arbitration hearing that the Grievant copied computer manuals and took the copies from the office.

"Maliciousness," in the ordinary sense of the word, generally connotes meanness, ill will or a desire to harm others. It is not clear whether the Grievant's actions here indicate such motives or just an arrogant overstepping of his authority.<FN 2> The Company has pointed out that malice has a somewhat broader sense in law, as the intent to commit an unlawful act, without just cause or reason.

However, even if the Grievant's actions described above do not neatly fit under the rubric of malicious conduct, they involve violations of trust and honesty which are basic to the employment relationship. Certain conduct of an employee may so offend the basic employment compact that it need not be addressed by an employer rule specifically prohibiting such conduct. (How Arbitration Works, Elkouri and Elkouri, 4th ed., pp. 682-683). The pattern of dishonest conduct displayed by the Grievant in this case falls into this category, the Arbitrator concludes.

The only remaining question is whether the Grievant's actions warranted discharge. It is always a serious question whether the discharge of a long-term employee with a good record can be upheld on the basis of one action or group of actions when there has been no progressive discipline.

The Company argues that the discharge should be upheld because the Grievant's actions posed such a danger to the privacy rights of individual employees. The Grievant admitted entering employees' offices which were off-limits to him and their locked desks, and at one point even admitted jimmying a lock to get into one desk. In addition, in this computer age, accessing an employee's computer is similar to going through a file cabinet without permission.

The Grievant's violation is compounded by the confidential nature of some of the information in the department, such as detailed information regarding bids for equipment, which could be very damaging to the Company if released to competing vendors. In addition, one employee testified that he runs projections of possible courses of action for the Company, which could be misinterpreted by other employees. Release of this information could prove very damaging to the morale of the employees in a department already beset by fears of cutbacks and tension between groups over job assignments. Another employee whose desk was entered controls most of the personnel files for the department.

The Arbitrator realizes that there is no definite proof that the Grievant accessed or used this information. However, the Grievant admits that he looked at documents on employees' desks and accessed their computers. His actions placed the security of all this information at risk.

The question arises whether the Company should have disciplined the Grievant at some earlier point in time, after he was first seen entering the Fleet Management Department, rather than allowing him to accumulate such a number and variety of offenses. However, the Company was trying to catch a thief, which was a good reason for continuing the surveillance beyond that point in time. Furthermore, there is no suggestion that the Company entrapped the Grievant by its actions, or encouraged him to continue his nightly activities.<FN 3>

The Grievant's actions described above, many of which would constitute a substantial breach of trust and security standing alone, add up to a staggering pattern of dishonesty. Furthermore, the Arbitrator is not convinced that the Grievant to this day recognizes the seriousness of the violations he committed. The only time that the Grievant acknowledged any error on his part was in stating that he knew that he was not supposed to enter the Fleet Management Department and this was offered only as an explanation for why he initially lied about his reasons for entering. In every case he offered justifications rather than remorse or even an acknowledgement that he did something wrong. For example, he justified unlocking employees' desks because he was looking for supplies and because he did not take the supplies for personal use. Balanced against the Grievant's long tenure with the Company is the dishonest nature of his actions, their number and variety. The Grievant has demonstrated that he either does not understand or will not conform to the normal pattern of trust and respect for confidentiality that an employer has a right to expect from every employee. Although he has not been charged with theft, he engaged in a reckless course of dishonest and clandestine conduct at a time and in a place in which the Company was experiencing large thefts. Therefore, even though the Company has not been able to demonstrate quantifiable economic damage from any particular dishonest action of the Grievant's, his conduct was serious enough to destroy the employer's legitimate expectation of basic honesty from him. The Company was justified in concluding that it cannot trust him.

In addition, the Grievant was responsible for distributing abusive and profane documents regarding management personnel in a way which suggested that he produced them or at least supported their

message. In view of all these facts the Arbitrator concludes that the Company had cause to discharge the Grievant.

AWARD

The grievance is denied.

/s/ Jeanne M. Vonhof

Jeanne M. Vonhof

Labor Arbitrator

Acting under Umpire Terry Bethel

Decided this 26th day of August, 1992.

Chicago, Illinois.

<FN 1>The Arbitrator has not considered the Company's evidence regarding the alternative way in which the Grievant may have obtained a key to the Fleet Management office, because it was not raised at an earlier point.

<FN 2>The production and/or distribution of the abusive documents discussed above could indicate a malicious intent.

<FN 3>Many of the Grievant's offenses were not revealed by the videotapes, but admitted to by the Grievant when he was told of the existence of the tapes. The Company would have had independent knowledge of the three (3) sets of documents even without the tapes.