Award No. 910
In the Matter of Arbitration Between:
Inland Steel Company
and
United Steelworkers of America,
Local No. 1010.
Grievance No. 25-V-068
Appeal No. 1521
Arbitrator: Jeanne M. Vonhof
December 13, 1995
REGULAR ARBITRATION
INTRODUCTION
The Undersigned Arbitrator was appointed according to the rules of the applicable collective bargaining agreement. This hearing was held on October 27, 1995 at the Company's offices in East Chicago, Indiana.
APPEARANCES
UNION
Advocate for the Union:
A. Jacque, Chairman, Grievance Committee
Witnesses:
T. Hargrove, Vice President, Local 1010
D. Spann, Vice Chairman, Safety Committee
M. Mezo, President, Local 1010
M. Goshay, Grievant
D. Lutes, Secretary, Grievance Committee
COMPANY
Advocate for the Company:
B. Smith, Arbitration Coordinator, Union Relations
Witnesses:
P. Perry, Planner, 5 Roll Shop
P. Sievers, Manager, 80" Hot Strip
Also present:
J. Spear, Staff Representative, Union Relations
BACKGROUND:
This is a case in which a long-term employee was discharged for falsifying Company records and for stealing, in relation to an incentive pay plan. The incident involved the No. 5 Roll Shop, which is where rolls are resurfaced through grinding. The F-6 rolls involved in this case are especially important because they are the final set of rolls over which the steel moves, and, if there are defects on the surface of these rolls, there is a reasonable possibility of defects on the finished steel. In addition, defects in the rolls can cause what was described as a "catastrophic" cobble, which can cause significant damage to the product and the equipment, as well as significant delay.
Operators on the No. 24 grinder, which is a computer-operated grinder used to resurface the F-6 rolls, control quality by performing a laser "eddy current crack scan" of the rolls, to help ensure that there are not cracks on the surface of the rolls. The evidence indicates that there were significant problems with the surface of the rolls during the final quarter of 1994. At that time the Company set up a team to address the problem.
The team decided to require operators to perform a scan of 100 percent of the surface of all F-6 rolls prior to the rolls leaving the No. 5 Roll Shop. Prior to that time the required scan examined only part of the surface of the rolls, a segment described as a "barber pole" pattern.
The extra scanning operation took about an extra seven (7) minutes per roll. The employees of the Roll Shop were not pleased when the new scan was announced in January, 1995, because the extra time required to scan each roll resulted in their being able to complete fewer rolls. Their earnings are based in part upon an incentive system, which is based upon the number of rolls each employee resurfaces.
According to the evidence, employees were not completing 100 per cent scans on all the F-6 rolls after the announcement in January, 1995. No one was disciplined for not performing the total scans during this period. In March, 1995 the Company issued a memo to the turn supervisors reiterating the instructions to take a 100 per cent crack detection scan on all rolls. The note also said that if a computer printout of the

"optimal (100%) crack scan" were not attached to the computerized profile printout accompanying each roll, "incentive on the roll will be removed."

The Grievant testified that the employees in the roll shop were upset about the decline in their incentive earnings resulting from the additional testing. He testified that they talked to stewards and supervisors, and filed a grievance over the issue.

He also testified that he believed that he was being assigned a higher number of F-6 rolls than other employees in the department who had less seniority. According to the Grievant, he complained to his supervisor about this but his situation did not change.

The Grievant indicated that he and other employees were thinking about how to get around performing the new scan on every F-6 roll. He devised a system whereby he would scan some rolls fully and attach the scans from those rolls to the printouts of other rolls on which he had performed only partial scans. He testified that he thought he would be caught doing this, but by doing so he would bring the issue to a head. He also testified that he performed a partial scan on every F-6 roll, and that had he been made aware of the importance of the 100 percent scan, he would have performed one on every roll.

The Company did discover the Grievant's system in May, 1995. The Grievant did not deny what he had done. The Grievant was suspended, a further investigation was held, and the Grievant was discharged. The Union filed a grievance over the discharge, the Parties could not resolve the issue, and the grievance proceeded to arbitration.

At the arbitration hearing, several Union witnesses testified that in the past employees have not been discharged the first time they are disciplined for filing false incentive claims, even when they have reaped substantial financial gains. The witnesses testified that on a first offense employees in the past have been given lesser discipline and required to pay back the Company for any incentive earnings improperly paid.

The Company introduced arbitration cases between the Parties in which arbitrators have stated that discharge is the appropriate penalty for willful fraud.

THE COMPANY'S POSITION

The Company argues that discharge is warranted in this case because the Grievant acted in a calculated way, with scienter, or guilty knowledge, of what he was doing. According to the Company, the Grievant developed and thought out a premeditated scheme designed to defraud the Company.

As a result, the Company argues, the Grievant accepted incentive payment for work he knew he did not perform, stealing money he thought he was owed. In addition, he falsified Company production records, stating that he performed work which he did not in fact perform. Because the Grievant betrayed the Company's trust, and because the work was of the utmost importance to the Company, the Grievant must be discharged, the Company argues.

In support of its argument, the Company relies upon several prior arbitration cases between the Parties dating back to the 1970's. According to the Company, these cases show that discharge is the appropriate penalty in cases where there is willful, deliberate fraud. The precedent between the Parties mandates that the Arbitrator sustain the discharge in this case, the Company argues.

The Company also argues that the Grievant's testimony that he did not realize the importance of the scans is not credible. According to the Company, the switch in scanning procedures was a major change, causing a disruption among the employees in the department, and therefore it is likely that the Grievant would have investigated the reason behind the change.

As for disparate treatment, the Company contends that the Grievant was not required to grind more F-6 rolls than the other employees in his department. In regard to other cases in which incentive earnings have been claimed improperly, the Company argues that each case is decided on its own facts, and mitigation was found in the other cases, or the employees would have been discharged.

The Company also argues that as a former Assistant Griever, the Grievant knew that the proper way to register his dissatisfaction was through a grievance, which already had been filed. However, the Grievant resorted to self-help and has shown no remorse for his actions, according to the Company.

On the basis of all these arguments the Company contends that the Grievant's discharge should be upheld.

THE UNION'S POSITION

The Union contends that the Grievant should not be discharged. According to the Union, the arbitration awards cited by the Company involved employees falsifying medical claims, not incentive records.

The Union also argues that the Company first announced the policy regarding the new scanning procedure in January, 1995. The employees continued to do the scans the old way, the Union contends, until March, 1995, and were not disciplined or reprimanded for doing so. If the new procedure were so important, the Union questions why other employees were not disciplined when they failed to perform it.

According to the Union, the Grievant only took the money he was entitled to under the old system. He took the older type of scans, but did not take the newer 100% scans. The Union argues that the evidence is not clear that the Grievant was made aware of the importance of doing the scans the new way. The Union argues that the memo of March 3, 1995 suggests that employees who do not perform the scan will not receive incentive pay, not that they will be suspended or discharged.

The Union contends that the Grievant was treated differently than other employees who did not follow the new plan, and also than other employees who were required to perform fewer scans. The Grievant also was treated differently than other employees who have altered incentive plans in the past, the Union contends. The only evidence regarding another employee who was discharged for falsifying Company production records is the Brown discharge, the Union argues, and that discharge was for a second offense. Here there is no evidence of any earlier offense by the Grievant, the Union argues, and, as a long-term employee with a good record, he should not be terminated.

OPINION

In the instant case the Grievant, a long-term employee of the Company, was discharged for violations of several rules arising from his falsifying records in regard to incentive pay. There is no dispute in this case that the Grievant did falsify the records; he did not perform the 100 percent scans on certain rolls for which he claimed the scans had been done. He earned incentive pay on these rolls.

The Company contends that on the basis of this undisputed evidence, the Grievant should be terminated.

The Union makes several arguments in the Grievant's behalf.

First, the Union argues that the evidence establishes that the Grievant performed partial scans on every roll, as was the former practice. Although there was no documentary evidence to support the Grievant's testimony, there was no evidence introduced by the Company to contradict it either, and there was no evidence that the Grievant had failed to perform the partial scans in the past. I conclude, therefore, that the Company hasn't established that the Grievant failed to perform any inspections at all on the rolls in question.

The Union also argues that the Company failed to communicate to the Grievant that discharge would result if he did not perform the 100 per cent scans in question. According to the Union, the Grievant believed that the March 3rd memorandum meant that if he did not perform the 100 percent scans, the worst that would happen is that he could lose incentive pay on the rolls, not that he would be discharged.

The wording of the second paragraph states that the consequences for not attaching the printouts are the loss of incentive pay. The Company argues that this language refers only to providing a printout, not to the consequences of not doing the work. No one remembered specifically talking to the Grievant about the meaning of the memorandum.

Company witnesses agreed that other employees had not performed the total scans during the period from January to March, 1995, and had not been disciplined for failing to do so. Even though the policy was restated in March, 1995, no disciplinary consequences were stated in the memo for failing to perform the work. The Grievant had reason to believe that failing to perform the scans was not a dischargeable offense, since other employees had not been disciplined at all for not performing the total scans, and the Company did not make clear that the penalty for not performing the work after March, 1995 would be discharge.

The Company argues that the deliberate, calculated nature of the Grievant's conduct, his acting with scienter, or guilty knowledge, and the fact that he falsified important production records indicates that discharge is the appropriate discipline in this case. The Company relies upon arbitration cases between these Parties indicating that discharge is the appropriate penalty when an employee willfully falsifies records given to the Company.

Several Union witnesses long involved in the grievance procedure, including Messrs. Michael Mezo, President of the Local, and Don Lutes, Secretary of the Grievance Committee for many years, testified that penalties short of discharge sometimes have been applied in cases involving dishonesty, depending upon the nature of the activity involved.

In particular they testified that many other employees had made false claims for incentive pay over the years, but no one had ever been discharged for a first offense. The testimony indicated that in one case many employees in a department had made false claims over a period of three (3) or four (4) years, involving an average total of $8,000 -- $10,000 per employee. The witnesses testified that over the years employees had used many different techniques for making false claims, including falsifying records and making claims for work not performed. They also testified that lesser penalties have been applied in other cases involving deliberate dishonesty, such as certain time card fraud cases.

In argument, the Union advocate noted that most of the arbitration cases relied upon by the Company involved insurance claims. In the one case involving falsifying production records, the Grievant had been disciplined for falsifying records on a prior occasion as well. <FN 1>

The Company did not present testimony contradicting that of the Union witnesses regarding discipline involving other incentive pay cases. Nor did the Company present any other arbitration cases or records of disciplines showing that employees had been discharged for first offenses of incentive pay fraud.

The Grievant here is a long-term employee and no evidence of any past misconduct on his part was introduced at the hearing. As the Company argues, no two discipline cases are ever identical, and there may have been mitigating circumstances in other cases which justified lesser penalties. However, there is not sufficient evidence for me to conclude that the Grievant's case is different from those of other employees who falsified records in order to obtain incentive pay. Although the Grievant was guilty of deliberate fraud, and severe discipline is merited in this case, other employees involved in incentive pay or timecard fraud also engaged in deliberate fraud, and were not discharged. Just cause would not be served if the Grievant were disciplined much more harshly than other employees who have committed the same offense.

However, although discharge is not appropriate here, significant discipline is merited. Even if the March 3, 1995 memo did not warn that an employee would be discharged for failing to perform the scans, it was not reasonable for the Grievant to conclude that no discipline would ensue if he did not perform them. The evidence clearly indicates that the Grievant knew he was supposed to perform the total scans.

In addition, the Grievant did not simply perform a partial rather than a full scan. He falsified documents to indicate that the proper scans had been done on many rolls, when they had not been performed. Even though there was no evidence of any specific damage which occurred because of the Grievant's actions, his misrepresentations could have caused confusion or worse problems. The Company presented evidence about the importance of performing the total scans in order to ensure high-quality steel in a very competitive market. Although the Grievant might have believed that he would not be discharged for failing to perform the total scans, he should have anticipated that falsifying the records to state that he did perform them would subject him to severe discipline.

The Union argues that the Grievant performed the work "the old way" and therefore was entitled to incentive pay as he had received in the past. But the Grievant understood what he was required to do for each roll, and did not perform the scans as he was instructed to do. Furthermore, he understood, according to his own testimony, that he would not receive incentive pay for rolls on which he did not perform the full scan. Therefore the Grievant is not entitled to any incentive pay for the rolls on which he did not perform a total scan. He shall be required to pay back the Company for any incentive pay he has received for the rolls on which he did not do a total scan.

The Company argues that the Grievant acted in his own self-interest, because he did not like the Company's new policy. Even if I were convinced that the Grievant acted as he did out of a concern for "bringing the issue to a head" for all employees of the department, as he contended, this is not an excuse which should mitigate his penalty. The Grievant knew that a grievance had been filed over the drop in incentive earnings. As a former Assistant Griever he should have known that the issue should have been handled through the grievance procedure rather than resorting to self-help.

The Grievant also contends that he was being assigned more F-6 rolls than other employees in the department, suggesting that his actions were brought about by this unfair treatment. However, without other evidence to back up this claim, I cannot conclude that he was being treated unfairly. The documentary evidence suggests otherwise, and one employee's perception of whether his workload is heavier than that of other employees is often not accurate.

Based upon all the evidence before me, I conclude that a sixty (60) day suspension without pay is in order, as well as a requirement that the Grievant pay back the incentive earnings he was paid on rolls on which he did not complete the total scan. The Grievant acted deliberately, resorting to self-help even after a grievance had been filed, and falsified records on more than one occasion. Therefore a lengthy suspension is in order.

AWARD

The grievance is sustained in part. The discharge is reduced to a sixty (60) day suspension without backpay. The Grievant must repay the incentive earnings earned on F-6 rolls on which he did not complete 100 percent scans, for the period from March 3, 1995 until the date of his discharge. The Grievant shall be made whole for backpay and any other losses incurred beyond the sixty (60) day suspension period.

/s/ Jeanne M. Vonhof

Jeanne M. Vonhof

Labor Arbitrator
Decided this 13th day of December, 1995.
<FN 1> The Grievant in that case was reinstated, due to a lack of evidence supporting the charge.