

Award No. 918
In the Matter of Arbitration Between:
Inland Steel Company
and
United Steelworkers of America
Local Union No. 1010
Gr. No. 7-V-44
Appeal No. 1529
Arbitrator: Jeanne M. Vonhof
June 27, 1996

INTRODUCTION

The Undersigned Arbitrator was appointed according to the rules of the applicable collective bargaining agreement. This hearing was held on Friday, May 24, 1996 at the Company's offices in East Chicago, Indiana.

APPEARANCES

UNION

Advocate for the Union:
M. Mezo, President, Local 1010

Witnesses:

A. Jacque, Chairman, Grievance Committee
R. Hall, Grievant

Also Present:

A. Dunlap, Assistant Griever

COMPANY

Advocate for the Company:
P. Parker, Arbitration Coordinator, Union Relations

Witnesses

J. Sadler, Section Manager, 2a/21" Mill
N. Shebish, Maintenance Section Manager, 2A/21" Mill
G. Clark, Plant Protection Officer
R. Nanney, Police Chief, Plant Protection

Also Present:

P. Berklich, Project Representative, Union Relations

BACKGROUND:

The Grievant has been employed by the Company for twenty-five (25) years and worked as a Product Checker on the 4:00 p.m. to 12:00 a.m. turn at the time of his discharge. His job was to receive materials from the No. 2 BOF and to assist another employee to bring steel from other areas of the mill. He was required to do location checks assisted by a computer.

The Grievant has been charged with theft or malicious conduct in regard to a large piece of solid brass weighing about 250 pounds, and measuring about 10 inches by 24 inches and about 3 inches thick. The spindle brass acts as a liner between the spindle, which is like a large drive shaft, and the millrolls, in order to prevent wear on the other components. According to unrefuted testimony, each piece of spindle brass costs the Company about \$800 and has a resale value on the street of about 60 - 80 cents per pound.

The evidence indicates that the 2A/21" Mill had been experiencing thefts of brass prior to March 7th; the Section Manager described the problem as "epidemic." Brass parts are usually kept in a storage room close to the department office, behind a locked steel door. Management presented evidence that the door had been tampered with on March 6, 1996; there was evidence of use of a pry bar and bolt cutters were on the floor next to the door. The security force was informed and came to inspect the situation.

On or about the same date two pieces of spindle brass were moved to a work table in preparation for swap out, i.e. for replacing them in the mill. The next day Management was informed that the two pieces were found to have been moved from the table to other locations on the floor in the department; one was leaning against an exterior wall, and the other was located on the floor about halfway between the table and the exterior wall. Neither location was appropriate for the spindle brass.

The management of the department requested security to watch the two pieces of brass. Officer G. Clark set up surveillance in a trailer just outside the exterior wall where one piece of brass was found. There was a

large opening in the wall right next to where the spindle brass was found. Rail tracks ran between the trailer and the exterior wall.

Mr. Clark testified that at about 6:30 p.m. he saw the Grievant walk up to one of the pieces of brass and flip it over, end to end, moving it away from the 2A21" building and towards the trailer. The Grievant stopped and went into another building when an overhead crane came by, and, according to Mr. Clark, appeared startled. The Grievant then re-emerged, flipped the brass piece five or six times towards the trailer and then reversed and flipped it back towards the 2A21" building wall, stopped and leaned it up against the wall. According to the security guard the Grievant then walked into another building, walked back out and walked north.

Mr. Clark testified that he next saw the Grievant and another man a short time later traveling south on a trackmobile on the railroad tracks which ran immediately outside the trailer. A trackmobile is a flat-bed vehicle which is used to transport items around the mill. It travels on rail tracks, and has another set of rubber wheels which may be lowered so that it can travel on a regular road. The two men stopped and lifted the spindle brass onto the trackmobile and headed south. Mr. Clark notified his supervisor, Lt. Reillo, that the brass was being moved, and followed the trackmobile on foot.

According to Mr. Clark, at an intersection where a road crosses the rail tracks and goes into the mill, the trackmobile put down its wheels for road travel. The trackmobile could go no further on the rail tracks at that point, because they were blocked with other rail cars.

Lt. Reillo picked up Mr. Clark in a marked security car. Mr. Clark testified that as they approached the trackmobile the Grievant jumped down and began to run very fast between rail cars and stacks of steel. Mr. Clark ran after him, but could not catch him. He testified that he never called "Stop!" or "Halt!" The other man on the trackmobile, Mr. Madrid Jones, did not leave.

The Grievant testified that when he found the brass on the night in question he assumed someone was going to steal it. He testified that he intended to take it to the mechanical spare parts area, near the Pit Office, which he regards as the same area as the scrap area.

The Grievant also testified that he knew from the beginning of the shift that the road to the south end of the department, where his car was parked, was blocked off. When asked under cross examination whether he could not simply remove the ropes, he testified that he could but would not, because the area was roped off due to the safety hazard created by large icicles hanging overhead from the roof.

The Grievant also testified that a branch of road into the mill itself was blocked by a large backhoe. Mr. Jacque testified that he saw the backhoe in that location several days after the incident.

The trackmobile was headed towards the south end of the building, where the Grievant had parked that day. The Grievant testified that he parks at the south end when he performs the Product Checker job. The evidence indicates that about 40-50 cars are usually parked at the north end on the Grievant's turn, where the locker rooms are located. Only 4-6 cars are usually parked at the south end.

The Grievant testified that he may have jumped off the trackmobile while it was still moving, as this is not uncommon. He testified that he walked fast, (but did not run) because it was cold, and that he would have stopped if the security guard had called out to him. The Grievant testified further that he left the trackmobile because he was supposed to move some rail cars, and he intended to return and help Mr. Jones move the piece of brass. He testified that he told Mr. Jones where they were going with the brass.

Mr. Jones was taken from the area immediately and was interviewed. According to the Company's notes of the investigation, Mr. Jones stated that the Grievant had asked him to help move the piece of brass, but did not tell him where they were going with it. Mr. Jones stated that after they saw plant security and the Grievant began running, Mr. Jones thought they were in trouble.

The Grievant was summoned and questioned by Mr. Nanney that night. He testified that he thought someone must be trying to steal the brass and therefore he should put it with the rest of the scrap. He also testified that he did it as a joke.

On the next day a more thorough investigation was held. At that time the Grievant said that he was trying to take the brass to the Pit Building and play a practical joke on whoever put it where he found it.

Mr. Jones eventually was exonerated of any wrongdoing. He did not testify at the arbitration hearing.

The Grievant was suspended preliminary to discharge on March 12, 1996. He was discharged under Rule 132 (L), which prohibits stealing or malicious conduct.

The Union grieved the discharge. The Parties were unable to resolve the dispute and it proceeded to arbitration.

THE COMPANY'S POSITION

The Company contends that the evidence indicates that the Grievant was attempting to steal the spindle brass on the night in question. In support of this view the Company argues that the Grievant had plenty to keep him busy in his regular job, that moving spare parts was not part of his regular duties, and that it is not credible that he would move such a heavy item just to be a "good citizen." In addition, the Company argues that brass is not stored at the Pit Office and that the article clearly was not a scrap item.

The Company also contends that the evidence shows that the Grievant fled when the security guards approached. In addition, the Company argues that the Grievant changed his story explaining his behavior, thereby weakening his credibility.

The Company contends that in order to establish that the Grievant was guilty, it need not establish that he took the goods out of the mill. But for the presence of plant security, the Company contends, the Grievant would have completed stealing the valuable piece of brass.

The Company argues that this case is different from Inland Award 848, where Umpire Bethel overturned the discharge, because the Grievant here went to considerable trouble to gain material of significant value. The Company argues that this is more like Inland Award 856, where the grievant was on his way out of the mill when he saw a plant security officer and turned around.

For all of the above reasons the Company contends that the grievance should be denied and the discharge overturned.

THE UNION'S POSITION

The Union argues first that most of the discrepancies between the testimony of the Company's witnesses and the Union's witnesses do not determine any issue of substance in this case. The Union notes that clearly there was an attempted theft from the motor room where brass is stored on March 6th on one of the turns before the Grievant's turn. There also was evidence that the brass was moved sometime prior to the Grievant's turn, and, according to the Union, there is not sufficient evidence that the Grievant moved it on his previous turn.

The Union also suggests that it was not unusual for the Grievant to have moved the brass. The Union notes the evidence that there was an epidemic of theft of brass in the department and that the production supervisors had been asked to notify the employees to look for anything unusual. According to the Union the Grievant did not spend much time or effort moving the item.

As for the Grievant running from the scene, the Union notes that it is not uncommon for employees to get off of rolling stock, and that the officer did not shout at him to stop. The evidence overall suggests that the Grievant was acting to prevent a theft, the Union argues.

The Union argues in the alternative that even if the Grievant had the intent to steal the brass, he did not get far enough along to consider him guilty of attempted theft. The Union argues that this is not like Inland Award 856, where the employee had his foot on the steps to the clock house to leave the mill.

In addition, the Union argues that a major flaw in the Company's case is that they have not been able to explain how the Grievant was going to get the brass out of the mill. Mr. Jones has not been charged as an accomplice and therefore was not available to help the Grievant, and it would be very difficult to put the item in the Grievant's car, according to the Union. In addition, the Grievant's car's storage area is visible, like a hatchback's, and it would be hard to conceal the item from security when leaving the mill, the Union asserts.

In conclusion, the Union contends that even if the Grievant intended to steal the item, the evidence does not indicate that he definitely would have continued and deprived the Company of its property. Therefore the Union argues that the grievance should be sustained and the discharge overturned.

OPINION

This is a case involving the discharge of a long term employee for violating a rule prohibiting stealing or malicious conduct. As described in greater detail in the "Background" section, the Grievant was observed moving a large piece of solid brass, first by hand and then on a trackmobile. When security guards came up to the trackmobile the Grievant left the scene.

The Grievant testified at the arbitration hearing that when he found the spindle brass in an unusual location, he suspected that someone was trying to steal it, and thought that he would protect it by taking it to the Pit Office. The trackmobile was heading in the direction of the Pit Office when the Grievant left it. And there had been an epidemic of theft of brass items in his department. Both of these facts lend support to the Grievant's testimony.

The Company argued that the Grievant has changed his explanation for his actions, from the day of the incident to the day after the incident to the arbitration hearing. I have carefully read the notes of both earlier

investigations and the arbitration hearing. There are some inconsistencies, but I do not think they indicate conclusively that the Grievant changed his story.

The Grievant testified at the arbitration hearing that he regarded the scrap pile, Pit Building and room where brass was stored as one area. There is a scrap pile near the Pit Building, which is near the storage room for the brass. There is no direct transcription of the Grievant's statements during the investigation and he was not questioned at length about where he was going. The Grievant has consistently stated that he moved the brass because he believed someone else was attempting to steal it.<FN 1> Thus, I have noted the inconsistencies, and have given them some, but not a great deal of weight.<FN 2>

The spindle brass was in an unusual location when the Grievant began to move it, but it is not clear that the Grievant would have known that the location was unusual, given his job duties. The Grievant testified at the arbitration hearing that he was not really aware of the brass thefts in the department. Thus, even if he did know that the location was inappropriate, it is not clear why he immediately concluded that it was being stolen.

An employee who recognizes that an expensive piece of material is in a location which indicates that it is being stolen might be expected to move it to a safer place. But here the piece was very heavy, weighing 250 pounds. The evidence suggests that the Grievant could not lift it up by himself. He flipped it end to end to move it on the ground and it took two employees to move it onto the trackmobile.

In addition, the Grievant took considerable time and effort to move the brass, even though moving it was not part of his job, and he was, according to his own testimony, busy with his own duties that night.<FN 3> The evidence indicates that his job normally kept him busy. Rather than moving the piece himself, it seems more likely that an employee in the Grievant's situation finding the spindle brass would notify a foreman -- to verify that the part was in the wrong place and/or to find an easier way to move it.

The most damning evidence against the Grievant is the guard's testimony that the Grievant jumped off the trackmobile and ran away when the marked security patrol car approached the vehicle. The Grievant presented unrefuted testimony that sometimes employees jump off the trackmobile while it is still moving. However, the reason he gave for leaving so suddenly, i.e. that he had to perform some of his regular job duties, does not ring true. According to his own testimony, he was engaged in taking the spindle brass to the Pit Office with Mr. Jones on the trackmobile, which was a diversion from his regular job activities. In his version of the events, it is not clear why he suddenly felt the need to return to his regular duties and abandon the two-person task of delivering the spindle brass. He testified at one point that when he left he expected Mr. Jones to just kick off the spindle brass when he arrived at the Pit Building; at another point he testified that he expected to return and help Mr. Jones. The Grievant offered no real reason for his sudden change of mind and activities.

The security guard indicated that the Grievant left the trackmobile when he saw the security force car come up. He also indicated that the Grievant ran so fast that the security guard could not catch him. The Grievant contends that he only walked away fast, he did not see the car, and he would have stopped if the security guard had called out to him.

The evidence regarding the statements of the other employee on the trackmobile are especially relevant in resolving this credibility dispute. According to Mr. Nanney's notes, Mr. Jones testified immediately after the incident that the Grievant left "running." Mr. Jones stated that the Grievant left in such a hurry that Mr. Jones concluded that they were in trouble. In the notes of the next day's investigation Mr. Jones said the Grievant left "in a hurry." On both days Mr. Jones stated that the Grievant left when plant security came up. Mr. Jones did not testify at the arbitration hearing, and was not subject to full cross-examination, although several Union representatives were present at the investigation the day after the incident. However, the evidence regarding his statements is credible given the other facts in the case and I have credited them. On the basis of all the evidence, I conclude that the Grievant did run from the trackmobile when the plant security guards approached it in the squad car.

The Grievant was headed towards his car with the spindle brass at the time he abandoned the trackmobile. His car was parked in an unusual spot, and it would have taken no more than a few minutes to reach it on the trackmobile. Mr. Nanney testified credibly that the road south was not blocked off and that he drove out the south entrance only an hour and a half before the incident. Even if the road were roped off, the Grievant could have removed the rope and proceeded down the road. If he were willing to risk losing his job over the theft of a large item, I believe he was willing to take the much smaller risk of an icicle dropping on him during the few minutes he would have been on the road, if the road in fact were roped off that day.

As for how the Grievant would have gotten the brass into his car and out of the plant, the Company need not establish every element of the Grievant's entire plan in order to prevail. The Grievant was pretty

resourceful in moving this heavy item through the plant and his removing it from the plant did not appear to be an insurmountable obstacle.

Most importantly, the Grievant ran from the security guards when they came upon him with the spindle brass. He has not presented an adequate explanation for why he ran, and the logical conclusion to draw from his running is that he was caught stealing the brass.

Based upon all the evidence, the Company did not err when it concluded that the Grievant was in the process of stealing the spindle brass rather than taking it to the Pit Office. The Union argues, however, that even if the Grievant had the intent to steal it, he did not get far enough along with his plan to merit discharge.

The Union used the analogy of a man who buys a gun and writes a bank robbery note, but is still sitting at his kitchen table. According to the Union, the man cannot be punished for a robbery while he remains in his kitchen or even several blocks from the bank. The Union argues that the Grievant here was closer to the kitchen than to the bank.

I understand the Union's argument that not all crime which is planned is punishable, even though some steps have been taken to execute the plan. But the Grievant here was not really in the same situation as the bank robber at his kitchen table. Here the situation is more like that of a bank employee found heading towards the back entrance of the bank with a handcart carrying bags of currency, who flees when the security guard arrives. Unless the employee has a good explanation for his behavior, it is reasonable to conclude that he was in the process of stealing the currency, and would have continued had he not been apprehended.

In Inland Aw. No. 856 Umpire Bethel upheld a discharge where an employee claimed he had changed his mind about stealing something and had started back into the plant. The Union had cited Jones and Laughlin Steel Corp., Case No. 5-773 (Seibel, Arb.) and Alcan Aluminum Corp., 85 LA 1001 (Jones, Arb. 1985), as cases in which discharges were overturned because the employees had changed their minds about stealing the items. Umpire Bethel distinguished these cases by noting that the grievant in his case changed his mind about stealing the items only when he saw a security guard and concluded that if he tried it he would be caught. In his award he stated,

Like Arbitrator Seibel in Jones and Laughlin, I might be willing to give the benefit of the doubt to an employee who rethinks his plan and changes his mind. But I am not willing to do that when an employee is on his way out of the plant with the stolen goods and then changes his mind only because he knows he'll be caught. The company has a legitimate interest in safeguarding its property. That interest extends to sanctions against those who try to steal, but fail. Perhaps it could not apply sanctions to those who plan a theft and then think better of it. But when its enforcement efforts pay off and a random search discourages an attempt, the individual whose plan was foiled cannot claim the benefit of the company's diligence.

I agree with the Union that there are some cases in which intent alone or intent plus certain steps may not be sufficient to establish theft or attempted theft. I don't agree that this is one of those cases. Here the Grievant was in the process of removing the brass when he was stopped by security. Like Inland Award 856, there was no evidence that he changed his mind, except when he saw the security guards. Like the Grievant in Inland Award 856, he cannot claim the benefit of the Company's diligence.

There is no way to know for certain whether the Grievant here would have been ultimately successful in stealing the spindle brass if he had not been stopped at that point. However, the Company is not limited to discharging employees for theft only if it catches them going out the plant gate with the stolen goods.

In Inland Award 856, Umpire Bethel concluded that it was not necessary for the employer to catch an employee in the act of trying to remove goods from its property in order to impose discharge. He stated, In my view, it is sufficient for the company to show in this case that, but for the presence of Harth, [the security guard], grievant would have gone ahead with his attempted theft.

Like Award 856, I conclude that the Grievant here would have continued with his theft if he had not been apprehended. He was traveling towards the direction of his car, which was not much further away when he was stopped and which was parked in an unusual place. He ran away when security guards approached and had no reasonable explanation for his conduct. He took enough steps to complete the theft that he may be held accountable.

Furthermore, this was not a case like Inland Award 848 where an employee stole a 55 cent snack cake from an open vending machine, on an impulse. In that case Umpire Bethel found that discharge was not appropriate, even though the Grievant was caught in the act of stealing the item. Here, the Grievant "went to some trouble to obtain material of significant value" (Inland Aw. No. 856). He planned and executed

steps towards stealing an expensive piece of brass, and therefore shattered the basic level of trust which must exist between the employer and the employee.

Thus, based upon all the facts in this case, I conclude that the Company did not err when it discharged the Grievant.

AWARD

The grievance is denied.

/s/ Jeanne M. Vonhof

Jeanne M. Vonhof

Acting Under Umpire Terry Bethel

Decided this 27th day of June, 1996

<FN 1>I have noted that early on the Grievant contended that he was playing a "practical joke" on whoever moved the spindle brass, and later he stated that he was attempting to protect the Company's property.

<FN 2>The Grievant's reference to the scrap pile is puzzling. The Grievant testified that the spindle brass looked fairly new. It did not look like scrap, and even used brass items generally are not placed in a regular scrap pile. However, this single reference to the scrap pile is inconclusive, given that the Grievant was not questioned in depth about where he was going and why at the time when he mentioned the scrap pile.

<FN 3>According to the Grievant, he left the trackmobile in a hurry before finishing the job of taking the brass to the Pit Building because he had other work to complete.