IN THE MATTER OF THE ARBITRATION BETWEEN

ARCELORMITTAL STEEL COMPANY
CONSHOHOCKEN PLANT

And Award No. 19

UNITED STEELWORKERS, USW
LOCAL UNION 9462

## OPINION AND AWARD

### Introduction

This case from the Conshohocken Plant concerns the Union's claim that the Company suspended Grievant Bernard Farcinio without just cause. The case was tried in the Company's offices on November 19, 2007. Patrick Parker represented the Company and Lew Dopson presented the Union's case. Grievant was present throughout the hearing and testified in his own behalf. There are no procedural arbitrability issues. The parties submitted the case on closing argument.

### Background

This case concerns the one day suspension of Grievant Bernard Farcinio for a violation of the Company's absenteeism policy. The Company has implemented a no-fault plan which assesses an occurrence for each absence not specifically excused by the terms of the policy. The exceptions are principally days off provided by contract, like holidays, vacation, workers compensation, sickness and accident, etc. Nothing happens for the first three occurrences in a

rolling twelve month period. When an employee has his fourth occurrence, the plan provides for a consultation with the employee's supervisor, who tells the employee that he has fallen under the absence control program of the plan. The fifth absence results in a consultation and a one day suspension; the sixth involves a consultation and a three day suspension; and the seventh occurrence results in discharge.

Grievant had his fifth occurrence on March 16, 2007, for which he was given a one-day suspension. Grievant was scheduled to work from 2 p.m. until 10 p.m. that day. Sometime between 9:00 a.m. and 10:00 a.m., Grievant called his supervisor, John Decker, Jr., and asked for a vacation day. Decker said he would check with employees already working to see if any of them would stay over to cover Grievant's shift. No employee was willing to stay, so Decker told Grievant he could not have the vacation day. Subsequently, Grievant called again to ask for a vacation day and was again refused. Later, Grievant called again and said he could not report to work because of severe weather.

Grievant testified that when he got up on March 16, there were already seven inches of snow on the ground and more was expected. He said that is what prompted his vacation request. However, he did not testify that he told Decker about his concern over the weather and Decker did not say Grievant mentioned the weather in his first two calls. Grievant lives near Reading, Pennsylvania, which is about 50 miles from the mill. Although there was no declared snow emergency, Grievant said newscasters were reporting that people should remain home, if possible. Grievant said it continued to snow throughout the day.

Union President Art Faddis testified that he left the plant at 2:00 p.m. on March 16. He lives near Glenmore, Pennsylvania, about 33 miles from the plant. He said he had to use the turnpike for his commute home and that traffic was "obscene." Faddis said it took him three and

a half hours to get home. The east-bound lanes of the turnpike – which Grievant would have used – were backed up for thirteen miles. The Union argues that the weather conditions made it impossible to get to work and that Grievant's absence should have been excused.

The Company introduced a weather record reporting conditions at Wings Airport, which is about 20 miles from the plant. It said the temperature on March 16, 2007 ranged between 30 and 39 degrees, and that the airport had received .78 inches of precipitation. Area Manager Decker said he lives in Downington, which is 30 miles west of the plant; Reading is northwest of the plant. He said he made it to work that day, arriving at about 5:00 a.m. He said he thought it was snowing both when he arrived at work and when he left; he did not recall what time he left the plant or whether there was more snow when he left than when he arrived. He also said two other employees reported off that day, although he did not remember why. Both Decker and Human Resources Manager Joanne Babaian said the Plant Manager had previously allowed an excused absence because of weather when a state of emergency had been declared. Both also said Grievant's discipline was based solely on his fifth occurrence under the absenteeism policy and that neither checked the weather in Reading on March 16.

The Company argues that there are no special attendance rules for employees who live 50 miles from the plant. Employees are expected to report to work no matter where they live. When Grievant chose to live 50 miles from the plant, he accepted the risk that he might be unable to get to work because of the weather. In addition, the Company questions whether Grievant could prove bad weather, given the report from the local airport. The Company argues that it was Grievant's burden to justify his absence, but he brought no documentary evidence that did so. It is apparent, the Company argues, that Grievant wanted a three day weekend and, when

he could not get a vacation day, he called in and falsely claimed that weather conditions prevented him from getting to work.

The Union says it firmly believes that employees can be excused from failing to report to work because of bad weather. Although bad weather is not mentioned as an exception in the attendance policy, the Union notes that Section C of the attendance policy recognizes that there are times employees are justified in being off, and it says that principle should extend to these facts. Although the Company points to its no-fault attendance plan, the Union says arbitrators have recognized that such plans have to be applied reasonably, and that an employee's right to be disciplined only for just cause is not lost because of a no-fault plan. The Union argues that the Company did not investigate whether there were severe weather conditions in Grievant's area on March 16, which resulted in an unreasonable application of an otherwise reasonable attendance policy. The Union also points out that weather can vary significantly from one area to another.

In addition to the merits, the Union also raises an issue about Justice and Dignity. Grievant was not afforded Justice and Dignity because the Company argues it applies only to five day suspensions preliminary to discharge and to discharge, subject to the exclusions mentioned in Article V-I-9-b-2, none of which apply here. This, the Company says, is the customary way it has applied J&D. The Company also points out that neither the second nor third step minutes say anything about Justice and Dignity, and that the issue cannot be raised for the first time at the hearing. Local Union President Faddis testified that the Union raised the issue in the third step. Human Resources Manager Babaian also said she remembered discussions about Justice and Dignity during the grievance procedure, which she thought was in the third step.

Findings and Discussion

The Union does not question the Company's right to implement a no-fault plan and it does not claim that the one in effect is unreasonable. It does say, however, that the policy was applied unreasonably in this case because conditions outside Grievant's control forced him to miss work. Neither side was able to establish with any precision the state of the weather in and around Reading on March 16, 2007. I am not persuaded by the Company's exhibit concerning the March 16 weather conditions at Wings Airport. That airport appears to be in suburban Philadelphia, about 50 miles southeast of Reading. The same web site the Company used for the Wings report reveals that the temperature in Reading on March 16 ranged from 25 to 37 degrees, and that there were .92 inches of precipitation. It is not clear, however, whether .92 represents the volume of water, or the depth of the snow. Although amounts vary depending on the temperature and other factors, one inch of precipitation (rain) can yield as much as ten inches of snow or more.

I credit Faddis' testimony that conditions were bleak when he left the plant on the afternoon of March 16. But that does not resolve the case. The same weather web site mentioned above suggests that there was a substantial amount of snow in Reading that day, but it is recorded as only light snow throughout most of the morning and early afternoon. It is difficult to conclude, then, that the weather was so bad Grievant could not get to work, even if it meant leaving early in the morning. In addition, nothing in the record indicates that Grievant mentioned the weather to Decker in either of his vacation day requests. One would think that if the weather were an issue, he would have said so in at least the second call as a way of convincing Decker of his need to be off. Although I doubt that Grievant's story is credible, even if it is, that does not mean the discipline must be set aside.

I agree with the Union's claim that consideration of the circumstances of a specific case is part of the just cause formulation. But the weather – even if it was as bad as Grievant claimed – is not the only relevant circumstance. It is fair to say that the quantum of just cause required can vary according to the level of discipline imposed. It is not uncommon, for example, for arbitrators to find that certain conduct warrants discipline, but is not just cause for discharge. The nature of the discipline assessed, then, is one of the circumstances an arbitrator must consider, and more justification might be required in discharge cases than in other forms of discipline.

Here, Grievant defends his absence by claiming that the weather made it impossible for him to get to work. Perhaps, as noted above, evidence of severe weather – if true – would carry greater weight if this were a discharge case. But this is a one day suspension, which is the first formal disciplinary step. A low level of discipline like a one day suspension serves to remind an employee that his prior absences have put him in the disciplinary process and that it is now crucial for him to work as scheduled. It is his responsibility to make the necessary arrangements to get there. This level of discipline helps to insure that, in future cases, an employee will not use the weather as an excuse without any real effort to get to work.

Faddis' testimony indicated that by 2:00 p.m. driving conditions were severe and that Grievant – had he intended to arrive in Conshohocken around 2:00 – would have had difficulty making it. But nothing required him to wait until the afternoon to leave for work. I have significant doubt that there were 7 inches of snow on the ground in Reading when Grievant got up. But even if there was snow on the ground, Grievant knew where he stood in the absenteeism progression schedule and it was his obligation to protect himself by leaving home in time to make it to work. I find that the Company had just cause to issue Grievant a one day suspension.

The Union also argues that the Company erred in failing to give Grievant the benefit of the Justice and Dignity provisions of the Agreement. The Company claims J&D applies only to discharge cases where the employee is suspended pending discharge, as provided for in Article 5-I-9-a-2. Presumably there are no decisions on this issue because one day suspensions are typically handled through the expedited procedure. It is true, as the Union says, that nothing in Section I-9-b says expressly that it applies only in discharge cases. However, subsection 3 suggests that was the parties' intent. It provides that once the suspension or discharge issue is resolved, if the decision is upheld, "the removal of the employee from the active rolls shall be effective for all purposes." This language would not appear to refer to short suspensions, where the employee presumably remains on the active rolls for at least some purposes during the period of suspension. Moreover, if the short suspension is reversed, the employee is protected with a make-whole remedy.

In addition, Section 9-A-2 says that in discharge cases, the Company must first impose a suspension "in accordance with section 9(b)" which is the J&D language. The explicit reference to compliance with 9-b as part of the discharge process strongly suggests that the parties intended J&D to apply in such cases, where, unlike the instant case, there is no foreseeable return to work date for an improperly discharge employee. Thus, I reject the Union's argument that Grievant was entitled to J&D.

## AWARD

The grievance is denied.

Terry A. Bethel
January 21, 2008