

IN THE MATTER OF THE ARBITRATION BETWEEN

ARCELORMITTAL USA

And

ArcelorMittal Case No. 35
H. Perez Discharge

UNITED STEELWORKERS
INTERNATIONAL UNION AND
LOCAL UNION 1010, USW

OPINION AND AWARD

Introduction

This case concerns the discharge of Grievant Heriberto Perez for bringing a switchblade knife onto Company property in violation of Plant Personal Conduct Rule 2-F.3. The case was tried in the Company's offices in East Chicago, Indiana on August 11, 2009. Ed Livorine represented the Company and Matt Beckman 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 stipulated that the issue is whether there was just cause for discharge and, if not, what the remedy should be. The parties submitted the case on closing arguments.

Background

Security Manager Tom Paris testified that on August 13, 2009, his supervisor, Kevin Vanna, told him he had received an anonymous report indicating that two employees – one of them Grievant – had been bragging about having guns in their cars. The call had been received

the previous day, when Grievant had already left work and the other employee was off. The Company arranged to search the employees' vehicles on March 13, apparently when they entered the plant. Mike Morley, Area Manager of Shop Services, testified that he received a call at about 8:00 a.m. on March 13, informing him that the two vehicles had not been stopped at the gate, but that both of them were parked in the pugh ladle area. Paris said he went to the pugh ladle area and told Grievant and the other employee that he intended to search their cars. Paris found a large folding knife with a simulated bone handle in the center console of Grievant's car. The knife measured about 9 inches in length, with about a four inch blade. Paris said he showed the knife to Vanna, and they decided to confiscate it. Paris did not examine the knife at that time because they were looking for guns. Paris said he returned to the plant security office after the vehicle search, which was when he realized the knife was a switchblade.

Morley said he was not present for the vehicle search, but that he received a call from his supervisor James Stahl, Division Manager MEU Shops System, saying that Stahl was on the way to the Plant Protection Office and that Morley should meet him there. Stahl testified that when he first saw the knife he pulled the blade out with his hand. He gave it to Vanna to close; Vanna did so and then hit a button that caused the blade to fly open. This, Stahl said, was when he realized the knife was a switchblade.

Stahl testified that he spoke to Grievant later that morning and Grievant told him that he had purchased the knife at a flea market. Stahl told Grievant it was not permitted in the plant, and then told Grievant he was to report off pending an investigation. Grievant agreed to allow Stahl to search his locker. The search did not yield any other weapons. Stahl said he next saw Grievant on March 18, at an investigatory meeting. Stahl said he asked Grievant if he remembered a discussion about weapons on Company property from his new employee

orientation class about ten months prior to this incident. Grievant said he remembered hearing about guns, switchblade knives and brass knuckles. Grievant repeated that he bought the knife at a flea market, that he knew it was a switchblade, and that he used it around his house and to clean fish. Grievant told Stahl that he took the knife to work the previous week because he was assigned to the brick stand. That job requires employees to cut straps that secure piles of refractory, and Grievant said the Company-provided tools often did not work. Stahl testified that he never saw Grievant using the knife to cut straps and that Grievant had never complained to him about tools or asked him for replacements. On cross examination, Stahl said he visits Grievant's work area 2 or 3 times a week and can be there for less than an hour.

Area Manager Morley said employees assigned to the brick stand will typically cut between 24 and 36 straps per day. The Company, he said, provides tools, and he identified two kinds of utility knives that could be used to cut the straps. Morley said he has seen employees using the Company knives, and that he had not seen anyone using an unauthorized knife. The Company knives were "readily available" and, he said, there was no shortage of blades. He also said that if employees did not have proper tools for a job they were to alert their supervisor and then wait until the tools were provided before doing that job. Morley said he never saw Grievant use the switchblade on the brick stand. In addition, Morley said the area supervisors told him they did not know that Grievant used a personal knife to cut straps on the brick stand. He also said employees can only use tools that have been approved by a plant-wide safety committee. On cross examination, Morley said supervisors are required to have tool box or safety meetings at the start of every turn. He and Stahl monitor this requirement by asking employees if they had a meeting.

Tom Ricciardi, Shift Manager in Pugh Ladle Repair, said he sometimes supervised Grievant. He said he could not recall Grievant asking him for knife blades. Ricciardi said he sees employees cut straps with Company-issued knives, and has not seen them use unauthorized tools, like a switchblade. He said no one had complained that it was difficult to cut the straps with the Company's knives. Like Morley, Ricciardi said if employees do not have the proper tools, they should wait until the supervisor provides them before beginning work. He also said he did not recall ever running out of knife blades. On cross examination, Ricciardi said he did not recall "specific safety coverage about weapons" at toolbox meetings, but he said he had covered the rule at issue in this case.

Craig Lamm, Union Relations Representative, said he covers weapons rules – including Rule 2-F-3 – in orientation, and that Grievant had attended such a session about 10 months prior to the incident at issue here. He identified slides he uses in the presentation, including one that says switchblade knives are prohibited on Company property. Lamm said employees sometimes ask whether they can carry small pocket knives, and he tells them to get approval from their supervisors, although he testified that he tells employees none of the knives listed in rule 2-F-3 is considered a tool. Lamm testified the Company has terminated every employee caught in violation of Rule 2-F-3. On cross examination, Lamm said he didn't know whether Grievant had received a copy of the March 2008 Rule Book during orientation. The Company points out that switchblade knives are prohibited under both the 2001 and 2008 versions of the rulebook. Lamm also said the parenthetical phrase ("unless used as a tool") modifies only sheath knives. This was added, he said, because at one timer riggers used sheath knives to perform their duties.

The Union called several witnesses who testified that they had used knives at work – including on the brick stand – with knowledge of supervision. Bob Osborne said he uses a knife

with a 3 and 5/8 inch blade and at least two supervisors have seen it. He also can flip the knife open quickly, although it is not a switchblade. Bob Deleon said he uses a knife with a 3 and 7/8 inch blade and has used other knives over the years. David Hunter said he has a Company-issued knife that opens with the flick of the thumb, although it is not a switchblade. He also demonstrated a knife with a ten inch blade like ones he said employee have been making for years. He also said he has seen employees sharpen trowels to use as a knife. Jeremy Klekot said he has used a spring assisted knife at work and that supervisors have seen him. He said a spring assisted knife is not a switchblade. Josh Isom said he showed his spring assisted knife to Shift Manager Ricciardi who commented that it was a “pretty cool knife.” Isom said he doubted that Grievant’s knife was a switch blade. Another witness said Grievant could open his knife by pulling the blade out with his hands, something that can’t be done with a real switchblade. Grievant said he, too, thought a switchblade could not be opened by hand.

Several employees complained that the Company-issued knives are not durable and that they have difficulty obtaining new knives or replacement blades. No one, Union witnesses said, has ever told them not to do the job until they got the right tool. One employee testified that Ricciardi told him that not having tools was not an excuse for not getting the job done. The employee said he has used pieces of scrap steel to cut straps. Several employees also said they knew the rules prohibited switchblades, although one said he did not know how to identify a switchblade.

Other employees testified about their experiences in orientation, including employees who went through orientation within a week or so of Grievant. They agreed that Lamb read the overhead slides to them and that he emphasized that employees would be fired if they brought a gun or explosives to work. However, they also said Lamm did not make any special mention of

knives. The employees also testified that another person at orientation told them they would throw a lot of information at them in a short time and that they would not be able to remember it all. However, he told the employees that the rules would be reinforced once they got to their departments. All of them said this did not happen. Some employees said they did not receive a rule book, either at orientation or in the mail. Others said they received a 2001 copy of the rule book in orientation and have not received a 2008 copy. Ernie Barrientez, a Griever from No. 3 Cold Strip, identified a power point presentation safety advocates prepared for contractors and new hires. It cautions that there are to be no “combat knives” on Company property, but does not mention switchblades.

Grievant testified that Lamb read through the power point presentation quickly during orientation. He also said he received a 2001 rulebook in his packet and said he had never seen the 2008 version. Grievant said he bought the knife at a flea market 3 or 4 years ago, that he did not realize it was a switchblade when he bought it, and that he didn't know it was illegal until after the Company confiscated it. He also said he remembered hearing about a rule against switchblades, but he thought it didn't apply if they were used as tools. Grievant said he had a Company-issued knife, but that it did not work well. He said he asked Ricciardi and others for blades, and they said they would get one for him, but they did not. Grievant testified that he had used the knife at work the previous week and then had put it in the center console of his car. Grievant said he was not aware that having a switchblade was a dischargeable offense. He also denied Stahl's testimony that he said he knew the knife was a switchblade. Grievant said he thought the opening button was a locking device.

On rebuttal Lamb said that during orientation he emphasizes the rules about fighting, alcohol and weapons. He tells employees that they can be fired for possession of any of the weapons on Company property and he gives examples for each weapon.

Positions of the Parties

The Company argues that discharge is the only appropriate discipline. The rule says clearly that switchblade knives are prohibited on Company property, and the Company has enforced the rule uniformly. A switchblade is, the Company says, an instrument of violence that is illegal in the State of Indiana, and there is no legitimate reason to have one. There are no mitigating circumstances, the Company says; Grievant admitted that he had a switchblade and that he knew they were prohibited on Company property. Moreover, Grievant was a short service employee who had only about 9 months of service at the time of the incident. The Company argues that the alleged shortage of tools is a red herring. Grievant never made any supervisor aware of a problem with Company tools, and this defense did not arise until the investigation meeting on March 18. Grievant also admitted that he had been given a Company-provided tool the week before. The Company also says there is no conflict between the rule books because both of them prohibit switchblades. Grievant at least had a copy of the 2001 rule book and Lamb testified that he covered the rule in detail during orientation.

The Company also references Inland Award 917, where a long service employee was reinstated after being found with a switchblade at work. At that time, the rules did not clearly prohibit switchblades, the Company says. But it learned from that experience and amended the rule to cover switchblades expressly. In addition, the rule had not been adequately publicized in Award 914, but that was not true in this case. The Company also points to ArcelorMittal Case

No. 31, where I reinstated an employee who had a gun in his car. The employee had 39 years of service, the gun was unloaded, and the employee had a plausible excuse. But none of that is true here the Company says. Grievant had only 9 months of service and he told conflicting stories about the knife and his knowledge that it was a switchblade. The Company concludes that it has a responsibility to keep employees safe which requires that it strictly enforce Rule 2-F-3.

The Union argues that the Company's orientation classes had about 60 employees, far more than Lamb claimed. In addition, Lamb covered the rules in about a half hour, contrary to his testimony that he spent almost two hours on the material. Grievant testified credibly, the Union says, that he thought a switchblade was permitted in the plant when it was used as a tool, which was his only purpose for bringing it to work. Even that would not have been necessary the Union contends if the Company made proper tools available, as it recognizes it is required to do. The Union also contends that the rule itself is confusing. Grievant did not see the current rule, and Grievant understood the 2001 rule to allow switchblades when used as a tool, which was what Grievant did. The rules were not reviewed in the department meetings, as employees were told they would be. The Union also points to the presentation prepared by safety advocates that does not even mention switchblade knives.

Findings and Discussion

As noted above, there is some controversy about whether Grievant had seen a 2008 copy of the rule book, which was in effect at the time of his discharge. Grievant does not deny having received a copy of the 2001 booklet. In the 2001 version, rule 2-F-3 reads as follows:

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

...

F. Unauthorized use of, possession of, storing of weapons or explosives on Company property. (Note: Employees are expected to know the content of their vehicles.) Weapons and explosives shall include, but are not limited to:

...

3. Switchblade knives, “brass knuckle” combat knives, sheath knives (unless used as a tool), machetes, throwing stars, bayonets, swords.

The 2008 booklet amended the rule to read:

3. Switchblade knives, brass knuckles, combat knives, sheath knives, buckle knives, stiletto knives, machetes, throwing stars, bayonets, swords, straight razors.

There may be some substantive differences between the 2001 and 2008 versions of the Personal Conduct Rules, but none that are pertinent to the facts at issue here. The 2008 version of the rule adds various kinds of knives to the prohibited list and it removes the parenthetical phrase “unless used as a tool.” But both versions say unambiguously that employees are not permitted to have switchblade knives on Company property.

The 2001 rule, in fact, allowed Grievant to present a defense that would not have been available to him under the 2008 rule. Grievant claimed that he thought the parenthetical phrase about use of the knife as a tool covered switchblades, but there is no such language in the 2008 rule. Had Grievant read the rule, he would have understood that the parenthetical phrase in the 2001 rule applied only to sheath knives. It would not make sense to have the phrase modify the entire list because brass knuckles (or brass knuckle combat knives) would not be used as a tool. The Union worked hard to make the rule seem ambiguous and to establish that Grievant did not understand it. But the rule is clear on its face and Lamm’s testimony that he covered it thoroughly in orientation was credible. In any event, the Company does not need a rule to prevent employees from possessing illegal weapons on its property. There is, as the Company contends, no justification for having a switchblade anywhere, but especially on Company

property. The fact – if it is a fact – that Grievant may have had difficulty using Company-issued tools does not justify bringing an illegal weapon to the plant.¹

Grievant's claim that he did not know the knife was a switchblade was not credible. I believed Stahl's testimony that prior to the grievance steps Grievant had acknowledged that he knew the knife was a switchblade when he bought it and that he remembered hearing in orientation that such knives were not permitted in the plant. Grievant claimed that he used the knife around his house and that he had seen the button that released the blade. It simply is not believable that he had used the knife but had not realized it was a switchblade. His story in the grievance procedure and at the hearing seemed contrived to coincide with testimony that other employees had used knives on the job. That may be true, but there is no credible evidence that employees used switchblades or that supervisors had seen them do so. I find, then, that Grievant knew switchblade knives were prohibited on Company property.

The real question in the case is not whether Grievant violated the rule but whether his conduct warranted discharge. The Union cites Inland Award 917, where I reinstated an employee who had a switchblade in the plant. At that time the rule did not expressly prohibit switchblades and the Company had done little to publicize its then-existing prohibition of knives with a blade longer than 3 inches, especially given that employee's limited facility with English. There was also evidence – not entered in the instant case – that other employees had used switchblades without complaint from management. Finally, the employee had more than 20 years of service. Similarly, my decision in ArcelorMittal No. 31 to reinstate an employee who had an unloaded gun in his car was based in significant part on his length of service (39 years)

¹ A Union witness questioned whether the knife was a switchblade, comparing it to a spring assisted knife he used and that he claimed was "legal." I observed Grievant's knife at the hearing and had no doubt that it was a switchblade. Moreover, even if a spring assisted knife differs from a switchblade, state law would seem to outlaw them both. Indiana Statue 35-47-5-2 prohibits knives that "open automatically" as well as those that "may be propelled by ... [a] spring...."

and the fact that he had not changed his story from the time the gun was found through the arbitration.

None of these mitigating factors are present here. Grievant had only about 9 months of service and his story has not been consistent. Moreover, the version he offered at arbitration was not credible. Grievant deliberately brought an illegal weapon onto plant property and the week before it was found in his car, he actually had it in the plant. Grievant knew switchblades were prohibited in the plant and that employees violating the rule could be discharged. In these circumstances I find that the Company had just cause for discharge.

AWARD

The grievance is denied.

Terry A. Bethel
November 12, 2009