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**IN THE MATTER OF ARBITRATION**

**OPINION AND AWARD**

between

CASE 61

**ARCELORMITTAL USA  
(BURNS HARBOR)**

**Grievance No. 12-6010  
(Five Day Suspension of  
Jeff Eckert)**

and

**THE UNITED STEEL WORKERS**

**Gil Vernon, Arbitrator**

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**APPEARANCES:**

**On Behalf of the Union: Rick Bucher – USW, Staff Representative**

**On Behalf of the Company: Bill Koch – Senior Labor Relations Representative**

**I. ISSUE**

The Parties agreed that the issue before the Arbitrator should be framed as follows:

“Was there just cause for the five-day suspension of the Grievant and, if not, what is the remedy?”

**II. BACKGROUND**

The grievance before the Arbitrator protests a 5-day suspension issued (but service suspended pursuant to justice and dignity provisions of the collective

bargaining agreement). The Grievant is a Maintenance Technician Mechanic in the Iron Producing Division.

Many basic facts which set the context of the dispute are undisputed. The iron producing blast furnace had been idled (banked) pending a possible work stoppage in connection with the expiration of the CBA. In the process of bringing the equipment back online a problem had developed with the swing of the mud gun at the east side of the D furnace.

Grievant was on the east side of the cast floor troubleshooting the issue with Technician Chris Chamber when Bryan Eschbach (Maintenance Manager) entered the room and came up behind Grievant.

There is no dispute that Eschbach extended an arm and touched the Grievant. The issue is whether it was innocent (as Eschbach claims he just put his left hand on Grievant's shoulder and right hand on Grievant's flank to draw him in closer so he could be heard over the noise). Eschbach gave a statement indicating he was just trying to converse with Grievant to say he was sorry they hadn't had a chance to talk recently.

Grievant claims that Eschbach "slapped" him in the back three times with "unappreciated force". There is no dispute that whatever the nature of the touching that after the physical contact Grievant turned and yelled to Eschbach "get your fucking hands off me".

The incident occurred around 10:00 a.m. Grievant said he waited until the end of the shift for Eschbach to apologize (something he thought sincerely Eschbach was capable of doing). When it was apparent no apology was coming he reported the incident to the security department. The Security Department asked Grievant, Chambers and Eschbach to write statements. Grievant's handwritten statement read as follows:

While working on "D" east mudgun Bryan Eschbach came up behind me and slapped me on my back with excessive force a few times and asked me "so I guess you hate me know (sic)".

I immediately turned around and said for him to get his fucking hands off of me!

Chamber's statement read:

At approx. 10:00 am I was standing by Jeff Eckert watching the mudgun. When Brian Eshback (sic) came up to Jeff & put a hand on Jeff's waiste (sic) and slapped him on the back. Jeff looked at Brian and said "get you (sic) fucking hands off me".

Eschbach's statement read:

The maintenance group had been troubleshooting the D Furnace east mudgun throughout the night & this morning. I spent my morning on D furnace going between both sides working the equipment and talking to an MTM (Mike Dillon) about lubing the east (illegible) reducer & gun pedestal (sic). At approx. 9 a.m. Jeff Fields (Maint Supervisor) brought 2 other MTMs up to the floor to discuss the job & ask for heatshields & to have operators knock in the sides of the (illegible). At that point, Mike continued to lubricate the gun reducer & Jeff Fields took the MTMs back to the shop to talk with us to ensure a safety precautions are taken. At approximately 10 am the group of MTMs came to the east floor & began to troubleshoot the gun. I was in the pulpit & talked to another MTM about what work had been done over the past 24 hours. I left the pulpit & saw Jeff Eckert standing in front of the gun. I walked up behind him w/intentions of filling him in on the equipment history. At that point I placed one hand on his left shoulder and another on his right hand & started to apologize that we had not talked in some days. He told me to take my hands off of him in a forceful manner & I did. I did not talk to Jeff after that & my intentions were not to anger or bother Jeff while he troubleshoot (sic) the drill. My only concern is for their safety & the safe return of the equipment.

The Security Department's report based on the written statements and interviews of Grievant, Chambers and Eschbach read as follows:

On 9/4/2012 at 1430 hrs, I Lt. Soppet 359782 was dispatched to Door 2008 for the harassment report involving ArcelorMittal salary and hourly employees. Upon arrival to Door 2008, I Lt. Soppet met with Jeff Eckert 92911 (ArcelorMittal) the complainant and Chris Chambers 94827 (ArcelorMittal) the witness to the incident. Mr. Eckert explained that at approx. 1000 hrs today (9/4/2012) while working at the East Side Cast Floor of the D Furnace, Bryan Eschbach 95087 (Maintenance Manager) came up behind Mr. Eckert and slapped him in the back approx. 3 times and asked "So I guess you hate me know (sic)?" Mr. Eckert stated that this entire incident developed when Mr. Eschbach got annoyed about filling out a HIRAC Lite form for the work that was to be done at the D Furnace this morning. Mr. Eckert stated that he was working by the mud gun at the east D Furnace cast floor and after Mr. Eschbach slapped him in the back, Mr. Eckert turned around and said "Get your fucking hands off of me!" Mr. Eckert explained that after he told Mr. Eschbach to stop touching him, Mr. Eschbach puts his hands up and walked away.

I Lt. Soppet, after speaking to Mr. Eckert spoke with Chris Chambers who was the witness to the incident. Mr. Chambers 94825, explained through his statement that he witnessed Mr. Eschbach come up behind Mr. Eckert and put his hands on Mr. Eckert's shoulder and then watched Mr. Eschbach slap Mr. Eckert in the back approx. 3 times at which point, Mr. Eckert told Mr. Eschbach to get his hands off him. Mr. Chambers stated that he was standing near Mr. Eckert by the mud gun at the time of incident.

After speaking with Mr. Eckert and Mr. Chambers, I Lt. Soppet got a hold of Mr. Eschbach and explained to him of the situation. Mr. Eschbach agreed to come to the Fire station to explain the situation and fill out a statement form. Upon Mr. Eschbach's arrival to the Fire Station, I Lt. Soppet brought Mr. Eschbach up to the Capt./Lt office and spoke with him. Mr. Eschbach explained that he had been running around the D furnace all morning trying to get all the equipment back up and running due to the shut down during the weekend. Mr. Eschbach stated that while Mr. Eckert was by the mud gun, he approached Mr. Eckert to advise Mr. Eckert of the equipment situation and to apologize to Mr. Eckert for not talking to him in some time. Mr. Eschbach stated that as he approached Mr. Eckert, he placed one hand on Mr. Eckert's left shoulder and then the other hand on his right flank area. Mr. Eschbach explained that before he could speak Mr. Eckert told him to get his hands off him in a forceful manner. Mr. Eschbach explained that he stopped touching Mr. Eckert at that moment and walked away to avoid any further incidents.

I Lt. Soppet after speaking with all parties involved gathered all personnel information and statement forms. Bruce Erwin 92885 (ArcelorMittal) the union griever for Iron producing was present while I Lt. Soppet spoke with Mr. Eckert and Mr. Chambers. A SR was generated and report filed. Statement forms of all parties to be scanner (sic) into the report. END REPORT . . . .

Sometime later the Assistant Grievor for the area told Labor Relations to pursue an investigation against Eschbach or he would ask local police to get involved. Labor Relations started an investigation and took additional statements from Eschbach, Chambers and Eckert. Management, as part of its investigation, also watched the production/security video recording of the area. After Management watched the tape and did not see Eschbach slap Grievant in the video, it disciplined Grievant for "fraud and/or harassment". The employee warning and disciplinary report read as follows:

On September 4, 2012 at approximately 10:00 a.m., a group of MTMs came to the cast floor to begin to troubleshoot the mud gun. Brian Eschbach, Iron Producing Supervisor, was in the pulpit and talked to an MTM about what work had been done over the past 24 hours. Eschbach left the pulpit and saw Jeff Eckert, 92911, standing in front of the D East mud gun. Eschbach walked up behind Eckert with the intentions of filling him in on the equipment history. It was very loud on the cast floor. In order to communicate with Eckert, Eschbach placed one hand on Eckert's left shoulder and another on his right flank. Eckert told Eschbach, "Take your fucking hands off of me." Eschbach complied. After the incident, Eschbach did not talk to Eckert.

On 9/4/2012 at 2:30 p.m., security was dispatched to Door 2008 for a harassment report. Security met with Eckert the complainant and Chris Chambers, 94825, the witness to the incident.

Eckert claimed that on September 4, 2012 at approximately 10:00 am, while working at the East Side Cast Floor of the D Furnace, Eschbach came up behind him and slapped him on the back approximately three (3) times with excessive, unappreciated force and yelled "So I guess you hate me now?" This referred to Eckert performing a HIRAC Lite on work at the D Furnace. Eckert said "Get your fucking hands off of me!"

Chambers was standing by Eckert watching the mud gun and stated that he observed Eschbach put a hand on Eckert's waist and then slap Eckert on the back. Eckert looked at Eschbach and said "get your fucking hands off me".

An investigation was conducted which included interviewing all parties involved and reviewing video footage of the alleged incident. It has been determined that Eckert provided false statements to the Company and that his charge of harassment is unfounded and constitutes fraud.

As a result of the above action, Jeffrey L. Eckert, 92911, is being issued a five (5) day penalty for fraud – providing a false statement to Plant Security, providing false testimony during an investigation and/or harassment. Any future offense(s) of fraud – providing false statements to the Company, providing false testimony during an investigation and/or harassment will subject Mr. Eckert to further disciplinary action, up to and including suspension with the intent to discharge.

A grievance was filed and processed. When it couldn't be resolved it was appealed to arbitration. A hearing was held June 26, 2013.

### **III. POSITION OF THE PARTIES (SUMMARY)**

#### **A. The Company**

The Company's position is that it had just cause for the 5-day suspension because the Grievant's statements that a supervisor slapped him on the back were proved false by the videotape. Indeed, everyone, including Grievant, who watched the video footage at the hearing agreed Grievant could not be seen to have been slapped by Eschbach. Grievant's false statements then are considered a form of harassment as it undermined the supervisor's authority.

#### **B. The Union**

It is the position of the Union that there was no just cause for the 5-day suspension. They note that in addition to the consistent statements of Grievant and Chambers, there were two other witnesses in the area (Mike Hodgins and Melvin Waldo) who witnessed a slap. As for the video, it is of poor quality and is not a continuous recording recording a minimum number of frames per second. They

also mention the poor camera angle as to why the slap, as reported by the several witnesses, can't be seen on the video.

#### **IV. OPINION AND AWARD**

It cannot be stressed enough that everybody agrees that Eschbach reached out and touched Grievant. The issue is whether it was with enough force to be considered a slap and was it repeated more than once.

It would be too simple in this case to say that either Grievant lied in his statements to the Company or that Eschbach lied. It is the conclusion of the Arbitrator that neither gentleman (both seem credible, intelligent and professional) are lying. Clearly they both have different perceptions of the incident but it is believed both are telling the truth as they see it. Similarly, the eye witnesses are telling the truth as they perceived the incident.

As for the video, it is true that it does not show that Eschbach slapped Grievant. That is because of the camera angle and the resolution of the recording. Eschbach's left hand and arm are not visible (the camera was to his back). Thus, it can't be determined with certainty that there was not a slap with the left hand. His right arm can be seen reaching out to Grievant's right side at 2:21 but the nature of the contact (if there was any) cannot be discerned. He then turns to walk away at

2:15 but steps back and reaches out again with his right hand. However, again the nature of the contact can't be clearly seen.

Importantly, while it is true the video doesn't confirm Grievant's (or the Union witnesses) version, it also doesn't confirm Eschbach's. It also doesn't affirmatively establish anyone's perception as false. In short, the video doesn't establish in any positive way that anybody is lying. The incident, from the time Eschbach entered the camera frame and approached Grievant from behind to the point he turned and clearly separated, only lasted 9 seconds from 2:23 (lapsed time) to 2:14 (lapsed time). The time when they were close enough for Eschbach to possibly be touching was even less (about 5 seconds).

This conclusion shouldn't be surprising as eye witnesses often varying in their perception. Grievant may have been startled and may be sensitive to being touched so that something innocently intended could be perceived as more forceful. Having no ill will Eschbach may have thought his contact was acceptable.

For just cause to exist, there would have to be more proof than this record offers.



AWARD

The grievance is sustained.



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Gil Vernon  
Arbitrator

Dated this 19<sup>th</sup> day of July, 2013.