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In the Matter of Arbitration Between:)
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ARCELORMITTAL,)
 Conshohocken Plant)
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 and)
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UNITED STEELWORKERS,)
 Local 9462.)
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**Grievant: M. Johnson
Suspension and Demotion**

**Grievance No. 13-2
Case 66**

INTRODUCTION

The Undersigned Arbitrator was appointed according to the rules of the applicable collective bargaining agreement. The hearing was held on August 12, 2013 in Conshohocken, PA.

Mr. Lew Dopson, Sub-District Director, represented United Steelworkers Local 9462, hereinafter referred to as the Union or the Local. Mr. Michael Johnson, Grievant; Mr. Pete MacLeod, MTE and Mr. G. Kairi Purnell, MTE, all testified on behalf of the Union.

Mr. Barry Simon, Attorney, represented ARCELORMITTAL, hereinafter referred to as Arcelor, the Company or the Employer. Mr. Robert (Bob) Simcox, Shift Manager of Electrical Maintenance; Mr. Marvin Logan, Division Engineer; and Ms. Joanne Babian, Human Resources and Labor Relations Manager, all testified on behalf of the Company.

Each party had a full and fair opportunity to present and cross-examine witnesses and to present evidence at the hearing. The parties presented closing arguments at the hearing, at which time the hearing was closed.

Issue(s)

Was the Grievant disciplined for just cause and demoted properly and if not, what shall the remedy be?

Relevant Contract Language

Section J. Management Rights

The management of the plants and the direction of the working forces, including the right to hire, transfer and suspend or discharge for proper cause, and the right to relieve employees from duty, is vested exclusively in the Company.

In the exercise of its prerogatives as set forth above, the Company shall not deprive an Employee of any rights under any agreement with the Union.

Key Selection Process

The parties recognize that positions contained in Labor Grade 5 and Maintenance Leader functions contained in the Maintenance technician Mechanical/Electrical position require the highest degree of technical competence, interpersonal/team building and leadership skills. Therefore, all vacancies in such positions will be filled in accordance with the following procedures:

1. Openings will be posted plant-wide with pre-requisite qualifications from the applicable department line of progression or maintenance technician electrical/ mechanical position.
2. Prospective candidates applying for such position must meet the qualifications listed below in addition to meeting the pre-requisite qualifications contained in the plant wide- posting:
 - o Possess leadership qualities.
 - o Have a good safety, attendance and discipline record.
 - o Possess good oral and written communication skills.
 - o Possess good interpersonal and team building skills.
 - o Possess/demonstrate initiative/problem solving /analytical, and decision making skills.
3. The local president and the plant manager will make recommendations of potential candidates from the plant-wide posting. Each representative may submit up to three names for consideration, a maximum of six candidates.
4. The local union president and plant manager will review potential candidates. This process may include personal interviews (we have interviewed every time).
5. The local union president and plant manager will discuss the candidates in a good faith effort and by consensus agree upon the selection of the final candidate from the list of potential candidates who best meets the qualifications contained in paragraph 2, above and the prerequisite qualification contained in the plant- wide posting. If the union president and the plant manager are unable to reach consensus, then the position will be filled in accordance with the seniority provisions contained in the Master ISG Agreement.
6. Successful candidates will be required to complete the required training in the appropriate time as established by management for the applicable positions.
7. Each successful candidate will undergo an initial performance to review upon completion of the 90 calendar days in the position, and the annual performance reviews thereafter, conducted by the local

union president and the plant manager. Evaluation differences will be discussed. Upon a determination that an Employee is not performing to the standards outline in paragraph 2. Above, the Employee may be removed from the position. The parties may agree to provide additional training and /or counseling to the involved Employee in an attempt to improve his/her performance. An Employee removed from the involved position will have the right to return to their former position in the applicable line of progression or maintenance technician mechanical/electrical position.

Background

The Grievant was initially terminated for insubordination. During the grievance process the termination was reduced to a suspension of about 29 days and a demotion from his position as a Senior Operating Technician (SOT), and the Union now grieves that action. The Grievant has worked at the Conshohocken plant since October 31, 1994 as a craft electrical employee. He became a temporary Leader in 2001 with one of the predecessor companies and was selected as a permanent Group Leader effective January 23, 2003. He has held a Leader/SOT position since that time.

Mr. Robert (Bob) Simcox, Shift Manager of Electrical Maintenance, has worked for the Company and its predecessors for 26 years. He testified that on the afternoon of January 8, 2013 he instructed Mr. Mike Hedgepeth, SOT on the day turn, to pass on a work directive to the Grievant as the incoming SOT. The Grievant was coming to work on the turn beginning at 6 PM that night. The order was to install the roll nest motor for the roughing mill and Simcox referred to it at arbitration as "a priority job." The mill was down and installation of the roll nest motor was needed in order for the mill to be restarted, which was scheduled for 6 PM on January 9th.

The evidence demonstrates that the installation of the roll nest motor was not on a "bar chart," which was completed on January 4, 2013 that laid out particular jobs for the week. The

problem with the roll nest motor arose after the bar chart was completed. The work was considered an "add on" to the week's work.

According to Simcox' testimony at arbitration, he told Hedgepeth to tell the Grievant to read an e-mail from him about the work. That e-mail, which was sent at about 3:30 PM that day, states, "Mike, Please ensure that you install RM Roll Motor. Use your crew -- Pete, Walt, Sean, Stan." Simcox also testified at arbitration that he told Hedgepeth that the Grievant should call him if there were any questions about the job. Hedgepeth did not testify, and the Company pointed out that they are prohibited from calling bargaining unit witnesses to testify, under the collective bargaining agreement.

Simcox testified that when he arrived at work the next day he found that the motor had not been installed. He instructed Hedgepeth to have his crew do it on the day turn. He said that this had a negative effect on the morale of the crew, because they had anticipated that the night turn crew would complete the work. The day turn crew were able to complete the work in time for the 6 PM start-up of the mill.

According to Simcox, it would take a minimum of three employees to perform the installation of the Roll Nest Motor: the SOT and two other employees, plus a crane operator. He concluded that the Grievant had enough employees to perform the work. He acknowledged that the other MTE's (Maintenance Technicians/Electrical) had other duties to perform that night, but said that the Grievant had the authority to order the other MTE's to assist in the installation of the roll nest motor. He said that MTE Sean Akins had experience with the installation of roll nest motors and MTE Walt Plant had experience at least with motors.

Simcox testified that he confirmed with Hedgepeth that he had given the Grievant his orders. When he asked the Grievant later in the week why he had not completed the installation on his turn, the Grievant said "I was busy" and would not provide any further information. Simcox said that when the Grievant would not provide him with any other information about why the work was not completed, Simcox went to his office and began writing up the discipline. He stated that he considered the Grievant's conduct gross insubordination, which is subject to termination, based upon his failure to install the roll nest motor and also his failure to provide any more information when asked about the incident. He also cited the Grievant for incompetence, which he noted is subject to progressive discipline. Simcox testified that he made the decision to terminate the Grievant on his own. At the third step the termination was reduced by the Company to time served, which the Union says is 29 days. Simcox said that the Grievant was demoted because he was guilty of insubordination and that is not the kind of person that Management wants as a Leader.

Under questioning from the Union, Simcox said that reading e-mails at the start of the turn is an expectation for SOT's, but not a requirement. He said that it is not uncommon for some projects to be added to those on the weekly "bar chart," if they arise later. He acknowledged that SOT's are expected to use judgment in determining what work is to be done. He also acknowledged that he had stressed to the employees the importance of performing the crane inspections, but said that that work could have been performed on another turn. In addition he acknowledged that MTE's Walt Plant, Stan Milligan, and Sean Akins each had their own assignments from the bar chart on the night in issue, and other duties based upon their areas of responsibility and expertise. He said that he could not recall if he was present when his boss, Mr. Marvin Logan, Division Engineer, presented information during the grievance procedure

regarding a conversation between the Grievant and himself on the night in question. He did not say that he knew about the conversation when he made the decision to terminate the Grievant.

Logan testified that on the night in question he did have a conversation with the Grievant at the beginning of the turn in which he asked the Grievant what work was planned for the evening. Logan said that there were about 6-7 electricians standing around at the time. Logan said that the Grievant told him that Simcox wanted him to install the roll nest motor, but that he did not have enough people to do so. Logan stated that he said to the Grievant, "You have a lot of people here." According to Logan, someone in the room said that the employees standing there were leaving for the day because they had just completed their shift. Logan said that he then said to the Grievant, "You've got the Motor Room guy, the Instrumentation guy, the Rover, MacLeod and yourself." MacLeod was the MTE who assisted the Grievant directly. Logan testified that he left it at that and left the room. He said that he did not tell the Grievant to reassign the employees from their assigned tasks, because he did not think that he needed to do so. He added that typically he does not get involved in the details of such assignments, deferring instead to the immediate supervisors, because of the large number of people (about 100) that he supervises.

The Grievant testified that when he worked as an SOT on the back turn, he determined what work was done each night and who did it. He stated that at the time of this incident he had only one employee who normally worked with him, MTE Pete MacLeod. He acknowledged that he also was responsible for Milligan in the Motor Shop and Plant in the Instrument Shop, but said that they have a lot of responsibilities of their own. He said that Akins performs his own rounds, taking care of water, air and utilities.

The Grievant acknowledged that Hedgepeth told him that Simcox wanted him to install the motor and that he gave Hedgepeth a hard time, asking "What did you do all day?" The Grievant did not remember Hedgepeth telling him that Simcox had sent him an e-mail to read about the job, but said that Hedgepeth may have told him.

The Grievant testified that when he saw Logan at the beginning of the turn, Logan asked him what he planned for the night. He testified that he told Logan that he would like to do the shipping crane inspection that turn. He said that he also told Logan that Simcox wanted him to install the roll nest motor and that he didn't think that it was safe for him to do so with only one guy. According to the Grievant, Logan replied that he had "all these guys here" and one of the employees present said, "We're going home." The Grievant said that Logan replied, "You have the Instrument guy and the Motor Room guy," and the Grievant responded that he was not sure that one of them, Walt Plant, was present at work that night. (Plant had been absent the prior two nights). The Grievant testified that he then asked Logan if he wanted him "to get the guy from the Motor Room." According to the Grievant, Logan did not respond to that question and they started talking about how the crew was short-staffed, because someone had left the crew and his position had not yet been filled. The Grievant testified that Logan never told him to change his crane inspection plans and install the motor, but that if he had told him to do so, the Grievant would have complied. Logan testified that he did not recall the Grievant asking him if he wanted him to assign the guy from the Motor Room to help him.

The Grievant testified that part of his duties as an SOT were to determine work priorities. He stated that he was aware of the start-up of the mill on the following day, 24 hours from when he began the shift. He stated that he also knew that the installation would take 4-6 hours.

The Grievant testified that he was told that crane inspections were more important than repair calls. He said that he had talked to the Leader of the shipping cranes and made a deal with him that they would work on the cranes at the beginning of the month because they were too busy towards the end of the month. He reiterated that if Logan had told him to install the motor that night he would have done so, but the MTE in the Motor Room was not used to doing the job and he would have had to explain all the safety procedures to him before beginning the job. He made the decision of what work was to be done that night, based on his analysis of the situation.

The Grievant acknowledged under questioning from the Company that he did not know that Plant was there that night when he talked to Logan, but found out later that he was present. He said that he did not usually check for e-mails because he is so busy when he comes on shift. He acknowledged that he did not look at the e-mail until May, after he was injured, although it was discussed at the Step 2 hearing. He did not have access to work e-mail while he was suspended. He testified that the comment he made to Hedgepeth was normal banter between employees handing jobs off to each other.

Mr. Pete MacLeod testified that his statement provided to the Company on January 24th was accurate. He testified that he was present for a conversation between Logan and the Grievant on the night in question. He said that Logan asked the Grievant if the Instrument Shop guy and the Motor Room guy reported to him, and the Grievant asked him if he wanted him to call the Motor Room guy over. MacLeod testified that Logan then asked "Why do you only have one man, have they taken the third man off the crew already?" and the Grievant replied "yes." He said that the conversation then moved on to the need to hire more people, and the problems the Company was having in doing so. At arbitration MacLeod said that the third guy on their crew, Ryan Harrell, had left several weeks earlier.

Under questioning from the Company, MacLeod said that it took three people and the crane operator to do the job. He also said that after Logan left he and the Grievant continued to have a discussion about whether they could do the job. MacLeod said that he was quite new on the job at the time, and there was one less person to perform the work than the number who did the job the last time. He said that it would not be safe with just the two of them doing it. He could not recall if the Grievant had talked about anyone else helping them.

Mr. G. Kairi Purnell, an MTE who has been with the Company for two years, testified that he also was coming off the day shift and was present when the Grievant talked to Logan. Purnell provided a statement to the Union about the conversation on February 5, 2013. He stated that Grievant explained to Logan that Hedgepeth mentioned that the roll nest motor needed to be installed and the Grievant explained that he did not have enough mechanics to complete the job safely. Logan asked about the other employees present and the Grievant responded that they were all going home (including Purnell). When Logan said that it had been explained to him that the Motor Room, the Instrument Shop guys and the Rover reported to him, the Grievant explained that Plant had called off the last two days, Milligan was tied up with other duties in the Motor Room and Akins had rounds to complete. After that statement, Logan said "I see" or "Okay" and then walked out the door, according to Purnell. Purnell also testified that this is a dangerous job that takes 5 or 6 people to do. He said he had done this job many times, and he would not recommend doing it with four people.

The Grievant testified that he had injured his arm removing a roll motor after the incident in issue here. His arm got pinned between the motor and a steel beam and now he has a titanium plate in his arm. The Grievant said that Hedgepeth was on the same job and he was injured too. The Grievant said he thought they should call a safety meeting at the time, but he had recently

been fired and he did not feel that he should do so. He acknowledged that there were three employees on the job at the time he was injured.

The Company's Position

- The Company has established that the Grievant was guilty of insubordination.
- This case has nothing to do with the Grievant's later unfortunate injury of his arm.
- It is undisputed that the Grievant knew that he was required to install the roll nest motor on the night in question.
- There is credible testimony that the instruction was given to the Grievant through Hedgepeth to install the motor on that shift. The instruction also included the directive to read the e-mail from Simcox and call Simcox if necessary.
- It is undisputed that Hedgepeth told the Grievant to look at his e-mail, but the Grievant did not do so until May, after his termination, demonstrating a "devil-may-care" attitude.
- The Company cannot call Hedgepeth as a witness, due to the contractual restriction. However the Union could call Hedgepeth as a witness and its failure to do so suggests that his testimony would not be helpful to the Grievant, and would support Simcox' testimony.
- Any argument that the Grievant did not receive a direct order from Simcox is a red herring, since it was acceptable for Simcox to convey the order through Hedgepeth.
- The Grievant's failure to complete the work on his turn affected the morale of the day shift, who were required to complete the work on the following day.
- The Grievant testified that that he told Hedgepeth that he thought Hedgepeth should have completed the work on his turn. This comment indicates a likely motive for the Grievant not completing the work on his turn.
- There is no doubt that Grievant knew and understood the Company rules regarding insubordination. He also understood the consequences of not obeying those rules, especially because he had experienced prior discipline for similar misconduct less than two years earlier.

- There is no doubt in the record that the Grievant had a full crew there to complete the work that night. Logan reminded him about the number of employees who were available.
- Everyone knew that the plan was for the mill to be back up and running by 6:00 PM on the following day. Nothing the Grievant's crew did that night was a higher priority than installing this motor.
- Simcox testified that when he questioned the Grievant about the failure to install the motor, the Grievant replied that he was busy, not that he was short-handed or that it was unsafe to do so. Simcox also testified that no safety issue was raised during the grievance procedure.
- The Company argues that the Union is grasping at straws with a safety issue, jumping on a suggestion in Purnell's statement.
- Purnell never said that it would be unsafe to perform the job with three people; he only said that he had seen it done with a larger crew.
- There is not sufficient evidence in the record to prove that the Grievant failed to do the job because he believed that it was unsafe.
- The Grievant could have been terminated for his insubordinate behavior, but instead the Company decided to permit him to keep his job, but to be relieved of his duties as an SOT.
- The key selection procedures for SOT's never supplant discipline totally, but provide guidance regarding what Management expects of its leaders.
- Here the Grievant acted in a way which is the antithesis of the teambuilding and teamwork required of a Leader. The Grievant's behavior undermines the joint effort of Union Management to be cooperative and have a successful enterprise.
- The management rights clause permits Management to relieve the employee of his or her duties in such a situation.
- There would be just cause for termination in this case. There certainly is just cause for the discipline imposed here by the Company.

- It is unnecessary for the Company to employ progressive discipline when insubordination is at issue. However the Company considered the Grievant's long tenure and determined that a lesser penalty was appropriate.

The Union's Position

- The Grievant never refused to do the job.
- The Grievant spoke to Logan the night of the incident and told him that he did not have the crew needed to perform the job. He was raising a safety concern, which is supported by MacLeod's testimony regarding that conversation.
- Logan asked the Grievant, "Don't you have enough guys to do the job?" and the Grievant explained why he did not.
- Simcox' testimony supports the Grievant's view, because he said that he was not aware of whether members of the crew had done the job previously under the new procedures.
- As an SOT, the Grievant was extremely aware of the skills and qualifications of the members of his crew.
- Logan engaged in a conversation with the Grievant about the crew needed to perform the job. The Grievant asked Logan whether he wanted him to use the Motor Room MTE and Logan did not respond. Logan could have said, "Yes, go get him. Go get anyone you need." However, he did not do so and instead engaged in a conversation with the Grievant about being short-handed.
- Simcox testified that he never heard a safety issue raised, but he was not present when the Grievant had his conversation with Logan.
- The SOT is an important job in the plant. Union employees are given substantial responsibility to make decisions and should not be subject to "Monday-morning quarterbacking" or discipline for insubordination when they exercise that discretion.
- The Grievant described the importance of the crane inspections, and Simcox admitted that crane repairs can be a priority.
- The Grievant said that he never opened the e-mail from Simcox, but Simcox acknowledged that there is no specific requirement for SOT's to do so.

- The earlier charge of insubordination against the Grievant was resolved at the lowest level of discipline, with a written warning. The Company citing that case now suggests that the Company's Counsel is not familiar with the facts of that discipline.
- Company Counsel's suggestion that the Grievant was motivated by trying to get back at Hedgepeth for not completing work on his shift is only speculation. The Grievant testified that his comments represented common banter among employees.
- The Union suggests that the discipline has already been modified because the Grievant is a good electrician.
- The Grievant had a good faith belief that he did not have enough employees to perform the work safely. Although he could have stated his safety objection more artfully, and other witnesses have made it clear that safety was his concern.
- There is a strong corporate culture protecting safety. There is not just cause to establish insubordination in this case.
- If the Grievant is not performing well as an SOT, the parties have agreed to a procedure for removing him from that position and that procedure was not followed here. The Employer cannot simply ignore the procedure agreed upon by the parties for removing SOT's.
- The management rights clause permits Management to transfer employees, but only for just cause. It does not mention demotion.
- Management cannot simply ignore the key selection process, which is where the demotion should occur, and not in the discipline process. The agreement calls for the Union to be involved in any such demotion, and steps short of demotion may be taken, such as additional training or counseling.
- Prior arbitration awards provide persuasive argument that demotion may not be used as a disciplinary measure, because it is indefinite in nature and may affect other contractual rights, and cause undue financial harm to the employee.
- The Union requests that the discipline be overturned and the Grievant be reinstated to his position as an SOT, and the Employer be required to go through the proper procedure to address any problems with his performance as an SOT.

Findings and Decision

In this case the Union originally challenged the Grievant's termination for insubordination and poor work performance. During the grievance procedure, the discharge was reduced to a suspension of about 29 days and the Grievant was demoted from his position as an SOT. The Union now challenges that discipline.

The Company has disciplined the Grievant for insubordination, one of the most serious charges that may be leveled against an employee. An employee against whom a charge of insubordination is sustained may be subject to termination without the benefit of progressive discipline. Under these circumstances, a strict standard of proof must be applied to the evidence upon which the Company has relied for the insubordination charge. Even with the reduction in the charge here, the Company is still contending that the Grievant is guilty of insubordination in this case, for which discharge could have been imposed. A high standard of proof, such as "clear and convincing" evidence, must therefore be applied to the facts.

In order to sustain a charge of insubordination, an Employer must establish that there was a clear direct order given to the employee, and that the employee understood at the time that the consequences for his or her refusal to comply with the order include serious discipline, up to and including termination. In this case there was convincing evidence that Simcox told Hedgepeth to tell the Grievant on the night in question that the roll nest motor should be installed. The Grievant acknowledged that he received this instruction from Hedgepeth and knew that it came from Simcox.¹

¹ Because Hedgepeth is a bargaining unit member, the Company could not call him to testify, but the Grievant admitted that he received the message. The cases cited by the Union regarding arbitrators striking down discipline for insubordination when the order was issued by another bargaining unit member do not apply here. In those cases the order originated with a bargaining unit member, which is not the case here.

It is also clear that this job did not appear on the "bar chart" that outlined the planned work for the week. The Company provided convincing evidence, however, that jobs may be added on to the planned work for the week, and that the installation of the roll nest motor was such a job, even though it was not included in the "bar chart." The Union did not refute this evidence. The Union also provided convincing evidence that several of the MTE's in the Department have regular areas of responsibility, such as the Motor Room, the Instrument Shop, or the Rover duties.

Both parties agree that work priorities may change throughout the week and even within a shift, based upon many factors. The Union argues that as an SOT, the Grievant had the discretion to determine the jobs that are to be performed on his turn. That discretion is not unlimited, and for the reasons discussed in greater detail below, the Arbitrator concludes that the Grievant did not use his best judgment in exercising that discretion on the night in question. However, the evidence indicates that the SOT's are given significant discretion to determine work priorities on their turn. The evidence also establishes that the Grievant was evaluating legitimate factors in determining what work should be done that night: the crew size he would need to install the roll nest motor; who was available to perform it;² and what other work was scheduled to be performed. This is what he discussed with Logan. The Company contends that the Grievant never explicitly raised a safety objection to the motor installation work. However, the work in question involved installing a very heavy motor. When an experienced crew Leader is considering the crew necessary to perform such a job, normally implicit in such a determination is a consideration of whether he has enough people with the right skills to perform the job *safely*.

² In contrast, in the earlier incident for which the Grievant received a written warning, the Company charged him with refusing to perform a job because he believed that it was not the work of his classification of employees.

Management has provided the SOT with significant responsibility and discretion to determine exactly what work is performed on the turn. As discussed below, the Grievant here probably made a poor decision regarding the work priorities for the night in question. However, sustaining a charge of insubordination arising from this decision requires more than second-guessing the quality of the Grievant's decision in hindsight. Insubordination requires a situation in which the employee understands that the consequences of refusing to perform certain work will likely lead to very serious discipline including discharge. Under these circumstances, it is difficult for Management to sustain a charge of insubordination, unless it is very clear that the discretion normally permitted to the SOT is being removed.

Logan testified that he did not think that he needed to reiterate Simcox' instruction to the Grievant at the end of their discussion on the night in question. He said that he normally doesn't get involved in the details of such orders that come from lower level supervisors. He indirectly supervises nearly 100 people and he is not aware of all the factors that might be involved in determining job priorities. However, all three Union witnesses reported that the Grievant asked him whether he should take someone from the Motor Room off of their regular work in order to perform the job. The Grievant's question to Logan is also stated as a fact in the Company's prepared statement of facts in the third step minutes. Logan's decision not to answer that question or to specifically tell the Grievant that he should or must proceed with the job reinforces the Grievant's conclusion that he retained discretion to determine whether the work was performed on his turn, based upon the resources available.

In this case, the normal discretion permitted to the Grievant to determine such priorities, and the ambiguous ending of his conversation with Logan about the staffing for the job³ would not have reasonably placed him on notice that his failure to finish installing the motor that night would amount to an act of insubordination. The Company has not met the strict burden of proof necessary to establish that the Grievant refused to perform a clear order that he knew could lead to discharge, as opposed to making a poor decision over which he reasonably believed that he had discretion. There are not sufficient grounds for a finding of insubordination based upon this evidence.

The Grievant was disciplined for poor work performance as well. The standards for establishing this charge are significantly different than those required for an insubordination charge. Employees are normally progressively disciplined for work performance issues and therefore a lower standard of proof may be applied to the evidence necessary to sustain a charge of poor work performance rather than one for insubordination.

In this case the Grievant received significant information that it was important to install the roll nest motor on his shift. The work needed to be completed by 6 PM the following day when the roughing mill was due to start up again. These start-up times are usually well-known among employees and the Grievant has not claimed that he did not know that the mill was starting up again at that time. Although the Union emphasizes that there were 24 hours in which to complete the 4 to 6 hour job of installing the motor, there were only 12 hours left at the end of the Grievant's turn to complete the job, after he decided that it would not be done on his turn.

³ In addition, when an employee engages in a discussion with a supervisor over whether work should be performed as instructed, normally the supervisor is required to inform the employee that the discussion is over and the work must be performed, in order to sustain a charge of insubordination. That did not occur here.

The Grievant said that he made the decision not to proceed with the roll nest motor installation based upon staffing, and the other work priorities for the night. There were two MTE's normally assigned to help him, but one of positions was not filled at the time. However, the Grievant did not offer a convincing reason as to why he did not seriously consider reassigning other MTE's to help install the motor. He did not provide sufficient evidence to conclude that he considered their skills for the job and found them insufficient. Although the crane work and the other duties they were performing were important, he knew that the installation of the roll nest motor had a short deadline. There was not convincing evidence that the other jobs had such a short deadline, or that the failure to complete them on that turn could have the same kind of potential consequences as the failure to complete this job, which could delay the start-up of the roughing mill.

Therefore there was enough information provided to the Grievant about the importance of this job that he should at least have consulted Simcox before deciding that the work would not be done. The Grievant did not recall Hedgepeth telling him to read the e-mail from Simcox, but he conceded that Hedgepeth may have given him the message. Even though the Grievant was not normally required to read the e-mails when he arrived at work, here he had been notified about a specific e-mail regarding this job. Once questions arose about doing this job, he probably should have read the e-mail.⁴ However, even if he did not read the e-mail, he knew he could consult with Simcox. He did not deny that Hedgepeth relayed the message that the Grievant should call Simcox if there were questions about the job.

⁴ The Grievant may have thought that the e-mail contained only a general instruction to install the motor. However, that e-mail addressed the staffing issue and if the Grievant was reluctant to reassign MTE's from their normal duties, the e-mail gave him back-up support from Management for doing so.

The Grievant's conversation with Logan did not absolve him of the responsibility to discuss the work with Simcox. Logan never said that the job requested by Simcox need not be done that night. The way Logan handled the situation should have indicated to the Grievant that he should take up any questions about it with Simcox, who had issued the instruction and who knew much more about the staffing situation and the work priorities of his crew than Logan did. Even though the Grievant had some discretion to determine work priorities, his failure to even consult with Simcox before deciding not to have the crew perform this important job that night provides sufficient grounds for discipline for poor work performance, i.e. failing to meet reasonable standards of proficiency. The Company did not err in imposing discipline for this conduct. The mill did start up on time the following day. However, the Grievant's failure to install the motor on his turn placed substantial pressure on the day turn to complete the work within a much shorter deadline than Simcox had planned, and increased the possibility of a delay in starting up the mill, if problems had been encountered in installing the motor.

The Company also demoted the Grievant from the position of SOT as a result of his conduct on the night in question and the Union challenges that decision as well. Normally, discipline short of discharge is intended to correct an employee's conduct. However, removing an employee permanently or indefinitely from a position is often viewed as more punitive than corrective. Furthermore, the indefinite -- and sometimes long-term -- nature of a demotion means that it may have a stronger and more lasting effect on the Grievant's career than even a substantial suspension. Many arbitrators have struck down demotions employed as discipline. How Arbitration Works, Elkouri & Elkouri, 6th ed. pp. 800-80.

Arbitrators have struck down demotions when they affect other important rights under the Agreement. Here the parties have agreed to a joint Key Selection Process for filling SOT

positions. Management argues that the Grievant's conduct in this case supports his removal from this position under the Key Selection criteria, which include "the highest degree of technical competence, interpersonal/teambuilding and leadership skills." However, the process agreed to by the parties involves direct Union participation in the selection of employees for such positions. The Plant Manager and the Union President meet together to review potential candidates to fill such a slot, in a good-faith effort to agree upon the selection of the final candidate. The procedure also includes a process for removing an employee who is not performing to the standards set forth in the procedure. That part of the procedure also includes Union participation. As an alternative to immediate removal, for example, the procedure permits that "*the parties* may agree to additional training and/or counseling to the involved Employee in an attempt to improve his/her performance."

The Company relies upon the management rights clause in support of its position. The management rights clause does not mention demotion, but does say that Management has the right to "relieve employees from duty." However, the parties have agreed to more specific language in the Key Selection Process with regard to the issue of filling leadership positions and removing employees from those positions and this specific agreement takes precedence over more general language in resolving this dispute. Here the Union was afforded no role in the decision to remove the Grievant from the SOT position. This is a violation of both the spirit and the letter of the Key Selection Process, and involves rights and interests that extend beyond whatever happens to the Grievant. The parties have agreed to a joint Union-Management process for determining which employee shall hold these leadership positions. The Arbitrator has the responsibility to give effect to the parties' whole Agreement and therefore concludes that Management violated that Agreement when it acted unilaterally to demote the Grievant. To

uphold Management's unilateral decision to remove the Grievant from the position without any Union participation would render the joint agreement meaningless. Management may still seek to remove the Grievant from the position because of his conduct, but must go through the proper procedure agreed to by the parties in order to do so.⁵ However, based upon this record, there were not grounds for Management's unilateral demotion of the Grievant from the position of SOT.

It is not clear from the record whether under the agreement and the parties' practice the parties may remove an employee from a leadership position at any time, or only at the time of annual performance reviews. Therefore, the Arbitrator will remand this portion of the remedy to the parties for further discussion about the Grievant's continuing status as an SOT. However, until that issue is resolved, the Grievant shall receive any differential in pay and benefits between the SOT position and the MTE position to which he was unilaterally demoted by the Company. The Arbitrator will retain jurisdiction to resolve issues related to this part of the remedy, if the parties cannot agree to a full resolution.

As discussed above, the evidence presented at arbitration is not sufficiently strong to support a finding of insubordination. The 29-day suspension was based in part upon Management's conclusions that the Grievant had engaged in insubordination and because there are not sufficient grounds to establish insubordination, that penalty is excessive. There is sufficient evidence, however, to assess discipline for the poor work performance of the Grievant.

⁵ Management argues that the Grievant's refusal to provide a detailed explanation to Simcox about his decision not to install the motor on that night demonstrates his inability to perform the teambuilding and leadership functions of the position. This is something that the parties may consider if Management continues to seek removal of the Grievant from the position. Simcox testified that he also considered this conduct as grounds for insubordination. However, the Grievant did not completely refuse to provide an explanation and therefore his conduct does not rise to the level of insubordination. It is unlikely that the Company would have charged him with insubordination based upon this conduct alone, absent its conclusion that he had refused to perform the work in question.

The suspension will be reduced to a five-day suspension. While this penalty is greater than the normal penalty for a first instance of poor work performance, the importance of the job assigned to the crew that night, and the Grievant's failure to consult with the supervisor assigning the work indicate that a more severe penalty is appropriate.

In addition, there was some evidence introduced at arbitration concerning how many days the Grievant would have worked during the period he was suspended. The Arbitrator also will remand this portion of the remedy to the parties for resolution and will retain jurisdiction solely to resolve any outstanding issues if the parties cannot reach agreement.

AWARD

The grievance is sustained in part. There was not proper cause to discipline the Grievant for insubordination. There was proper cause to discipline the Grievant for poor work performance, however. The Grievant's suspension shall be reduced to a five-day suspension. The Company also violated the agreement between the parties by making a unilateral decision to demote the Grievant. The Grievant shall be recompensed for any lost wages and/or benefits resulting from his demotion and suspension, except for the period of the five-day suspension. The issue of the Grievant's continuing status as an SOT has been remanded to the parties, as well as the calculation of lost wages and benefits. The Arbitrator retains jurisdiction solely over the remedy portion of the Award in order to resolve any disputes which the parties have not been able to resolve regarding the remedy issues.

Jeanne M. Vonhof
Panel Arbitrator

Decided this 3rd day of January, 2014.