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In the Matter of Arbitration Between:)
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ARCELORMITTAL USA)
East Chicago, IN.)
)
and)
)
UNITED STEELWORKERS,)
District 7, Local 1010.)
)

Grievant: Garcia
Issue: Termination
Grievance No. 28-AA-0003
Arbitrator Docket No. 171101

BEFORE ARBITRATOR JEANNE M. VONHOF

INTRODUCTION

The undersigned Arbitrator was appointed according to the rules of the applicable collective bargaining agreement. The hearing was held on February 21, 2018, in East Chicago, IN.

Mr. Christopher M. Melnyczenko, Senior Labor Relations Representative, represented ArcelorMittal USA, hereinafter referred to as the Employer or the Company. Mr. Ken Haluska, Division Manager, East Finishing; Mr. Mark Kulavic, Process Manager at the time of the discharge, and Ms. Cheree Leffel, Senior Labor Relations Manager, testified on behalf of the Employer.

Mr. Alexander Jacque, District 7, Sub-District 5 District Director, represented United Steelworkers, Local 1010, hereinafter referred to as the Union or the Local. Ms. Michelle Garcia, Grievant; Mr. Henry Bronisz, Griever; and Mr. Darell Reed, Chairman, Grievance Committee, testified on behalf of the Union.

Each Party had a full and fair opportunity to present evidence at the hearing. Both Parties made closing arguments at the hearing.

Issues:

Was the Grievant discharged for just cause?

If not, what shall the remedy be?

Background

The Grievant, Michelle Garcia, was notified via letter on September 20, 2016 that she was suspended pending discharge for violating the following Personal Conduct Rules:

1) Rule 2 L—theft or attempted theft of Company property (including falsification of time worked); and Rule 2 T—attempting to damage, falsify or otherwise defeat the integrity of the plant payroll timekeeping system. She also was terminated on the basis of her overall work record. The Grievant was charged with manipulating the timekeeping and payroll system to pay herself and two co-workers for shifts they did not work, and for adjusting their absence records to remove absences. The suspension was converted to a discharge effective September 30, 2016.

Mr. Ken Haluska, Division Manager, East Finishing, testified that the TIMES payroll system has been in operation for about 20 years. Employees may access the system to determine their schedules and other information. However, only supervisors and certain clerks are authorized to make changes to the system, he testified, by implementing a manual override using a proper user ID and password.

Mr. Mark Kulavic, Process Manager at the time of the discharge, testified that he oversaw the Grievant's work at that time. On June 24, 2016, he disciplined the Grievant for failing to complete required inspections of coils. She was disciplined for negligent performance of her job duties, as well as for falsifying production records when she reported that the inspections had been performed. She received a 15-day suspension. The Union argues that this discipline has been grieved and not resolved, and should not be considered by the Arbitrator.

Kulavic testified that he became aware that the Grievant and another employee had been improperly authorized for pay for overtime shifts on August 23 and 24, 2016, when they were

not scheduled for overtime work on those dates. The payments had not been authorized either by him or by the clerk, and Kulavic halted the payments.

Kulavic ordered the clerk to examine what had occurred with these payments, and the clerk found that they had been authorized under a "TIM014" user ID. Kulavic was not familiar with that user ID. Upon further examination, the Company discovered 15 different instances in which 3 employees,¹ including the Grievant, had been paid for overtime shifts they did not work, with payment authorized by the TIM014 user ID. Management also identified nine instances where these three employees had reported off work, but their absences were later deleted in the TIMES system.

The Company presented evidence that it is very simple to make changes within the TIMES system, and authorize payments to employees, once access to do so is gained. Kulavic reported that the Company conducted a further investigation into the unauthorized payments and found that there were 24 instances in which the TIM014 user ID was used to alter payment and absence records for the three employees, not including the four shifts for which he had caught and halted the payments. The Company then reviewed records to determine whether the three employees were in the mill at the time when the changes were made. The records show that the Grievant was the only one of the three employees who was present in the mill when each of the 24 changes was made. The records do not show which computer terminal was used to make the changes. Kulavic acknowledged that the payroll and attendance changes at issue here can be made from any computer accessible to employees.

Kulavic then reviewed surveillance videos of the Grievant's activities on the dates and times in question. He stated that video recordings were still available for only 12 of the 24 dates

¹ The other two employees are referred to as Employees B and C in these proceedings.

on which changes were made; the other recordings already had been recorded over. According to Kulavic, the videos show that the Grievant was alone with a computer terminal in the 29 TM pulpit, a small control room, on each of the 12 occasions for which video is available, at the precise time when changes were made to the three employees' records. One of the videos was viewed at arbitration and the others were presented as evidence. Under questioning from the Union, Kulavic acknowledged that there is a door to the back of the pulpit which cannot be viewed from the camera view presented at arbitration. Kulavic testified, however, that it would not be possible for someone to access that door without being seen approaching or leaving the area of the pulpit, in the camera views which were presented in evidence.

Kulavic also acknowledged that during the investigation, the Grievant stated that she did not make the modifications at issue here. When the other two employees were interviewed, they did not claim that the Grievant made the changes. Kulavic also acknowledged that the TIMES system sometimes makes errors. He said that there have been instances of employees swiping their ID cards into the mill's computerized security/timekeeping system upon arrival at the mill and the swiping not being recorded in the mill's records. When this occurs, a Manager or clerk corrects the records to reflect that the employee is present and working. In her testimony, the Grievant also testified about this problem with the system. Kulavic testified that since the Grievant has been discharged, there have not been any instances of which he is aware, where employees have been paid for periods they did not work.

Ms. Cheree Leffel, Senior Labor Relations Representative, testified that Kulavic approached her in late August 2016 and told her that someone was making changes to payroll records in his department. She conducted the investigation, in conjunction with the IT department, to determine exactly when the changes were made, which employees' records were

affected and which of the affected employees were in the mill at the time the changes were made. The evidence showed that the Grievant was the only one in the mill when each of the changes was made. The Company concluded from this information that the Grievant had made the improper changes to the records.

In addition, Leffel testified that the IT department told her that the user ID TIM014 had been the user ID for a payroll clerk who had retired in January 2016. Later, it was reactivated, according to IT's records, but a new password was not established. Leffel testified that she did not know how an employee was able to access the user ID. She testified that employee access to the TIMES system is supposed to be "Read Only" access, unless their job, such as a payroll clerk, requires access to make changes. According to Leffel, the Grievant reported during the investigation that she knew and had used the same password which was used in this case, "DUMMY," to access other employees' records in the past. This is the system's default password. Leffel also acknowledged that employees can access the TIMES system from home if they are authorized for remote access.

Ms. Michelle Garcia, the Grievant, testified that she has worked for the Company since 2008, as an Operator/Inspector. She denied that she made any of the changes in the TIMES system at issue here. She testified that part of her job is to operate a computer in the pulpit, but her duties require her to work outside the pulpit too. Her co-workers use the same computer she does, and she testified that she saw several of them in the videos entering the pulpit they share. She testified that there is a back door to the pulpit which is not visible in the video recordings.

According to the Grievant, employees check other employees' schedules and time records frequently by referencing the other employees' ID's, which are posted with the schedules. She testified that she used the user IDs TIM599 and TIM177 to do so. According to

the Grievant, the purpose for checking other employees' records is to monitor overtime equalization, because obtaining overtime work is very competitive. She testified that she did not know the clerk with the TIM014 user ID who retired, and she did not obtain the TIM014 user ID or ever use it. She also testified that "DUMMY" is a very generic password often used in the mill.

The Grievant testified that she did not know that she was not authorized to use TIM599 to check other people's records. She acknowledged that an employee needs a Manager's approval for overtime. Under questioning from the Company, she said that she never noticed the extra pay in her checks from the overtime shifts for which she was paid that she did not work, because she works a lot of overtime. The Company introduced an extra check she received which suggests that she asked the Company for a payroll correction, as proof that she does pay attention to her checks. She said that she most frequently receives payments for mistakes in her regular paycheck. She acknowledged that she has stopped for drinks after work with Employees B and C, as part of a group of employees.

Mr. Henry Bronisz testified that he has worked for the Company for 42 years, and currently serves as Griever. He confirmed that employees do access other employees' records to determine who is working overtime, and said that he did so for many years. He also stated that managers can access the records from home. He was present when the Grievant and Employee B were interviewed about these payments and each of them said they had no idea how they had occurred.

Bronisz testified that he was aware of the password "DUMMY." He went on to say that it is possible to arrive at a usable user ID on the Company computer system, simply by trying

various three-number combinations after entering “TIM.” He confirmed that, to his knowledge, there have been no other incidents of this nature since the Grievant's discharge.

Mr. Darrell Reed, Grievance Committee Chairman, testified that in around 2012 a problem arose with employees being paid improperly for overtime. Employees were given computer access to review whether they were properly paid. He said that once an employee entered the system, they were able to check other employees’ records too, using the employees’ Company ID number. He acknowledged that the access granted to employees was “Read Only” access.

Reed also introduced the discipline of another employee who failed to complete a required strip check on a coil, which resulted in subsequent coils having defects. She received a 5-day suspension, which was later reduced to a VODG through negotiation with the Union. Leffel testified that this person received only a 5-day suspension, compared to the Grievant’s 15 days, because she had neglected to perform only one check, while the Grievant failed to perform multiple checks over several days.

The Company’s Position

- The Grievant is an employee who has deliberately violated the trust of the Employer in a very serious matter.
- The evidence shows that changes were made to the TIMES payroll system that resulted in the Grievant and two other employees receiving overtime pay for time that was not worked, and in having absences removed from their records. The most logical and reasonable explanation for how the modifications were made is that the Grievant made them.
- The Grievant had the motive to make the changes, as she received overtime pay for shifts she did not work, and improved her attendance record to avoid discipline.
- Only certain users are authorized to use the TIMES system to make changes to payroll and attendance records, but it is possible for employees to gain unauthorized access.

- The Grievant admitted that in the past she had used the password that was used to make the changes at issue here.
- The videos show that the Grievant was in the pulpit alone, with a computer, at the times that many of the changes were made.
- The Grievant was the only one of the three employees who was at work on all of the occasions when the changes were made.
- Even if another co-worker was present in the pulpit, or entered through the back door, the Grievant could have made the changes while they were present. Even if another person were present in the pulpit with her on one or two occasions, changes were made on many occasions.
- There is no other reasonable explanation for how the changes were made, other than that the Grievant made them.
- The Grievant's past record of falsifying production reports demonstrates that she has a propensity for dishonesty. Although a grievance has been filed over the discipline issued for this reason, the Union has not advanced it to arbitration.
- Dishonesty is a dischargeable offense, regardless of the amount of money involved.
- Arbitration awards in the steel industry support the Company's position here that deliberately violating the Company's trust creates irrevocable harm to the employment relationship and need not be tolerated.
- The grievance should be denied and the discharge upheld.

The Union's Position

- There was no just cause to discharge the Grievant.
- There was more than one employee who was involved in this case and who received overtime pay. All three employees denied that they modified the payroll system.
- The Company assumes that it was the Grievant who made the changes at issue here, but it could have been one of the other two employees. These employees did not notice or did not report that they had received extra pay, the same as the Grievant.
- The Grievant was assigned to use the same computer terminal as other employees. It is possible that other employees could have made the changes which the Company says the Grievant made.

- The video cameras here do not show the back door of the pulpit, so we cannot tell if the Grievant was in the pulpit alone.
- The Company did not prove which computer terminal was used to make the changes.
- The TIMES system makes errors. Employees routinely swipe in at times when the system does not register their arrival.
- The Company cannot cite the 15-day suspension of the Grievant, because the grievance over that discipline is still in the grievance procedure.
- No one from Payroll testified at the hearing to explain the records system. The Company's witnesses did not have direct knowledge of the system.
- Arbitration awards from the steel industry support the Union's position that an employee cannot be found responsible for misconduct if the employee is not the only one who could have committed the offense.
- The Grievant should be reinstated and made whole for all backpay and other losses.

Findings and Decision

In this case the Union has challenged the discharge of the Grievant for falsifying Company time and attendance records. The Company argues that the most logical and reasonable explanation of the facts discovered in its investigation is that the Grievant made the computer modifications to pay herself and two other employees for overtime shifts which they did not work. In addition, the Company charges the Grievant with making changes to attendance records for the three employees by deleting certain absences in order to improve their attendance records and avoid discipline. The Grievant denies that she made the changes.

Falsifying time or pay records is one of the most serious charges that can be leveled against an employee. If an employee deliberately alters payroll records to obtain pay for time which was not worked, the employee has violated a basic trust which must exist in the employment relationship. As the Company argues, discharge is often the penalty for such

conduct, even for a first offense, absent significant mitigating circumstances. Because the penalty for such misconduct is often so severe, and may affect the employee's long-term career, the Employer must demonstrate by very clear evidence that the employee committed the dishonest acts for which the employee is charged.

In this case, the Company first discovered that the Grievant and another employee were scheduled to be paid for two overtime shifts they did not work. Management deleted the authorization for these payments. The Company investigated further and has presented convincing evidence, not disputed by the Union, that the Grievant and two other employees were paid for a total of 15 overtime shifts which they did not work over a period of about 5 months in 2016. In addition, the Company presented persuasive evidence that during the same period there were nine absences, among the three employees, which were deleted from the computerized attendance system, so as not to be counted in their attendance records.

The issue in this case is whether there is sufficient convincing evidence that it is the Grievant who made these modifications. The Company could not determine the computer terminal or terminals from which the changes were made, although they were able to pinpoint the times when the modifications were made in the system. There is no convincing evidence here that the changes at issue could have happened accidentally, with a wrong keystroke or two, or because of a malfunction like that which sometimes occurs when employees swipe in. The evidence demonstrates that there were repeated payments authorized and attendance records changed on multiple occasions, affecting only three employees. The evidence supports a conclusion that the changes were made deliberately, and not randomly, or through a system error.

The Union argues, however, that anyone in the mill could have made the changes, from any computer in the mill, or even from a home computer. The evidence in the record indicates that only Management personnel have remote access to the Company's computers from home. Moreover, it was reasonable for the Company to conclude that the changes which were made in the Company's computer system were most likely made by the three employees who benefitted from them, in the absence of any other reasonable explanation.

The Grievant did not report to the Company the overpayments in her paycheck before they were discovered by the Company. The incorrect payments to the Grievant were substantial, in each case amounting to an entire eight-hour shift at the overtime rate. There were five such overpayments over about four months. These facts cast doubt on the Grievant's statement that she did not notice any of the overpayments, as does the evidence that the Grievant has corrected other payroll mistakes in the past.

The Union introduced persuasive evidence that employees have been granted computer access that permits them to routinely view other employees' records, in order to monitor overtime equalization. However, both Company and Union witnesses testified that this access is "Read Only," and that employees do not have authority to make changes to time or pay records, unless they hold a position such as payroll clerk. The modifications to the payroll and attendance record at issue here were made under the user ID "TIM014," which was assigned to a clerk who retired several months before the changes in question were made, and who had access to make changes through that ID. It is not clear from the record how any current employee was able to obtain the retired clerk's ID. However, the Company presented persuasive evidence demonstrating that once a person gains access to the TIMES system through an ID which authorizes the user to make

changes, it is easy to use the system to authorize payments to employees. No specialized training or computer expertise is necessary.

Once the Company identified what modifications had been made to the computer system and when they had occurred, it was reasonable to examine whether the employees who benefited from the changes were at work at the time the changes were made. The Union argues that it is improper to hold the Grievant responsible for actions that could have been done by any of the three employees who benefited from them. The Company's investigation found a significant difference, however, between the Grievant's record and those of the other two employees. The evidence demonstrates that the Grievant was the only one of the three employees who was present in the mill on every date and shift when the 24 modifications were made. She was the only one of the three working when 14 of those 24 changes were made, including at the times when 12 of the 15 unworked overtime shifts were added, for all three employees. Of particular importance here, the Grievant was the only one of the three employees working on dates when changes were made to pay her for four out of the five shifts she did not work but for which she received overtime pay – and for which the investigation uncovered the dates of the computer modifications.² In contrast, there are no shifts during which Employee B or Employee C were working in the mill alone on dates when any of the modifications were made. The record thus demonstrates a very different pattern for the Grievant than for the other two employees with regard to their presence on dates when the fraudulent modifications were made.

The Company also provided video evidence establishing that the Grievant was in the 29 TM pulpit with computer access at the time when 12 of the 24 modifications were made. The

² Payments which had been authorized in the system for the Grievant for last two unworked shifts were intercepted and deleted from the system before recording the dates on which the computer modifications to pay them were made.

video appears to show the Grievant alone in the pulpit on those occasions; on some occasions, co-workers are seen leaving the pulpit shortly before the time at which the modifications were made. The Union notes that there is a back door to the pulpit, which cannot be viewed directly from the camera angle in the video recordings. However, the Arbitrator has viewed the video recordings carefully, and concludes that they are recorded from a vantage point that is high enough above the pulpit and far enough away that it would be very difficult for someone to approach the back of the pulpit and stop there to enter the pulpit, without being viewed and recorded from the camera. There is no evidence on the videos of anyone stopping at the back of the pulpit during the recorded time periods. There are not video recordings available for all of the dates and times when modifications were made, but for each of the occasions where video recordings are available, the video evidence shows that the Grievant was most likely alone in a small closed room, the pulpit, with access to the computer terminal on which she normally worked.

Nevertheless, the Grievant should not be held accountable for the modifications made to the records of Employees B and C when they were also present in the mill. As the Union argues, these two other employees could have made changes from other computer terminals in the mill at that time, and they had an interest in doing so. There were days when only the Grievant was present in the mill, and changes were made benefiting the other two employees' pay and attendance records, which strongly suggests that the Grievant was involved in some kind of arrangement with the other two employees to defraud the Company. Nevertheless, there is not sufficient convincing evidence in the record to conclude that the Grievant had a clear motive to take all the risks and make all the changes benefiting the other two employees, when they were also present in the mill. Therefore, the Arbitrator has not counted these instances against the

Grievant, and cannot conclude on this record that the Grievant is solely responsible for all 24 of the recorded pay and attendance modifications uncovered by the Company.

There is sufficient evidence, however, to hold the Grievant responsible for some of the modifications made using the TIME014 user ID. The Grievant had a substantial motive for making the beneficial changes to her own record on the dates when she was present in the mill, and alone in a closed room with a computer terminal at the time when the fraudulent hours were entered. She admitted that she knew and had used the default password for the TIM014 user ID in the past. Most importantly, she was the only one of the three employees at work on four of the five dates when changes were made in the computer system to pay her for overtime shifts which she did not work. In addition, the evidence shows that on one occasion she was the only one of the three employees present when changes were made to her attendance records. This evidence provides sufficient convincing proof that the Grievant intentionally stole time from the Company by altering her own pay records, and also modified her attendance records. In addition, the Grievant alone among the three employees was present in the mill when 12 of the 15 improper overtime shifts for all three employees were authorized using the TIM014 user ID, suggesting that she made these modifications too, even though her motive for making such modifications is not as clear as when she made changes benefitting herself.

The question then is whether the evidence which clearly points to the Grievant as the responsible party for making these modifications is sufficient to sustain the discharge of a 9-year employee. The Company notes that the Grievant was discharged for her conduct in this case, and on the basis of her past record, which cites a 15-day suspension. That 15-day suspension discipline includes a charge that the Grievant falsified production records. However, the Union argues that the discipline was grieved and has proceeded through the grievance procedure up to

the arbitration stage. Because the grievance has not been finally resolved, the discipline may not be considered as part of the Grievant's disciplinary record.

Nevertheless, there is sufficient compelling evidence on the record to sustain the discharge of the Grievant. She received multiple payments for full shifts she did not work, at the overtime rate, and she did not report any of these overpayments to the Company. She alone benefited from the modifications made from a computer terminal in the mill to authorize these overtime payments and for improving her attendance records by deleting absences. The evidence establishes that she was most likely alone in the pulpit with a computer terminal at the time when many of the computerized pay and attendance modifications were made, and that she knew the default password for the user ID used to make the changes. She was the only one of the three employees who received such benefits who was present in the mill on all of the dates and shifts when the changes were made, including four of the five modifications of unauthorized overtime payments to herself. Absent any reason presented in the record explaining why anyone else would want to pay the Grievant for time not worked, the most likely explanation is that she made these changes to her records. There also is significant evidence that she made some of the modifications benefiting the other two employees as well, on the days when modifications were made and only she was present in the mill.

The Grievant's conduct demonstrates a serious breach of the trust that must exist in the employment relationship. She engaged in multiple acts that constitute a clear violation of the rules against theft of Company resources, and tampering with the payroll system, in order to obtain overtime pay for time not worked, and to fraudulently improve her attendance record. Discharge is appropriate as the usual penalty in such cases, absent significant mitigating

circumstances, which have not been established on this record. Considering all the evidence here, the grievance must be denied.

AWARD

For the reasons set forth above, the grievance is denied.

Jeanne M. Vonhof
Labor Arbitrator

Dated this 20th day of March, 2018.