Award No. 871
In the Matter of Arbitration Between:
Inland Steel Company
and
United Steelworkers of America
Local Union No. 1010
Gr. No. 25-T-117
Appeal No. 1482
Arbitrator: Jeanne M. Vonhof
March 5, 1993

INTRODUCTION

The Undersigned Arbitrator was appointed according to the rules of the applicable collective bargaining agreement. This hearing was held on Friday, January 29, 1993 at the Company's offices in East Chicago, Indiana. The Company filed a pre-hearing brief and the Union filed a pre-hearing memorandum in the case.

APPEARANCES

UNION

Advocate for the Union:
A. Jacque, 1st Vice Chairman, Grievance Committee
Witnesses:
L. Colon, Jr., Grievant
L. Colon, Sr., Employee
P. Fiegle, Materials Transporter
R. Hafner, Materials Transporter
C. Pickett, Materials Control Mechanic
Also Present:
L. Aguilar, Second Vice Chairman, Grievance Committee
J. Robinson, Chairman, Grievance Committee

COMPANY

Advocate for the Company:
W. Peterson, Project Representative, Union Relations
Witnesses:
Herb Harth, Plant Protection Officer
Phillip Perry, Planner No. 5 Roll Shop
Also Present:
B. Smith, Senior Representative, Union Relations
S. Martin, Turn Supervisor, No. 5 Roll Shop
B. Nanney, Investigator, Plant Protection Services
B. Adkins, HRG Generalist, 80" Hot Strip Mill

BACKGROUND

The Grievant, Luis Colon, Jr., began his employment with the Company in 1977 and was employed as a Materials Transporter in the Maintenance Sequence of the Roll Shop at the time of his discharge. The events giving rise to his discharge are as follows.

On October 23, 1992 at approximately 6:15 a.m. the Grievant was exiting the plant in his pickup truck after working his turn. He was pulled over by Plant Protection Officer H. Harth for a routine random vehicle search.

Officer Harth found, in the bed of the pickup truck, a large open wooden box, which has been referred to by the Parties as a "torrington bearing" box, and which the Parties agree came from the plant. Inside of this box was a smaller wooden box about 15 inches by 18 inches by 8 inches in size. This second box was constructed of about eight (8) pieces of one-inch rough wood nailed together. Officer Harth testified that this second box was nailed shut when he first saw it and appeared not to have been opened previously. Officer Harth testified that he asked the Grievant, "What is that?" in regards to the smaller box. The Grievant replied that it was a block of wood. Officer Harth testified that he and the Grievant went back and forth several times, with Officer Harth contending that it was a box and the Grievant contending that it was a block of wood. Officer Harth asked the Grievant where he got the object and the Grievant said he got it from the side of the road on Cline Avenue.

Officer Harth testified further that he reached over to take the box out of the truck when the Grievant offered to get it. The Grievant lifted it off the truck and it either accidentally slipped or he purposely dropped it out of his grasp and onto the ground. Something inside the box rattled and the Grievant, according to Mr. Harth, said something like, "Well, there is something in it."
Officer Harth testified that he said he would have to open the box and would go get tools. The Grievant offered his own tools and took a small pinch bar off his truck and, according to Officer Harth, began beating on the box. Officer Harth told him to stop and just pry up the lid, which the Grievant did, and the two men found a gear inside the box.
The evidence indicates that the gear is used in a screw down bearing for the finishing stands on the hot strip and costs the Company about $560. The box and the gear together weighed 48 pounds.
An investigative hearing was held later in the day on October 23, 1992. At that time the Grievant abandoned his story that he had found the box on the side of Cline Avenue. He testified instead that he had found it in the plant, north of the Roll Shop by the canteen area. He testified at the arbitration hearing that he had told the first story of finding the box on Cline Avenue because he thought that would be the end of the matter.
The Grievant testified that about a week before the incident in question he had received a materials pass for two days to bring some scrap wood home. He was particularly interested in large wooden boxes that he could use as a dog house and whelping box for his dog, and some smaller pieces to burn as firewood.
The Grievant testified that he loaded up his truck with scrap wood on October 15 and 16, 1992. When he unloaded the large boxes at home he found the smaller box inside, he testified. He testified further that he thought it was a solid block of wood, not a box. According to the Grievant he picked it up and put it back in his truck, to use as blocking in case he needed to change a tire. Because it was rolling around, he put it in the large box on his truck several days before it was found, according to the Grievant. He testified that he had carried it in and out of the plant for a number of days in his truck.
Several other Union witnesses testified in the Grievant's behalf. One witness testified that he had seen the box in question in the Grievant's pickup truck several days before October 23rd. Another witness testified that he had originally unloaded the contents of the larger box and placed it in the scrap pile and remembered seeing a smaller box in its corner which he believed was just filler.
The Company completed its investigation and concluded that the Grievant was in the process of stealing the gear at the time of the search of his vehicle. The Grievant was discharged and the Union filed a grievance contesting the discharge. The Parties were unable to resolve the dispute and it proceeded to arbitration.

THE COMPANY'S POSITION

The Company contends that the grievance should be denied because the evidence indicates that the Grievant was in possession of a box containing a steel bearing and that he intended to commit an unlawful act, i.e. stealing it from the premises. According to the Company the Grievant's testimony is inherently incredible, especially his claim that he thought the object in question was a block of wood, rather than a box. The Company contends that a physical inspection of the box renders this claim wholly unbelievable.
The Company also argues that in the Grievant's position as a Materials Transporter it was his responsibility to handle boxes of this nature on a regular basis. The Company notes that the Grievant has worked in the Roll Shop area and knows what is in boxes of this sort.
The Company also notes that, by the Grievant's own testimony, he moved this box by hand on several occasions. According to the Company, someone who had moved the box by hand would not mistake it for a block of wood, because of its weight and appearance.
Furthermore, in assessing the credibility of the Grievant, the Company argues that the Arbitrator should consider that the Grievant initially lied to the Plant Protection officer in describing where he found the box. According to the Company, it makes no sense for the Grievant to concoct such a lie if he believed that he were only in possession of a block of wood. The Company contends that it has consistently treated attempted theft as a dischargeable offense and that arbitrators at Inland have upheld that position. In addition the Company contends that the proper standard of proof is a preponderance of the evidence. According to the Company, the testimony of the other witnesses who testified in the Grievant's behalf is irrelevant and adds nothing to the Union's case. For all the above reasons the Company urges that the grievance be denied and the discharge upheld.

THE UNION'S POSITION

The Union contends that the Company has not established that the Grievant was trying to steal the bearing. In support of this position the Union argues first that there was no reason for the Grievant to be hauling this

box back and forth from the plant if he knew it was a box and contained something of value to the Company. The Union relies upon the Grievant's testimony that the bearing was of almost no value outside the plant. Furthermore, the Union contends that the testimony of Mr. Fiegle supports the Grievant's testimony that he did haul the box in his truck in and out of the plant several times before being apprehended with it.

The Union acknowledges that the Grievant had no materials pass on the day in question. However, the Union further argues that once the Grievant had hauled the scrap wood out on a materials pass he was free to do with it as he pleased, including putting it in his truck to be used to block the truck.

The Union also points out that the Company cannot pinpoint when the gear was removed from the plant. In addition, the Union argues that the testimony of Mr. Pickett that there was a smaller box in the bigger box tends to support the Grievant.

According to the Union, the Grievant's behavior at the guard station suggests innocence. He was very cooperative, the Union notes, and did not try to escape from the guard. As for changing his story regarding where he got the box, the Union notes that the Grievant made the change the same day he gave the original story, and asserts that no one can prove where he did find the box.

According to the Union the issue is not whether the Grievant misidentified the box, but rather, whether he intended to steal the bearing. The Union points out that he was well aware of the Company's random vehicle searches.

The Union also argues that the standard of proof in such a case should be proof beyond a reasonable doubt. For all of the above reasons the Union contends that the grievance should be sustained and the discharge overturned.

OPINION

This is a case involving the discharge of an employee for violating Rule 132(1) of the Company's general rules. That rule states in relevant part,

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

1. Stealing or malicious conduct, including destroying, damaging, or hiding any property of other employees or of the Company and the destruction, damaging or pilfering of vending machines or equipment made available to employees for the purpose of in-plant feeding.

As discussed in more detail in the earlier section of this opinion, the Grievant was found, during a random vehicle search by plant security personnel, with a wooden box in the back of his pickup truck. The box contained a gear which costs the Company about $560.

There is no question that the Grievant did not have a materials pass to remove this box from the plant on the day he was found with it. Nor was any question raised by the Union over whether the box in question was Company property or contained the gear identified by the Company.

In essence, the Grievant has offered one explanation for the presence in his truck of the gear inside its packing box. The Grievant has argued that he believed the box was a solid block of wood, and that he took it out of the plant "legally" on a materials pass about a week earlier.

There is ample evidence that the Grievant did in fact take out of the plant several loads of scrap wood about one week before the incident leading to his discharge. Mr. Hafner's testimony corroborates the Grievant's on this point.

Mr. Pickett testified that he placed a large wooden box on the scrap pile several days before the Grievant had a materials pass and that he thought this box contained a smaller box like the one in question, which he thought was probably filler. However, the Arbitrator questions both the credibility and the relevance of this testimony. Mr. Pickett's testimony was not presented in an earlier stage of the grievance procedure. It is difficult for the Arbitrator to believe that several months after the fact he could remember accurately the filler contents of a particular box being thrown on the scrap pile. In addition, Mr. Pickett located the larger wooden box as being outside on the scrap pile; the Grievant testified that he found it inside the plant, near the Roll Shop.

However, even if this evidence were completely credible and consistent, it does not necessarily control the outcome in this case because the question remains whether the Grievant realized the object was a box when he handled it later. For even if the Grievant did innocently take the box outside of the mill inside a larger box on a legitimate materials pass, he had an obligation to return it as soon as he realized that it was not scrap wood.

Thus, the linchpin of the Grievant's case rests on the credibility of his claim that he never realized the object was a box, but rather thought it was a solid block of wood. The Arbitrator has carefully considered

the facts in the Grievant's favor in this regard, including the testimony of his father that he had suggested to his son that he obtain blocks of wood to block his truck and the testimony of another employee that he saw the object in the Grievant's truck several days before it was discovered. The Arbitrator also has considered the following facts: 1) the box did not appear to have been opened; 2) the gear does not appear to be of much value to anyone outside the plant; and 3) the Grievant generally was cooperative with the guard in the random search.

However, having carefully considered these factors, the Arbitrator concludes that other factors seriously undermine the Grievant's story that he believed the object was not a box. First, he lifted it and carried it manually several times, by his own account -- out of the larger box at home, into his truck, and later from the bed of his truck into the wooden box on his truck. The box, with the gear inside weighs forty-eight (48) pounds, which is noticeably heavier than the amount a solid block of wood of that size and type would weigh. The wood of which it is constructed, from the Arbitrator's own observations, is rough, cheap, light wood (like pine) that is commonly used in packing crates, etc. One would expect a solid block of this material to weigh far less than 48 pounds.

Even more convincing, it is clear from even a casual observation of the object that it was constructed of a number of pieces of wood nailed together. The cracks between the pieces are plainly visible, as are the nails. Even the Grievant's witness, Mr. Fiegle, who testified that he saw the object from a distance in the Grievant's truck, consistently described it as a "box," not a block of wood, and specifically stated in his testimony that he thought this was a box, not a block of wood. (The Arbitrator is not convinced, by the way, of the credibility of Mr. Fiegle's testimony that he did see the box in the Grievant's truck several days before the Grievant was caught with it).

The Grievant testified at one point that he believed that pieces of wood were nailed over a solid block of wood to "square it off." The Grievant did not give a good explanation of why this procedure would be necessary.

The gear was not packed tightly in the box; there was perhaps a half inch or so of space between the gear and the wooden box. Under these circumstances the gear would be likely to shift slightly when the Grievant lifted the object, and to make a noise as it hit the edge of the box. The testimony of the security guard indicated that this did happen at the time the Grievant was stopped by him and lifted the object off his truck.

In addition, the Grievant worked as a Materials Transporter before he was discharged. Therefore his job required him to lift and load boxes exactly like the box in question in the course of his job. This fact alone seriously weakens the Grievant's credibility in regards to his statement that he believed the object was a solid piece of wood rather than a box. In addition, his job provided him access to the location where the box would normally have been stored.

The Arbitrator also is persuaded by the Grievant's own behavior in this case that the Grievant realized the object was a box. When first confronted by the security guard he told him that he had found the box on Cline Avenue. He testified that he told this lie because he thought the matter would stop there. This initial lie of course throws doubt on the Grievant's entire credibility in this case. Even beyond this obvious fact, however, the Grievant had a much stronger motive to lie if he believed the object were a box rather than a block of wood. If he had truly believed that the object were a worthless block of scrap wood, there would have been very little reason to lie about where he had obtained it.

Nor is the Arbitrator persuaded by the argument that the Grievant went back and forth for several days into and out of the plant with the object, and would not have done so if he thought it were a box containing something valuable. The evidence does not definitely establish that the Grievant took the box with the earlier scrap wood, as opposed to taking it on the day he was found with it.

Therefore, on the basis of all this evidence, the Arbitrator concludes that the Company has successfully established that the Grievant was in the imminent process of taking a valuable part off the Company premises. The Arbitrator has concluded that the Grievant's excuses for doing so are not believable.

It is less clear whether the Grievant knew exactly what was in the box, or its value. However, the evidence indicated that the Grievant, as a Materials Transporter, handled boxes of this size and type which he knew contained gears and other equipment parts.

Nor is it clear why he would be taking something which, according to the evidence presented at the arbitration hearing, would have little value to anyone outside the plant. There was no evidence of prior misconduct on the part of the Grievant in this case or anything else which would explain why he did what he did on the day in question. The Grievant may have acted as he did as a result of a foolish mistake on his part, or as a prank to see what he could get away with.

In Inland Award 856, Arbitrator Bethel upheld the discharge, even though there was no obvious reason why the Grievant would steal the object(s) in question. Theft, or a theft which would have occurred except for the interception of the Company's security personnel, is a very serious matter. The lack of evidence that the Grievant had any good reason to steal the object is one factor the Arbitrator has considered in assessing the Grievant's credibility in regard to his excuse for why he had the object. But the Company need not prove a good reason for a theft in order to discipline an employee for that theft.

There has been no suggestion in this case that if the Grievant knowingly took the box the discharge should be mitigated by the fact that he did not actually leave the premises of the plant with the material. As Arbitrator Bethel held in a somewhat similar case between these Parties,

The company has a legitimate interest in safeguarding its property. That interest extends to sanctions against those who try to steal, but fail. Perhaps it could not apply sanctions to those who plan a theft and then think better of it. But when its enforcement efforts pay off and a random search discourages an attempt, the individual whose plan was foiled cannot claim the benefit of the company's diligence. (Inland Award 856, 1992).

On another point, Arbitrator Bethel distinguished Award 856 from an earlier case where an employee stole a snack cake worth fifty-five cents from an already broken machine. (Inland Award 848). Arbitrator Bethel overturned the discharge in the earlier case, reasoning that the grievant had not broken the machine, had acted on impulse, and that the item was of very little value. He contrasted that with the facts involved in Award 856, where the item was worth about $1200 and the Grievant planned the removal of the objects. The instant case is more like the latter case. Here the object is worth more than $500 and the evidence suggests that the Grievant either planned to take it, or having taken it mistakenly, did not plan to return it. The discharge resulting from this action is very unfortunate, given the Grievant's thirteen-year tenure with the Company, and the absence of any similar blot on his past record. But the Arbitrator is convinced that, for whatever reason, the Grievant was taking valuable material out of the plant on that day.

It may well be that the Grievant would not repeat that action if he had that day to relive. However, I cannot ignore the facts or the legitimate rule safeguarding the Employer's property. If there were any reasonable doubt in the Arbitrator's mind that the Grievant really did perceive the object to be a solid block of wood, the outcome of this grievance might be a different. Furthermore, this might be a different case if the Grievant had admitted that he made a mistake. As it is, however, the basic trust between the employer and employee has been breached by the Grievant's actions in this case. Therefore the discharge is upheld.

AWARD

The grievance is denied.

/s/ Jeanne M. Vonhof
Jeanne M. Vonhof
Labor Arbitrator
Acting Under Umpire Terry Bethel
Dated this 5th day of March, 1993.
Chicago, Illinois.