
In the Matter of Arbitration Between:)
Ispat-Inland Steel Company)
and)
United Steelworkers of America)
Local Union No. 1010.)

Gr. Nos. 1-W-013
Appeal No. 1586
Award No. 975

INTRODUCTION

The Undersigned Arbitrator was appointed according to the rules of the applicable collective bargaining agreement. This hearing was held on November 16, 2000 at the Company's offices in East Chicago, Indiana.

APPEARANCES

UNION

Advocate for the Union:

D. Reed, Secretary, Grievance Committee

Witnesses:

- C. Bradshaw, Grievant, First Helper
- D. Shattuck, Chairman, Grievance Committee
- R. Mosqueda, Hourly Cast House Supervisor
- A. Pugh, Keeper
- B. Tetek, First Helper
- R. Lopez, First Helper
- M. Carrasquillo, Griever

COMPANY

Advocate for the Company:

P. Parker, Section Manager, Arbitration and Advocacy

Witnesses:

R. Espinosa, Casting Supervisor
J. Griffin, Manager, Plant 2 and 3 Blast Furnaces
H. Brown, Chief, Plant Security and Fire

BACKGROUND:

The Grievant was discharged for allegedly threatening another employee in the presence of a Supervisor. Mr. R. Espinosa was working as the Turn Coordinator that day. He testified that the furnaces are normally staffed by three employees, a Keeper, and two (2) First Keeper Helpers. The Keeper has responsibility to make sure that the furnace is ready to cast. According to the Turn Coordinator, the Keeper does not direct the First Helpers to do their jobs, but he does direct them to help him do his job.

The Turn Coordinator said that on the day in question Keeper N. Dix called him on the radio and said that he was having a problem. The Turn Coordinator headed to the Casthouse, not knowing the nature of the problem. When he arrived in the Casthouse lunchroom, Keeper Dix told the Supervisor that he had told the Grievant to put covers on the iron runners that morning. He said that the Grievant argued about it, but did complete the work. Later in the turn, there was a call for sand and breeze, and the Grievant began to move the items with an overhead crane to the required location in the Casthouse. In the middle of moving the sand, Keeper Dix said he told the Grievant that that job could wait because the pugh ladle was getting full and it was necessary to knock down a dam. The Keeper said the Grievant told him that if he wanted the dam knocked down, the Keeper could do it. The Keeper did knock the dam down and then called the Turn

Coordinator. He told the Turn Coordinator that the Turn Coordinator needed to talk to the Grievant.

The Turn Coordinator went to the Casthouse and told the Grievant that he wanted to talk over a problem with him in the lunch room. He said that the Grievant followed him to the lunch room. Bull Gang Leader Pugh was just leaving the lunch room when the Turn Coordinator and the Grievant walked in. Keeper Dix already was there. According to the Turn Coordinator, the Grievant began shouting as soon as they walked in, calling Mr. Dix an obscene name and accusing him of "f----- with me." He said that he was older than Mr. Dix and Mr. Dix had to respect him, and that Keepers had been "f----- me over for the last 5-6 years." Then, according to the Turn Coordinator, the Grievant said to Mr. Dix that they could take this outside, that he had a gun and "I'll blow your a-- away." According to the Turn Coordinator, he told the Grievant that if he did not stop screaming, he was going to have to send him home. He testified that the Grievant then told him that he better send him home or someone was going to get hurt. According to the Turn Coordinator, the Grievant said that that was "not a threat, it's a promise." The Grievant was screaming, yelling and out of control, according to the Turn Coordinator.

The Turn Coordinator said that he told the Grievant to go to the Control Room, and the Turn Coordinator followed him there. The Grievant was still talking, he said, saying that he was not going to work with Mr. Dix. The Turn Coordinator told him to drop it. The Turn Coordinator called Plant Protection to have the Grievant escorted out for insubordination. He said he sent him home for insubordination because the Grievant did not respond to his orders to calm down. He stated that he did not mention to the Plant Protection officer that the Grievant

had threatened someone when he had the Grievant escorted out, because he was nervous and scared, and he had never dealt with this type of situation before.

The Turn Coordinator talked to the Section Manager of the Plant 2 and 3 Blast Furnace Department, who told him to document the incident. After this initial conversation, the Section Manager called and left a message that the Turn Coordinator should pull the Grievant's identification badge so he couldn't come back in the plant after being sent home. While the Turn Coordinator and the Grievant were waiting for Plant Security, the Turn Coordinator said that the Grievant said to him that what happened to Mr. Dix's brother could happen to Mr. Dix. Apparently Mr. Dix's brother, formerly an Inland employee, had been shot and killed. Mr. Dix was not present when this conversation allegedly occurred. The Turn Coordinator said that he did not know whether anyone else heard this comment, but that two employees were present, the Stove Tender and the Control Room Operator.

The Union has raised an argument that the Grievant's rights under Article 8, Section 2 were violated when the Turn Coordinator called him into the lunchroom to talk to him without Union representation. The Turn Coordinator stated that he was the Grievant's immediate supervisor, because the Turn Coordinator and Casthouse Foreman jobs are "interchangeable," if there are problems at two (2) furnaces at once. In addition, the Turn Coordinator said that the Grievant never asked for Union representation on his way to the lunch room. The Turn Coordinator testified further that the purpose of the discussion was not disciplinary.

On cross-examination, the Turn Coordinator acknowledged that he was not the Casthouse Foreman on the date in question and that the Casthouse Foreman would usually be the Grievant's immediate supervisor. He also acknowledged that prior to this incident the Grievant had asked to

be moved off this turn. According to the Turn Coordinator the Grievant did not specify at that time that he wished to be transferred from the crew because of Mr. Dix. The Turn Coordinator stated that he had the same relationship with Mr. Dix as with the Grievant, and denied that he gave Mr. Dix more overtime.

The Union introduced the report of the Plant Protection Officer who escorted the Grievant out of the plant. It states,

Dispatched to above location. Arrived at 8:10 a.m. Mr. R. Espinosa reported that Mr. Cecil Bradshaw #12671 was insubordinate to him in regards to his job duties. Mr. Bradshaw talked about how his Supv. was telling him to do specific duties and Mr. Bradshaw said that he was already doing them. Per Mr. Espinosa, employee did not do them in accordance with Mr. Espinosa's requests. Escorted Mr. Bradshaw to 2BF Locker room, change clothes and shower and pull I.D. badge per Mr. R. Espinosa's requests. Mr. Bradshaw gave Lt. Alchiner (sp.?) his I.D. badge, and was escorted off property exiting south gate at 8:41 a.m. Took I.D. badge back to Mr. Espinosa and gave it to him personal. NOTE: No other talk was heard from Mr. Bradshaw about supervisors or coordinators to Lt. Alchiner (sp.?).

Mr. J. Griffin, Manager, Plant # 2 Blast Furnaces, stated that he took over the investigation of the incident. He said that when the Turn Coordinator and Mr. Dix were writing their statements about the incident there was no joking, that they appeared concerned, serious and tense. He said that he interviewed the Grievant, who denied making any threatening statements, or even arguing with Mr. Dix. He said that the Grievant claimed in that meeting that he had asked Mr. Dix, not a member of Management, for a Union representative on the day of the incident. The Grievant did claim that he had been trying to get off the crew because of Mr. Dix. The Manager said that employees are not routinely transferred for such reasons, because such transfers often involve moving other employees. He acknowledged that two other employees had been moved off the same crew at their requests, but that this was done after the furnace had been down for thirty (30) days for relining, when crew changes are common.

Mr. Griffin stated that he made the decision to discharge the Grievant because he believed the statements made by the Turn Coordinator and Mr. Dix regarding threatening statements made by the Grievant. He said that their verbal statements were consistent with their written

statements, and he disbelieved the Grievant's denials. He explained that other employees corroborated the testimony that the Grievant and Mr. Dix were arguing on the day in question. According to the Section Manger, he had no option but to take the threat seriously.

The Company's Chief of Security and Fire testified that he was brought in to counsel Mr. Dix. He said that Mr. Dix told him that the Grievant had threatened to "blow his a-- off." When the Security Chief asked Mr. Dix whether he believed that the Grievant was serious, or would carry out the threat, Mr. Dix responded, "I don't know." He said Mr. Dix hung his head and would not look at the Security Chief, which convinced the Security Chief that he was scared. The Security Chief told Mr. Dix that he could file a complaint with the police, because Plant Security could not protect him off the premises. At first Mr. Dix was reluctant to do so. The Chief said he told Mr. Dix that he did not have to file a police report, but Mr. Dix eventually decided to do so. On cross-examination, the Chief admitted that there had been no search of the Grievant's person, locker or car. He testified that if the Plant Protection Officer had known that a threat had been made, there would have been a search for a gun.

The Grievant testified that he has worked as a First Helper for most of his twenty-one (21) years. He acknowledged that putting the covers on and knocking down the dam are some of his job duties. He said that during that morning Mr. Dix had told him that Mr. Dix had knocked down the dam after the fact and asked the Grievant in an angry way "why in the f---- you didn't do your job?" The Grievant said that he just walked away. He said that at the end of the cast the Turn Coordinator came to him and asked him if he would come to the shanty. The Grievant testified that he replied, "No, not without a Griever" and "We've been over this 10,000 times before." He said that he refused to go into the shanty without a Union Representative, and he believed that he was sent home for insubordination for that act.

The Grievant said he had talked to Mr. Espinosa and the regular Turn Coordinator before this incident about transferring off the turn, because he and Mr. Dix did not get along, but that he had been told that they just had to get along. The Grievant said that normally if there is a problem on his crew, he calls the Casthouse Supervisor. He said he never calls the Turn Coordinator. He did admit to having an argument with Mr. Dix that morning, but denied making the threats attributed to him. He said he does not own a gun.

The Chairman of the Grievance Committee testified that more than one Management employee may be regarded as an employee's supervisor, in the sense that an employee must respect their authority. However, normally the person who supervises an employee at the lowest level is considered the employee's immediate supervisor, for purposes of Article 8, Section 2. There is only one immediate supervisor, he stated. He also testified that the Union advises employees to request Union representation, if an employee is called into a meeting with someone other than his immediate supervisor, and the meeting could lead to discipline. However, the employee is entitled to representation automatically, whether or not the employee requests it, according to the Chairman of the Grievance Committee.

Mr. R. Mosqueda testified that he has worked off and on as an hourly foreman for 20 years. He said that he was assigned as the Casthouse Foreman on the day in question, and was the immediate supervisor for the employees in the Casthouse that day. Normally when there are any problems in the Casthouse, the Casthouse Foreman is called. On the day in question he said that even if he could not have come immediately when called, he could have been there in 10-15 minutes. He acknowledged on cross-examination that there were water problems with a scrubber on that day, which he was attending to at the time of the incident. He also said that if there were a problem in the Casthouse and the Casthouse Foremen could not be located, or was not available, the procedure is to call the Turn Coordinator for any problems. He acknowledged that the department covers a large area to be supervised.

Mr. Pugh testified that he was there with the Grievant and Mr. Dix during the entire period before the Turn Coordinator came. He said that he heard the two arguing but did not hear the Grievant threaten Mr. Dix. He said that he is a close friend to Mr. Dix, and has not had any problems with him. He also said that Mr. Dix and Mr. Espinosa were friends at work. He explained that he knew that Mr. Dix's brother had been shot and killed, but did not know if this was common knowledge at the plant. According to Mr. Pugh, the Casthouse Foreman is the immediate supervisor for the Casthouse.

Mr. Tetek testified that on the morning in question he was working as the other First Helper. He said that Mr. Dix is a critical, bossy, "on your back" individual. He said that he witnessed Mr. Dix purposely criticizing the Grievant. According to the Witness, the Grievant

appeared not to want to argue, at one point asking Mr. Dix why he was always picking on him. Mr. Tetek said that he did not hear the Grievant make any threats. He said that the Grievant appeared upset, and under duress. After arguing with Mr. Dix, the Grievant told Mr. Tetek that he wanted a Union man right away, that he needed to get out of there.

The Witness testified that two other employees, Messrs. Lewis and Lopez, had requested to be transferred away from Mr. Dix, because he was difficult to work with, and critical. He said that Mr. Dix was quick to call Mr. Espinosa if he had a problem, calling him "my enforcer." He said that Mr. Espinosa normally was his immediate supervisor but that day Mr. Espinosa was working as Turn Coordinator, and his supervisor was Mr. Mosqueda.

Mr. Lopez testified that he had requested to get off the turn because Mr. Dix was hard to work with. If a ladle were overfilled, he believed that Mr. Dix would blame it on him. He said that Mr. Dix was verbally abusive, used profanity towards other employees, and demanded that things be done his way. He said that he talked to Mr. Espinosa and another Management official about the situation, but nothing was done at first. Eventually he was moved from the turn. He said that the Casthouse Foreman is the immediate supervisor for employees in the Casthouse.

The Griever testified that the Grievant was the Safety Representative for his department, someone selected by Management and the Union because he was respected. In other instances where employees argue, the Griever usually is called in to help resolve the situation. He said that the Turn Coordinator supervises the whole department, not just the Casthouse, whereas the Casthouse Foreman basically directs the casting operation in both Casthouses. The Casthouse Foreman is the one who handles problems, such as calling for additional help when needed.

The Grievant's disciplinary record for the five (5) years prior to his termination shows that he had received disciplinary time off on four occasions for absenteeism. He also received a record review for absenteeism on February 6, 1998.

THE POSITIONS OF THE PARTIES:

The Union argues that there are significant discrepancies between the various reports about what actually occurred on the day in question. If threats had been made, they would have

been overheard by Mr. Pugh and others, the Union argues. However, neither Mr. Pugh nor any other employee testified that they overheard any such threats.

The Union also argues that the Grievant's immediate supervisor on the day in question was Mr. Mosqueda. Several Union Witnesses testified that their immediate supervisor when they were casting was the Casthouse Foreman. The Grievant should have been provided with Union representation in his discussion with the Turn Coordinator, since he was not the Grievant's immediate supervisor, the Union argues.

In addition, the Union contends that the Grievant should not have been working with Mr. Dix at the time of this incident. Mr. Dix was overbearing and used profanity towards co-workers. Mr. Dix had problems with other employees, not only the Grievant. The Grievant is a 22 year veteran of the Company, with 21 years at the No. 2 Blast Furnace. He knew his job, had received accolades, and had never received discipline for poor workmanship. He also served as the Safety Advocate, a position of respect. The Grievant was the object of a conspiracy to defame, disgrace and ridicule him, according to the Union, and the discharge was not for just cause.

According to the Union, anytime a gun is mentioned by an employee in the plant, the Company conducts a search for a weapon. The fact that no search was conducted and no mention of a gun was made to Plant Protection calls into question whether a threat ever was made, the Union argues. The Union suggests an alternative scenario: that the Company could not fire the Grievant for insubordination and so the threat was made up. There is not sufficient evidence that the Grievant is guilty of making a threat, and therefore, the grievance should be sustained and the Grievant made whole for all losses.

The Company argues first that there has been no violation of Article 8, Section 2. This argument was raised after the fact in order to bolster the Grievant's case, according to the Company. The Grievant never asked for Union representation. The Turn Coordinator was acting as the Grievant's supervisor, and he did not ask to meet with the Grievant for disciplinary reasons.

The Company acknowledges that the Turn Coordinator could have described the threat more clearly to Plant Protection, and the Company could have had the Grievant's car searched. However, the Company contends that it is not unusual to send an employee home for insubordination in this situation, and the Turn Coordinator's failure to report the threat to Plant

Protection does not excuse the fact that the Grievant threatened to shoot Mr. Dix. According to the Company, there is ample evidence to support this point. The Company contends further that the Grievant's denial that he was even present in the shanty indicates that: the Grievant understands that making such a threat is a dischargeable offense, and the Grievant has no remorse over the situation.

The Company contends that it has a zero tolerance policy when it comes to having a gun in the plant or threatening to shoot someone with a gun. The Company cannot afford the risk that someone will make good on a threat, and the Company will not tolerate the creation of such a hostile atmosphere in the workplace that comes when threats are left unchecked. For all of the above reasons, the Company argues that the grievance should be denied.

DECISION:

This is a case involving the discharge of the Grievant for allegedly threatening another employee. As a threshold issue, the Union argues that the Company erred when it failed to provide Union representation for the Grievant in the meeting where he is reported to have made the threat. Under Article 8, Section 2 of the labor agreement, "an employee who is summoned to meet in an office with a supervisor other than his own immediate supervisor for the purpose of discussing possible disciplinary action shall be entitled to be accompanied by his Grievance Committeeman or Assistant Grievance Committeeman if he requests such representation..."

There is a major disagreement between the parties about whether Mr. Espinosa was the Grievant's immediate supervisor on the day in question. The evidence indicates that the Casthouse Foreman is generally the immediate supervisor for the Casthouse crew. The Company presented testimony that the Casthouse Foreman and the Turn Coordinator are interchangeable, however, as immediate supervisors, at least when there are two furnaces running. The Union presented the testimony of several employees who work in the Casthouse, each of whom said that they consider their immediate supervisor to be the Casthouse Foreman. When there is a problem, he is the person they call. Although both parties introduced arbitration awards, none of them

addressed the situation at issue here, where the Company contends that either one of two employees can be considered an immediate supervisor, for purposes of Article 8, Section 2.

The Turn Coordinator oversees the entire department on that turn, according to evidence submitted by the Union. Therefore, it makes sense that the Turn Coordinator would step in as supervisor for the Casthouse Foreman when the Casthouse Foreman is not available. The hourly employee who worked as Casthouse Foreman on the day in question acknowledged that the Casthouse Foreman and the Turn Coordinator often work interchangeably, if need be. The Casthouse Foreman also testified that he was working on a problem with a scrubber on that morning, and could not have gotten away immediately to handle the situation between Mr. Dix and the Grievant. The Turn Coordinator knew that the Casthouse Foreman was otherwise occupied, and believed that he was acting as a supervisor. He normally worked as the immediate supervisor for the Casthouse crew. In addition, as Article 13.78 of the Agreement makes clear, hourly employees who are temporarily assigned as supervisors do not have full supervisory authority with regards to other hourly employees: they may not issue discipline letters to employees. Thus, if any discipline were being considered at the time the Grievant was called into a meeting, as the Union argues, then it appears that the Turn Coordinator would be considered the Grievant's immediate supervisor for this purpose. Therefore the evidence strongly suggests that the Turn Coordinator would be considered the Grievant's immediate supervisor on the day in question, for purposes of Article 8, Section 2.

However, there is no need to ultimately decide that question in this case, because the Arbitrator concludes that the discharge must be overturned for other reasons. With regard to whether the Grievant made the comments attributed to him, the evidence does not support the conclusion that the Turn Coordinator fabricated the incident. There was no history of bad relations between the Grievant and the Turn Coordinator, who must have understood the seriousness of making such an accusation. The oral and written statements made shortly after the incident by the Turn Coordinator and Mr. Dix also support the credibility of the Turn Coordinator. Furthermore, the Grievant's blanket denial that he engaged in any conversation, or even entered the room, do not ring true.

Uttering threatening words in the workplace is a dangerous and foolhardy act. It is an action which Employers do not take lightly. The action may provide grounds for discharge under certain circumstances, as the cases relied upon by the Company show. Inland Award Nos. 757 and 839. However, balanced against a legitimate concern about workplace violence in a case like this are the facts about one individual employee who has 22 years of history with the Company. There was no evidence that the Grievant had any prior history of using abusive or threatening language to supervisors or co-workers, other than the statements made in the few minutes which formed the basis for his discharge. In addition, the cases cited by the Company involved employees who engaged in physical fighting, and the use of weapons against other employees, as well as issuing verbal threats. While the presence of such physical conduct may not be necessary in order to sustain a discharge for issuing a verbal threat, the behavior in those cases was more serious than in the case at issue here.

Furthermore, there is evidence that there were problems on this crew, and that the Grievant had tried to take sensible action by notifying Management about the situation, prior to the incident which led to his discharge. The Arbitrator appreciates the Company's concern that it cannot begin bumping employees each time employees have problems with each other while assigned to the same crew. However, it appears that Management received enough information that there were significant ongoing interpersonal problems on this crew so as to require at least more investigation. The Grievant was extremely frustrated and angry because of events arising on that day, but also because of tension building up for some time. This tension contributed to the Grievant "blowing his top" on the day in question. Therefore, the Arbitrator concludes that Management may have been partially responsible for the situation that arose on the day in question.

The Turn Coordinator treated the Grievant's conduct at the time of the incident more like an angry outburst than a serious threat. When the Grievant uttered the threatening words, Mr. Espinosa did not send him home immediately. Instead, according to Mr. Espinosa's testimony, after the Grievant issued the threatening words, Mr. Espinosa told the Grievant that he would have to settle down, or he *would* be sent home. If the Grievant had calmed himself at that time, it is not clear that he would have been sent home at all. When he did not settle down, Mr. Espinosa

called Plant Protection to send him home for insubordination. He explained at arbitration that the insubordination was the Grievant's refusal to calm down.

Most importantly, Mr. Espinosa did not tell Plant Security that the Grievant had made any threats when he called Security to take the Grievant out of the plant. He explained this omission as caused by nervousness. However, it is difficult to believe that a supervisor, even one who had not dealt with a threatening situation before, would neglect to tell Plant Protection that an employee had threatened to shoot another employee, if he believed that a serious threat had been made.¹ There might be more support for the Company's position if the Plant Protection report stated simply that the Grievant was being sent home for insubordination. Instead, it contains several sentences about the Grievant's alleged failures to perform certain duties that morning. The details of the Plant Protection report indicate that it was gleaned from a discussion with Mr. Espinosa on that day. There is no mention in this report at all of any insubordination arising out of the Grievant's conversation with Mr. Espinosa. Nor is there any mention in that report of any threatening comments made by the Grievant. Therefore, even when the Turn Coordinator had enough time to calm down and describe the events causing him to send the Grievant home, he did not mention the threatening comments.

The Company did pull the Grievant's I.D. before he went home, allegedly to prevent him from returning to harm someone. That suggestion did not come from Mr. Espinosa, however, the Management person directly involved in the situation. Even Mr. Espinosa's supervisor, who recommended that the Grievant's badge should be pulled, did not suggest that the Grievant or his locker should be searched. If Management seriously believed the Grievant's threat at that time, it does not make sense that the Company would not order the Grievant'

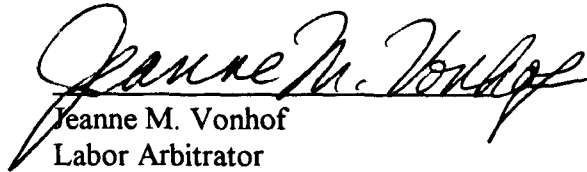
¹ The Arbitrator also has considered the testimony that the Grievant repeated a similar threat after leaving the lunchroom. The Turn Coordinator did not mention these comments to Plant Security either, however, which suggests that he did not consider them to be a serious threat, just as he did not consider the comments a few minutes earlier to be a serious threat.

Therefore, the Arbitrator concludes that on the day in question there was not a clear conclusion by Management that the Grievant was seriously threatening another employee. Furthermore, the Company may be partially responsible for the situation which gave rise to the Grievant's outburst. In addition, there is no record of any other similar incidents involving the Grievant.

On the basis of all these facts, the Arbitrator concludes that discharge is not appropriate here. Nevertheless, the Arbitrator concludes that the Company was justified in issuing substantial discipline to the Grievant. Employees may not make idle threats to shoot someone with a gun. Although it does not appear that the Management directly involved with the Grievant at the time of the incident considered his words to indicate a serious intent to harm another employee, no employee can take the risk that those who hear such words will regard them as an idle threat. The words here were expressed in anger, and even if the Grievant did not truly mean to threaten Mr. Dix, such statements are likely to cause fear, confusion and disruption in the workplace, which often extend to other employees beyond the immediate parties to the conversation. Frustration over a difficult work situation does not excuse the Grievant's actions. Employers generally must take such threats seriously, especially given the ready access to weapons in this country. Furthermore, the Grievant has not taken responsibility for his actions or expressed remorse for them. Therefore, while the Grievant will be reinstated, he will not be awarded backpay. The time he has been off work will be regarded as a disciplinary suspension.

AWARD:

The grievance is sustained in part. The Grievant is reinstated without backpay. The period between his discharge and reinstatement is to be considered a disciplinary suspension.


Jeanne M. Vonhof
Labor Arbitrator

Dated this 20th day of January, 2001.

Acting under Umpire Terry Bethel.

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GRIEVANCE COMM. OFFICE