

IN THE MATTER OF THE ARBITRATION BETWEEN

ISPAT INLAND STEEL COMPANY

And

Award 1014

UNITED STEELWORKERS OF AMERICA
LOCAL UNION 1010-27

OPINION AND AWARD

Introduction

This case concerns the discharge of Grievant David Wozniak for attempting to impede production and recklessly endangering fellow employees. The case was tried in the Company's offices in East Chicago, Indiana on March 8, 2004. Patrick Parker represented the Company and Bill Carey presented the case for the Union. Grievant was present throughout the hearing and testified in his own behalf. The parties submitted the case on oral argument.

Appearances

For the Company:

P. Parker.....Section Manager of Arbitration and Advocacy
D. Zellers.....Hourly Ladle Metallurgical Supervisor, No. 4 BOF
F. Cruz.....Supervisor, No. 4 BOF
R. Besich.....Section Manager, No. 2 BOF/CC Caster
C. Lamm.....Senior Representative, Union Relations
P. Street.....Student Intern

For the Union:

B. Carey.....USWA Staff Representative
D. Wozniak.....Grievant
D. Reed.....Secretary, Grievance Committee
J. Straugh.....Griever

Background

At the time of his discharge on December 11, 2003, Grievant was working as a ladle craneman in No. 4 BOF/CC. Company witnesses testified about the need to transport ladles promptly to avoid getting behind. The Company alleges that on December 4, 2003, Grievant came to work upset because he learned that he had lost a grievance. Doug Zellers, Hourly Ladle Met Supervisor, testified that at the beginning of the shift he noticed the crane was running “real slow – barely moving.” The ladleman had complained to Zellers, asserting that Grievant was operating the crane slowly because he was angry over losing the grievance. Zellers said he decided not to confront Grievant over the matter at that time but, instead, wanted to wait and let Grievant “cool down.” Later in the turn, the ladle helper told Zellers that Grievant had hit him with the crane’s J hook. The Company introduced pictures of the J hook, which is quite large and, according to one witness, weighs a ton.

Zellers said he contacted the other supervisor, Frank Cruz, and that the two of them got on the crane to speak to Grievant. Zellers said Grievant stared straight ahead and did not look at them. When asked about the slow operation, Grievant said he was going “back to basics” and that anything extra “was going to cost you.” Grievant then told them to “get the fuck out of my crane” and advised them to let him know the next time they planned to board it. It is apparently standard procedure to let the crane operator know before getting on the crane. Zellers said earlier

he had called another craneman to make some moves in the south end, work that the ladle crane operator can sometimes do. Zellers said Grievant could not do this work because he was operating so slowly. Zellers said he and Cruz decided to call plant protection and send Grievant for a fitness-to-work test. Subsequently, the two supervisors discovered that Grievant had also hit the ladleman with the hook, knocking off his hat.

On cross examination, Zellers acknowledged that he did not say anything to Grievant about slow production prior to boarding the crane, even though he thought Grievant was operating slowly at the beginning of the turn. He also said there is a window in the crane and a radio he could have used to contact Grievant. The turn had started at about 2:00 p.m., and Zellers said he and Cruz got on the crane to talk to Grievant about slow operation between 3:30 and 3:45. He had first noticed the slow operation at about 2:15.

At the time of the incident on December 4, Cruz was in training as a supervisor. He said Zellers contacted him and told him they were falling behind because the crane was running slow. The two men went to see Grievant. Cruz said when they got to the crane, it was parked with the J hook on a ladle that was on the scale. Apparently, the supervisors thought this minimized any danger that they would startle Grievant and cause him to move the crane erratically. Cruz said Grievant was not startled when they approached him and that he did not look at them. Zellers asked Grievant if he was going to run in first point – the slowest setting – all day and Grievant said he was “getting back to basics” and that “first point is all you’re going to get.” Grievant also said if they wanted anything else, they would have to pay for it. He then told them to “get the fuck off my crane.” The two supervisors interviewed both the ladle helper and the ladleman about getting hit with the J hook. Each one described how the incident occurred, with Grievant moving

the J hook into them. Cruz testified that a crane operator should never move the crane without having been signaled by the person on the ground.

On cross examination, Cruz agreed that sometimes the man on the ground doesn't give a signal and, because it's a routine move, the craneman goes ahead and does it. But, he said, the craneman has to wait until the people on the ground are far away from the hook before doing this. Cruz said he thought the ladles were behind shortly after the start of the shift, although the operation had not been behind before the start of the shift. But he agreed that the operation could not get four ladles behind in 20 or 30 minutes, and he said it was possible the problem had started on the previous turn.

Rick Besich, Section Manager of Casters at No. 2 BOF, testified about the importance of not falling behind with the ladles. He also described Grievant's previous disciplines, which included an incident in January 2002, when the slab turner was down at the scarfer, and Grievant damaged slabs when negligently turning them with the crane. The Company gave Grievant a reprimand letter and told him that a repeat incident could lead to more serious discipline. On February 20, 2002, Grievant refused to operate the crane as directed and, when he was told that he would be escorted out of the plant, Grievant put a padlock on the crane's main switch. The Company says this was an attempt to shut down the scarfer. Grievant was given three days off for insubordination and had a record review in which he was told that a repetition of this kind of behavior could lead to discharge. On May 3, 2003, Grievant broke the crane bucket, which Besich thought was a deliberate action to avoid doing a particular job. Grievant was given a one day suspension for his conduct.

Besich said there was an investigation following the incidents at issue here. This revealed there was nothing wrong with the crane, which was contrary to Grievant's claim that it would not even run in first point that day. Other bargaining unit employees said Grievant was operating very slowly. Besich also reviewed statements from employees about how they were hit with the J hook. Besich said he had never heard of anyone getting hit with the J hook and Grievant hit two employees within a short period of time. Besich said he thinks Grievant's record demonstrates that if he doesn't get his way, he will try to insure that the work doesn't get done. In this case, Grievant's actions were particularly dangerous because he hit two employees with a very heavy piece of equipment. On cross examination, Besich acknowledged that the ladleman had not reported to management that Grievant had hit him with the crane. The Union's representative also suggested that the ladle helper had backed into the J Hook. Besich agreed that there are grievances pending over Grievant's other disciplines. I asked Besich if he would have expected a supervisor to tell a crane operator to speed up if he was behind at the beginning of a turn and Besich replied, "In some cases." On redirect, he said a supervisor might not confront an employee at the beginning of the turn, but would "make a mental note of it."

Grievant testified that he learned just before the turn that he was not going to be paid for a promotion that he thought had been improperly denied when a junior employee had been promoted around him. He said he then told another employee, "The good times are over for me. I have to get back to basics." He said this meant he wanted a higher paying job and he did not want to "mess up." Grievant said he did not try to cause any delays in the operation. He said he wanted to take an appropriate amount of time to make the moves so he could work properly. He denied running in first point and, in fact, said the crane would not even operate in that setting.

Grievant said he was operating at an appropriate speed. Grievant said the J hook hit the ladleman's hat only because the ladleman was moving too quickly and not watching the J hook. This caused him to run into it. Similarly, he said the ladle helper stood up and backed up into the hook, thus hitting himself in the back. Grievant denied wrongdoing in either incident. He said the ladle helper yelled and screamed and used obscene gestures, but that Grievant simply replied that he should see the supervisor if he had a problem. He also claimed that the helper boarded the crane and wanted to fight him.

Grievant said the two supervisors did not announce themselves when they got on the crane and that this shocked him. They asked him what was going on and Grievant replied that he was not having a good day and that he "could only get the basics done." He also told them that he was having problems with the schedule, that things were "falling apart," and that he would not have time to do any extras, like moving material at the south end.

On cross examination, Grievant said the January 2002 incident was prompted because there was something wrong with the crane that no one could find. He denied refusing to operate it. Grievant acknowledged locking out the crane in February of 2002, but he said he didn't give the key to the supervisor because the supervisor didn't ask for it. As for the culminating incident, Grievant testified that he told "everyone" he was going to operate the crane as efficiently as he could, a claim the Company said it had not heard before the arbitration. Grievant said this was not in the third step minutes because they are inaccurate and "lots of things were left out." Grievant also claimed that the ladle helper and ladleman seemed distracted that day and that they should have been more careful.

The Griever testified that he was at the third step and that Grievant's testimony at the arbitration was not completely new. He put some stress on the word "completely." He also discussed the procedure for hooking up to the crane and the possibility the men on the ground could have slipped or tripped on the uneven surface.

The Company argues that either of the offenses justified the discharge. Grievant deliberately or recklessly hit two co-workers with the J hook and he intentionally ran the crane in a manner intended to slow down production. He had engaged in similar behavior before and had been warned about the consequences. The Company also says Grievant's testimony was not credible and that much of it had never been revealed in the grievance procedure. The Union argues that a number of minor incidents were blown out of proportion. It says the employees on the ground hit the J hook themselves and that there was no documentation at the hearing that the ladle operation fell behind that day. It also points out that Zellers did not think the problem was serious enough to warrant his attention early in the turn. The Union says that the Company's speculation about motive is meaningless without proof.

Findings and Discussion

Grievant was not a credible witness. By the time of the hearing, he had had time to think of explanations for his actions and comments that had not occurred to him previously. For example, he explained his "back to basics" statement by claiming he told co-workers he wanted to get back to basics so he could get a promotion. He also tried to explain his comment to Zellers that he would only operate in first point by claiming he said the crane was slow and "felt" like it was in first point. This testimony was clearly not true. Nor is there any truth in Grievant's story

that he did not hit his co-workers with the J hook and that, instead, both of them bumped into it. It is not of great significance that the ladleman did not promptly report this incident to management. Bargaining unit employees sometimes avoid reporting another employee's misconduct. But the ladleman confirmed that the incident occurred – and that it was Grievant's fault – when interviewed by the Company. If the ladleman thought the matter was not serious, the Union could have called him to testify.

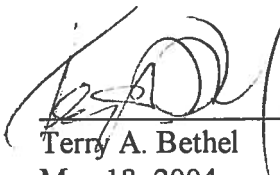
I find that both of the allegations against Grievant are true: he tried to impede production and he hit both of his co-workers with the J hook. Moreover, it seems likely that hitting the two employees was either deliberate or the result of a reckless disregard for their safety. Both Company and Union witnesses said they were not aware of another employee ever having been hit. Yet Grievant hit two of them in less than an hour, something that could not have happened unless he wanted it to or unless he was blatantly indifferent to the consequences of his actions.

I have some doubt about whether, in the circumstances of this case, Grievant's slow operation of the crane would be sufficient, of itself, to justify his discharge, although it certainly would warrant discipline. This is a serious offense, and I find it significant that Grievant had been disciplined on other occasions about letting his emotions overcome his judgment and taking out his anger by refusing to work properly. This was a lesson he obviously had not learned. But I must question whether Zellers regarded the slow operation as crucial that day. He observed Grievant's conduct early in the turn, but did nothing. This may have been simply a reluctance to confront an angry employee who presumably had a reputation for being argumentative. But Grievant's conduct might have been affected by a rebuke from Zellers early in the shift.

The same thing is not true, however, of Grievant's actions against his co-workers. The workplace often leads to frustrations, and employees sometimes react in ways they would not have if they had time to exercise sound judgment. Presumably, this is the reason arbitrators have sometimes required employers to give employees a warning about the consequences of insubordination before taking disciplinary action. In some cases, the employee relents and no harm is done. But some actions cannot be reversed. Here, Grievant hit co-workers with a J hook that weighed a ton or more. Fortunately, neither was injured. But Grievant could not have known this would be the result when he hit them. I cannot say whether Grievant acted out of anger at management, or for other reasons. But proof of a motive is not essential in a case like this. The fact is that Grievant put other employees at risk of serious injury and he must bear the consequences of his actions. This is a case in which long service with the Company is not a mitigating factor. I find that this conduct provided the Company just cause for discharge, especially when combined with Grievant's attempt to impede production. Thus, the grievance will be denied.

AWARD

The grievance is denied.


Terry A. Bethel
May 18, 2004

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