

IN THE MATTER OF THE ARBITRATION BETWEEN

ARCELORMITTAL USA
CLEVELAND PLANT

And

ArcelorMittal Case No. 106

UNITED STEELWORKERS
INTERNATIONAL UNION AND
LOCAL UNION 979, USW

OPINION AND AWARD

Background

This case from the Cleveland plant concerns the discharge of Grievant Brett Deamon for stealing time and falsifying Company records. The case was tried in Independence, Ohio on February 28, 2020. Manager of Labor Relations Janet Jordan represented the Company and Grievance Chairman Tony Panza presented the case for Grievant and the Union. Grievant was present throughout the hearing and testified in his own behalf. The parties submitted the case on final argument.

Labor Relations Representative Michelle Hattendorf testified that in December 2018, the Company received an anonymous complaint on its Alertline System Report that four employees, including Grievant, were arriving late and/or leaving early, but claiming pay for the entire workday. Hattendorf said the Company began an investigation, but it did not get far because the cameras which could have captured the actual arrival and departure times of the employees were not working properly. Apparently, the Company let the matter lie until September 2019, when it received another anonymous complaint about another employee. Hattendorf said she reviewed

the time sheets and camera footage for that employee and also for Grievant. She determined that there had been several occasions when Grievant had come in late or left early, but did not note those occurrences on his time sheet.

Until May 2019, Hattendorf said, the Company had mostly used paper time sheets. Beginning in May, employees began swiping in and out with badges, although this was a trial period and employees still used paper time sheets. If employees forgot their badges, they were supposed to alert a security guard, giving their name and clock number. They were also supposed to inform their supervisor. Employees were sent a letter explaining this procedure. On September 19, 2019, the Company sent all employees a letter explaining that the system in use since May would “GO LIVE” on September 22, 2019. At that time, the clock-in and clock-out times from the badge system would be used to determine hours for which employees would be paid. Employees were told again to notify the security guard and their supervisor if they forgot their badge. In addition, they were instructed to continue to use paper time sheets until advised to stop.

During the arbitration hearing, the Company focused on Grievant’s time sheet from the week beginning October 6, 2019 and ending October 12, 2019. On Sunday, October 6, 2019, Grievant was scheduled to work ten hours, from 5:00 a.m. to 3:00 p.m. At 6:18 a.m. on October 6, Grievant sent an email to Donna Sinegar of Division Administration/Finishing which said, in full, “I drove my wife’s car today and completely forgot timecard. 5a til 3p in W2.” Sinegar responded by reminding Grievant that when he did not have his time card he was required to stop at the gate and buzz the guard, which Grievant had not done, and that he was to do so going forward. The video from that morning revealed that Grievant drove his own truck (with a noticeable vanity license plate) and not his wife’s car, and that he did not arrive at work until

5:54 a.m. In addition, Grievant did not work until 3:00 p.m.; rather, he left at 1:45 p.m. Because he did not swipe in and out, and because he failed to notify the guard on his arrival, Grievant's time worked on October 6 was determined from the written time sheet. On that document, Grievant claimed to have arrived at 5 a.m. and to have left at 3:00 p.m., all of which was paid at the time-and-a-half premium (Sunday) rate.

Hattendorf said Grievant has not denied arriving late or leaving early. However, in the second step grievance meeting, Grievant claimed that he meant to say in his email that he left his wallet containing his time card in his wife's car, not that he drove his wife's car to work. Hattendorf said other instances of late arrivals or leaving early were discussed in the grievance procedure and Grievant did not deny them, either. Those instances were not detailed at the arbitration hearing. The other incident Hattendorf discussed in arbitration occurred on November 14, 2019. On that day, Grievant was scheduled to work at 6:00 p.m. The camera showed him driving into the hot mill area at 5:58 p.m. Grievant backed into a parking space in an inappropriate area at about 6:00 p.m., and was still sitting in his truck at 6:24 p.m. At 3:47 a.m., Grievant returned to his truck and, at 3:49 a.m., drove it out of view of the camera, apparently heading for the employee parking area. He was not shown leaving the gate until 6:07 a.m.

On cross examination, Hattendorf said that on a regular basis, when Grievant arrived late or left early, he did not swipe in or out. She said there were three other instances that were discussed in the grievance procedure. She also said Grievant would not have been paid for the time in those instances, if he had noted them on his time sheet.

Grievant had about seven-and-a half years of service at the time of his discharge. He said his last job was as a floater crane operator, that he went to different buildings, and that he worked

different hours every day. He did not have a relief and he sometimes finished early, although apparently he was not allowed to leave early. Grievant testified that he was not scheduled to attend any of the meetings over the badge swipe-in system and that he did not receive the letter explaining the system. Grievant said on October 6 he forgot his time card. He said he could not explain why he told Sinegar he had driven his wife's car to work. He said there is nothing he can say to make the incident all right, that he has no excuse, and that he regrets it every day. He also said he has never previously filled out a time sheet incorrectly.

John Pellegrino, Zone 2 Grievance Committeeman, testified that because the time sheets cover the entire week, some employees fill them out with their scheduled hours at the beginning of the week and then forget to go back and correct them if they actually work different hours. Dan Boone, Local Union 979 President, testified that the Company had said it would approach him if employees were getting into problems with the new swipe system. He also said if employees were not complying with the new system, they were supposed to be brought in and told how to comply. This has not been consistently applied, he said.

In its case-in-chief, the Company tendered time sheets from 2016 showing that on four occasions, Grievant had failed to ring in or out and had reported having worked more hours than he was present. I sustained the Union's objection to the evidence because the facts surrounding the exhibit had not been disclosed to the Union prior to the hearing. Moreover, they were not relied on as a reason for the discharge during the grievance procedure. However, in his testimony during the Union's case, Grievant claimed that he had never before failed to fill out a time sheet properly. The Company then offered the same exhibit on rebuttal to impeach Grievant's testimony, since the exhibit indicates that he had, in fact, filled out time sheets

improperly in the past. But this use of the exhibit bears only on Grievant's credibility. I did not admit the exhibit as evidence of wrongdoing to support the discharge.

The Company argues that this is a simple case that has nothing to do with employees experiencing any problems with the swipe system. The Company insists that Grievant "blatantly lied" about the hours he worked on a number of occasions and that he even lied about time-keeping records while testifying in arbitration. The Company says it has a right to expect honesty from its employees and it says it has been consistent in discharging employees guilty of time card theft. The Company cites *USS-45,193* and says that, like the employee in that case, Grievant was trying to gain income he had not earned.

The Union says there is no evidence of any prior problems with Grievant and no record of any discipline. It also notes that the Company was first notified about alleged time discrepancies in December of 2018, but found nothing implicating Grievant. The Company then did nothing for 10 months. It was common, the Union says, for employees to fill out their time sheets with their scheduled times at the beginning of the week. The Union says the Company's case does not support its contention that Grievant was consistently putting incorrect times on his time sheets. There were simply a few times when Grievant arrived a little late or left a little early. This, the Union asserts, should have been handled under the attendance policy, but the Company took no action. This, the Union contends, led employees into a false sense of security. The Union argues that Grievant never received the implementation training for the new swipe system. It also says the Company did not meet with him about problems, even though it was supposed to do so for employees who were having trouble with the system. The Union says it is not trying to gloss over what Grievant did. Grievant admitted his conduct and has apologized for

it, and he is not a habitual offender. The Union agrees that Grievant is subject to severe discipline, but argues that discharge is too harsh.

Discussion and Findings

As the Company correctly points out, this is not a case about difficulties Grievant had adjusting to the new swipe-in system. Grievant apparently did not receive in-person training on the system. However, it is very unlikely that he did not receive the letter explaining how the system would operate. But even if that were true, Grievant's problem in this case was not ignorance of how the system was supposed to work. Grievant drove his truck to work and failed to swipe in. He also neglected to call security when he arrived at the gate. The vice of his conduct was not simply his failure to use the card but, more significantly, his representation on the time sheet that he had arrived at 5:00 a.m. when he did not actually arrive until 5:54 a.m.; and, Grievant's time sheet said he left at 3:00 when he actually left at 1:45. Union Committeeman Pellegrino testified that employees sometimes fill out their time sheets at the start of the week and then forget to go back and correct them if their work hours change during the week. That may be, but Grievant made no claim to having done so in his arbitration testimony. And, even if he had, his time sheet appears to have other changes, including October 7 and 9. Moreover, Grievant worked non-scheduled hours on October 8, which are accurately reflected on his time sheet. In short, I do not believe that Grievant's failure to enter his proper work hours on October 6 was a mistake or an oversight.

My view of Grievant's conduct on October 6 is influenced by his claim to Sinegar that he did not have his badge available because he had driven his wife's car to work. That obviously was not true; Grievant can clearly be seen entering the gate in his own truck. He later claimed

that he meant to say he left his badge in his wife's car. But it is not easy to understand how he could have made such a significant error. Grievant's false story about what he did strongly suggests that he was simply trying to cover up the fact that he had arrived almost an hour late for work and that he did not intend to correct his time sheet to reflect that fact. Thus, I am persuaded that Grievant misrepresented the time he worked on October 6 in an attempt to receive pay for hours when he was not in the plant. He did not need training to advise him that doing so was improper and he did not need advice from supervision about how to use the new time system. As explained by Mark Kovach, Division Manager of Finishing and Shipping, the Company has to be able to rely on its employees to be honest, and Grievant was not.

The difficult issue in the case is not what Grievant did but, rather, what level of discipline is appropriate. The Company says it has regularly discharged employees for time fraud. It also relies on *USS-45,193*, in which I upheld the discharge of an employee who had fraudulently submitted paperwork asking for incentive payments that he had not earned. One difference between that case and this one, however, is that the employee involved adamantly – and, I found, dishonestly – denied any wrongdoing, including offering arbitration testimony that I found was not credible. In the instant case, I did not believe Grievant's claim that he did not receive the time system letter, and I did not believe he intended to tell Sinegar that he simply left his badge in his wife's car. But Grievant admitted recording the improper time on his time sheet. And, he did not claim in his arbitration testimony that he simply forgot to change an entry. Moreover, he made no excuse for his conduct and he expressed regret.

I also note that in *USS-45,193*, I cited several other steel industry cases in which employees were discharged for time card fraud. But all of those cases involved multiple instances of fraud, including one case in which an employee had defrauded the employer 14

times in two months. The Company says Grievant was “consistently” claiming time that he did not work, but its evidence in arbitration does not support that claim. As noted, the Company did not enter documentary evidence about other instances when Grievant was late or left early, but then claimed on his time sheet to have been at work for all of his scheduled hours. Hattendorf testified that there were three instances mentioned in the grievance procedure that Grievant did not deny. The third step minutes indicate an instance in which an unnamed member of management saw Grievant enter the plant at 7:04 a.m., but he apparently swiped in, meaning that the time system would have had his actual arrival time. Presumably, this should have been handled under the attendance policy. There was also an incident when Grievant sat in his truck from 5:50 until 5:59, and then clocked out at 5:59 instead of 6 p.m. Grievant apparently claimed that he was supporting contractors who were finished by 5:50; but again, the time system would have captured the actual time he left. On one other occasion, Grievant claimed to have forgotten his time card, but the camera captured him arriving at 7:05 a.m. and leaving at 2:58 p.m., although he claimed to have worked from 7 to 3. These instances do not establish a pattern of consistent abuse.

The other incident put into evidence at the hearing concerned Grievant’s arriving at 5:58 p.m. on November 19 and then sitting in his truck until 6:24. Grievant was training on a new bid and he said he checked with his trainer when he got to work on that down day, who told Grievant he had some time. Grievant said he spent the time on the phone talking to Committeeman Pellegrino about whether to accept the bid or return to finishing. There is no evidence that the Company tried to verify Grievant’s story that his trainer told him he could take some time before starting to work. And, there is no evidence about whether there was actually something he was supposed to be doing at 6 p.m. while the line was down. In these

circumstances, I cannot view this incident as support for the Company's argument that Grievant consistently misrepresented his time.¹

My judgment in this case is also influenced to some extent by the Company's substantial delay in investigating the anonymous report from a coworker. The report itself is hearsay and cannot be used to support the Company's case. However, the Company properly relied on it to begin an investigation. The Company says it has a lean management presence in the plant, so it is reasonable to believe that it would have been difficult to monitor Grievant's movements without the camera evidence. But the Company waited almost 10 months before reopening the investigation into Grievant's activities. I do not mean to suggest that the Company was indifferent about potential theft of time. Nor can the Union claim that anyone was misled by the Company's delay. But it is fair to believe that the Company thought it had no reason to question Grievant's time records in the period between December 2018 and October 2019. This, too, undercuts the Company's claim that Grievant was engaged in continuously entering fraudulent time sheets.

This is not an easy case. Grievant committed a serious infraction and serious discipline is warranted. If there were more substance to the Company's claim of multiple offenses, I would view the matter differently. I am also influenced by Grievant's arbitration testimony, in which he not only admitted his offense but made no attempt to excuse it, an attitude all too often absent in cases like this. After a careful review of the circumstances, I am persuaded that the Company did not have just cause for discharge. I will order that Grievant be reinstated without back pay.

¹ The Company also pointed out that Grievant got in his truck at 3:47 a.m. and drove out of view at 3:49. He was apparently heading in the direction of the employee parking lot. Given the evidence that Grievant was parked in an inappropriate spot at the start of the shift – an event that is not germane to the Company's claim of time fraud – it seems as though Grievant was merely moving his truck to the employee area. There was no evidence that he was absent from work after that time.

The period off work will serve as a disciplinary suspension. Grievant should understand that given the seriousness of this offense, he is on thin ice and should tread carefully.

AWARD

The grievance is sustained, in part. Grievant is to be reinstated, but without back pay. The time off work is to count as a disciplinary suspension.

Terry A. Bethel

Terry A. Bethel, Arbitrator
March 24, 2020