IN THE MATTER OF THE ARBITRATION BETWEEN

ARCELORMITTAL USA

And

ArcelorMittal Case No. 31
T. Trimble Discharge

UNITED STEELWORKERS
INTERNATIONAL UNION AND
LOCAL UNION 1011, USW

OPINION AND AWARD

Introduction

This case concerns the discharge of Grievant Thomas Trimble for bringing a gun onto Company property in violation of Plant Personal Conduct Rule 2-F:

> The following offenses are among those which may be cause for discipline, up to, and including suspension preliminary to discharge:
> ...
>
> F. Unauthorized use of, possession of, storing of weapons or explosives on Company property....

The case was tried in the Company's offices in East Chicago on June 7, 2009. Robert Cayia represented the Company and Bill Carey presented the Union's case. Grievant was present throughout the hearing and testified in his own behalf. There are no procedural arbitrability issues. The parties stipulated that the issue is whether there was just cause for discharge and, if not, what the remedy should be. The parties submitted the case on closing arguments.

Background

The Company has long had a rule prohibiting employees from transporting or being in possession of guns on Company property. There is no dispute that Grievant was stopped for a routine car inspection when he was leaving the plant on the morning of March 30, 2009, and that the car had been parked on Company property during his shift. During the search Grievant told the security officer that he had a gun in his center console. The guard told Grievant to make the gun safe, and Grievant removed the clip. The gun at issue was a .765 mm, Deutsche Werke semi automatic. Grievant said the gun had little value for serious shooters, although it could have value as an antique. Nevertheless, Grievant acknowledged that the weapon was able to fire and that he had fired it.

Kevin Vana, Site Security Manager, testified that on March 30, 2009, he received a call that a security guard had found a gun during a vehicle inspection. Vana said Grievant still had the gun when he (Vana) arrived on the scene. The security guard had not taken the clip away from Grievant, and he did not testify at the hearing about whether there were bullets in it. Vana said it was a mistake for the guard to leave the clip with Grievant. Vana testified that employees are responsible for knowing the contents of their vehicles. He also said he believes that discharge is the appropriate response to a violation of Rule 2-F. Mark Whalen, Vice-President and General Manager of Indiana Harbor Works, testified about the Company's commitment to safety and the efforts the Company has taken to educate employees on safety matters. He said the plant rules were necessary to regulate the plant's environment, and that strict enforcement of rules about firearms was essential to protect employees. He also said there can be no consideration of mitigating factors in cases like this one.

Grievant testified that he had owned several firearms until mid-2006, when he sold all of them except the one found in his car on March 30. Grievant explained that his daughter had moved in with him and his wife and, due to certain circumstances, he no longer wanted to keep guns in his home. He took them to a dealer and sold all but the Deutsche Werke handgun, which the gun dealer did not want. At about the same time, problems in Grievant's personal life caused him to leave his home and ultimately move to a lake cabin in Buffalo, about 90 miles from the Company. Grievant said he took the gun with him and put it in a drawer containing clothing. He did not have ammunition for the gun, he said. Grievant said he moved back to Hammond in 2008, although he left some of his possessions – including the gun – in Buffalo. Grievant said he developed a painful abscess on March 10, and that his doctor gave him pain pills, which made him dizzy. He said he took the pills when he was off duty, but not on days he worked. His last day of work before a scheduled vacation was March 16.

Grievant had put the Buffalo house on the market when he moved back to Hammond. On March 16, he said, his realtor told him she wanted to show the Buffalo cabin to a potential buyer. Grievant said the house was "messed up" and that he went to Buffalo to clean it and remove his possessions. He started taking the pain pills again during that period. Grievant said he found the hand gun when he emptied his sock drawer and decided to take it home. Grievant said he put the gun in the center console of his car. He forgot about it, but then remembered it was there on March 30, when the guard asked to search his car. Grievant said he was almost in tears when he told the guard, "you don't want to look in there." Grievant testified that the guard took the gun, and handed it back to Grievant with instructions to "make it safe." Grievant said he removed the clip and handed the gun back to the guard. The guard did not ask for the clip, so Grievant kept it.

Positions of the Parties

The Company argues that it is reasonable to assume the gun was loaded. The security guard handed the gun to Grievant and told him to make it safe. In response, Grievant did not say the gun was not loaded, or that it was already safe. Instead, he removed the clip, which suggests there were bullets in the clip. But even if the gun was empty, the Company says discharge was the appropriate discipline. The Company argues that the rule at issue is reasonable and that Grievant admitted he knew about the rule. The Company relies on news coverage of workplace shootings and the general impression of an increase in work place violence. A ban on guns, it says, is essential to employee safety. The Company also questions the efficacy of the rule if I were to accept Grievant's argument. It is not uncommon for employees to claim that they forgot they had a gun in the car, an excuse the Company cannot easily rebut. The Company argues that if explanations like the one offered in this case can excuse bringing a weapon onto Company property, then there is no effective way to enforce the rule.

The Union cites studies that contradict the impression of an increase in workplace violence and it argues that if the Company's strict enforcement of Rule 2-F is based on the perception of such an increase, then the foundation for the rule is invalid. The Union also cites cases indicating that bringing a gun onto Company property does not always result in discharge, and cases indicating that the individual facts of a case must be considered, including mitigating factors. Here, Grievant had 39 years of service and had never been disciplined. Moreover, the gun was unloaded, which the Union says was a factor cited in some other cases. The Union agrees that it could be hard for the Company to verify an employee's claim that he forgot a gun was in the car, but it says this was not a garden variety case. Given the circumstances, the Union argues, it is fair to believe Grievant's story.

Findings and Discussion

I cannot find that the gun was loaded. I understand the Company's argument that Grievant removed the clip from the gun when he was told to make it safe. However, separating clip and gun is a way of insuring that a gun is not dangerous, even if it was already unloaded. In addition, the Company acknowledges that it was a mistake for the guard not to confiscate the clip. Had the guard taken the clip there would be no doubt about whether the gun was loaded. In these circumstances the benefit of the doubt must go to Grievant.

No one questions the Company's interest in safeguarding employees from the effects of workplace violence. It is difficult to know whether the perception of an increased danger is based on fact. The Company cites news reports, especially from a recent 30 day period that saw 57 people killed in workplace shootings. The Union cites studies downplaying the risk, but the studies rely on data over ten years old. But no matter what the actual facts, there have been enough reports of workplace shootings in the past few years to put employers on guard and to take measures intended to limit employee exposure to deadly weapons like guns. That does not mean, however, that it is inappropriate to consider the circumstances of particular cases, something I have done previously in cases involving predecessor companies.

In Inland Award 940, I upheld the discharge of a 27 year employee who had taken a loaded handgun onto Company property. As in this case, the employee offered a story about how the gun came to be in the car, and then said he had forgotten about it. I noted the Company's significant interest in disciplining employees who violated the rule against firearms, but I also said, "This does not necessarily mean that there are never mitigating circumstances or that discharge is always appropriate." However, I pointed to the fact that the employee had taken a loaded weapon inside the plant gates and I found that these circumstances were sufficient to

outweigh any effect of mitigating factors, including length of service. I also noted that I did not believe the employee's story of why the gun was in his car. Similarly, in Inland Award 860, I said I could not find that bringing a gun onto Company property was always cause for discharge. But in upholding the discharge, I noted that the employee had hidden the gun in a work area inside the plant and had offered a bizarre account of why he did so.

There are also cases in which arbitrators have found – or seem to have found – that having a gun on Company property is of itself a dischargeable offense without regard to particular circumstances. Arbitrator Luskin's decisions in Inland Awards 636 and 637 are in this category. It is worth noting, however, that Award 636 involved an employee who had a loaded gun on his person inside the workplace while he was under the influence of alcohol, and that I have previously described the result in Award 637 as "particularly harsh."

I agree with the Company's claim that it is hard to evaluate an employee's assertion that he forgot a gun was in the car. But such an evaluation is present in many discharge cases, including alleged safety violations where lives may also be in danger. Grievant's story about why the gun was in his car was plausible, unlike the accounts I received from the grievants in Inland 860 and Inland 940. Also, Grievant's story did not change from the time he was confronted by the guard to the time he testified in arbitration. This alone is not sufficient to establish truth, but it is one factor to consider in evaluating Grievant's claim.

Other arbitrators have recognized the danger of possessing a loaded gun in or near the workplace, see e.g., USS-USWA Board of Arbitration Case Nos. USS-36,278 and USS-45,045. In the latter case, the Board of Arbitration also noted that the grievant had only four years of service. But Grievant in the instant case had 39 years of service and a clean work record and, as explained above, I must assume that the gun was unloaded.

I understand the Company's concern that any modification of the penalty could undermine the force of its rule against firearms on Company property. But that does not warrant a refusal to consider the circumstances of each case. Here, the circumstances – especially the plausible explanation, the unloaded gun, and Grievant's very long service – convince me that Grievant's offense was serious, but did not warrant discharge. I will order the Company to reinstate Grievant, but without back pay. The time off work shall be converted to a disciplinary suspension.

AWARD

The grievance is sustained, in part. Grievant is to be reinstated without back pay, with the time off work to be considered a disciplinary suspension.

Terry A. Bethel
July 19, 2009