IN THE MATTER OF THE ARBITRATION BETWEEN

ARCELORMITTAL USA
INDIANA HARBOR WORKS

And

ArcelorMittal Case No. 78

UNITED STEELWORKERS
INTERNATIONAL UNION AND
LOCAL UNION 6787

OPINION AND AWARD

Background

This case from the Burns Harbor Plant concerns the discharge of Grievant Orion Foster for "intimidation and/or threatening bodily harm to fellow employees." At the time of his discharge on September 19, 2014, Grievant had about 37 years of service and was an MTE in the MEU Plant Services-HVAC Department.

Greg Odle, Process Manager for the MUE-HVAC Group, testified that at about 5:45 a.m. on September 2, 2014, Anthony Raimondi, one of his employees, approached him and asked for a closed-door meeting. The subject of the meeting was a comment Grievant had made to Raimondi on August 27. Odle had Raimondi prepare a statement concerning that conversation:

> On Wed. 8-27 at 5:30 am Orion Foster came to me in the lunch rm. and made a comment 'Let me get out of here before I kill someone.' Then I looked over at him and I said, 'I bet there is a list' and he said 'oh no – no list. I will come in on a Wed. during the safety meeting with a shotgun and 2-6 shooters, step around the corner and start shooting and as people are running I will start picking them off as they run to the office to get away.'

According to Odle, Raimondi was both concerned and conflicted. Raimondi told him coming forward had been a tough decision, but he thought it was necessary when Grievant called off the day before a scheduled safety meeting. Grievant had been scheduled to work the midnight shift on September 2, 2014, but had called in and did not report for work. Odle testified that after speaking to Raimondi, he called Grievant and told him not to report for work until further notice. He also told him about Raimondi's statement and Grievant replied that he did not remember the conversation. He also said, "You know me. I wouldn't do that."

Odle reported the conversation to Alissa Smundin, Process Manager-Human Resources, and sent her a copy of Raimondi's statement. Smundin testified that she questioned Grievant and Raimondi on about September 9, both of whom had Union Representation at the time of the interviews. She learned that Grievant and Raimondi were friends even before Grievant was hired and that Raimondi had been Grievant's best man at his wedding. According to Smundin, Raimondi explained that he did not report the comments immediately, but that they began to weigh on him and his wife noticed that he was acting differently. Raimondi told her what Grievant had said and she responded that he might tell someone at work. Raimondi said he also confided in a coworker, who said he should come forward. Smundin testified that Raimondi told her the triggering event was when Grievant reported off before the safety meeting. That was when Raimondi approached Odle.

Smundin interviewed Grievant at the Union Hall because he was not allowed on Company property. She described Grievant's behavior during the meeting as "odd," and "not in keeping with the gravity of the situation." She said he was jovial and playful and that he did not seem concerned. Grievant told her he did not remember the conversation Raimondi described. There was a police officer present during the interview, which Smundin said was not normal.

Smundin also said the Union had asked her for a picture of Grievant because, according to the grievance chairman, the employees at the front desk wanted to be able to identify Grievant if he came to the hall. The grievance chairman also told Smundin that the doors to the hall were locked. Smundin said the Union had not previously asked her for a picture of a discharged employee. However, Bruce Aubrey testified that he had been at the hall since 1985 and that it was not unusual to ask for a picture or to have security present in the second step hearing. He could recall that happening on at least three other occasions, and he said the Union wanted to err on the side of caution.

Grievant testified that he had worked for the Company since November 22, 1978, and had never been disciplined prior to this case. He also noted that he had been a sub-foreman for several years. Grievant maintained that he did not remember the conversation reported by Raimondi. He did not remember a lot of conversations from that period, he said, because he was working 12 to 13 shifts in a row. He was mentally and physical exhausted, and he said one day blended into the next. He called off on September 2 because he was tired after having worked several days in a row. Grievant said he had no enemies among his coworkers and that he was not mad at anyone. Grievant acknowledged that during this period someone was siphoning gas from his car and someone had taken money from his locker. But, he said he had no idea who the culprit was.

Grievant claimed that he did not own any guns in 2014. He once owned a .22 caliber rifle and a 9-mm handgun, but when he got married in 1985, his wife wanted him to get the guns out of the house. Grievant said the guns were gone by the late 80's or early 90's. He denied ever having a six-shooter, which he described as something out of the old west or something in cartoons. Grievant said he could have retired instead of being discharged, but he refused. He

said he wanted the case arbitrated as a matter of self-respect and of keeping the respect of his coworkers and family. Grievant said the discharge was wrong, and that there was no way he would harm people he has known for 40 years. On cross examination, Grievant said he had talked to coworkers about the gas siphoning and theft of money. In addition, the Company pointed to Grievant's payroll records, which showed that Grievant had been off on August 28, in training on August 29, and off on August 30. This was intended to counter Grievant's claim that he called off on September 2 because he was tired.

Raimondi testified that when Grievant said he wanted to "get out of here before I kill someone," he thought Grievant was joking and his response about a list was also intended as a joke. The same was true when Grievant said he would shoot employees with his six-shooter and shotgun. Raimondi described the exchange as "joking and lighthearted" and as "normal idle talk." He would have gone to the safety meeting without fear of Grievant, Raimondi said. He also said he was cooking eggs and that he never even faced Grievant during the exchange. When he turned a few seconds later, Grievant was gone. Raimondi said Grievant did not express anger at anyone and Raimondi never thought Grievant was a threat to his coworkers. He also said Grievant frequently joked with coworkers and that the jokes were often preceded by the words "oh no." Thus, when he heard Grievant say "oh no" during their exchange, he knew the next comment would be a joke.

Raimondi said he did not report the conversation until September 2 because he considered it a joke. However, he mentioned it to his wife and she said he had to report it to his supervisor. His wife did say he was acting differently, but Raimondi said that was because of family circumstances, including his father's recent diagnosis with lung cancer and his mother-in-

law's death. However, Raimondi said his wife kept insisting that he report the incident and he finally did because of her persistence.

The "Brief Statement of Company Position" section of the Step 2 Minutes quote Raimondi as saying that he mulled over Grievant's comments and thought there could be a 1% chance Grievant might do what he said. In arbitration, Raimondi testified that it was inaccurate to say he mulled over the comments. He agreed that he said there was a 99% chance Grievant would not act out his comments, but that was because you can never be 100% certain of anything. He also said he had heard other employees make similar comments, referring specifically to an employee who talked about bouncing people off walls. He never reported those comments, Raimondi insisted, because he did not take them seriously.

Dennis Sass said he had worked in the same shop with Grievant since 1978 and that he had never known Grievant to be violent. He described Grievant as "one of the good guys." Sass said there were a lot of gun enthusiasts in the plant and that it was normal for them to talk about weapons. He said a foreman named Jerry Campbell had joked about shooting people and saying they would be "purple mist." He was known as the "purple mist guy." There was another employee, Sass said, who talked about blowing stuff up, and still others who threatened to beat people up. No one reported these incidents, Sass claimed, because no one took them seriously. Sass described his coworkers as "family" and he said "they save my life every day." He identified a petition signed by coworkers that said they had never known Grievant to be violent; they knew him better than the Company representatives who suspended him with intent to discharge; they thought the Company had overreacted; and they would like to see Grievant returned to work.

Mike Gromer testified that he had known Grievant for over 37 years and had been his work partner for 10 of the last 12 years. He said he had never known Grievant to be violent. Like Sass, Gromer said there had been many occasions when employees made statements that could seem threatening to an outsider, but were understood as a joke by their coworkers. Gromer said when he and Grievant had a lot of calls, managers sometimes were angry about the delay in responding. Gromer said he did not react well in those situations, and he described Grievant as the "peacemaker." He said he did not feel threatened by Grievant's comments and that he thought it was another "sick joke." Gromer also claimed Grievant liked to use humor to put people in their place, and he often used the terms "oh no" or "no no" to lead into a joke.

Positions of the Parties

The Company cites Rule 10 of the Plant Rules and Regulations: "Any employee who intimidates or threatens a fellow employee or member of management will be subject to immediate suspension and discharge." The Company argues that it has a moral and contractual obligation to provide a safe workplace, which is what it did in this case by removing Grievant from the plant. The Company says it does not have the skill to look into Grievant's heart. But, it points out that the person who knows Grievant best obviously considered his comments to be threatening; otherwise he would not have reported them to Odle. The Company says Raimondi may be second-guessing himself now, but at the time that mattered he had the gumption to get involved, and doing so might have saved lives. The Union, too, must have recognized a threat because it asked for Grievant's picture to post for office personnel and there was a police officer present for Grievant's interview at the Union Hall. In these circumstances, the Company says, it would have been imprudent not to take the comments seriously. The Company also noted the

testimony of MEU Division Manager Donald Angert, who said the level of detail in Grievant's statement required the Company to take Grievant's words seriously.

The Company cites *USS-47,121; 122* in which the Board of Arbitration noted that the offending employee had not made his comments in a "flippant or jocular manner," which the Company says was also true in the instant case. The Company also cites *USS-47,815; 816*, in which an employee said he had not meant for his words to be taken seriously and that he was simply "playing around." The Board said the test was whether a fair reading of the language would reasonably tend to threaten or intimidate another employee. That standard was satisfied in this case, too, the Company contends.

The Union says it is not denying that Grievant made the comments; rather, the Union argues that Grievant was joking and that the only employee who heard what Grievant said did not believe his remarks were threatening. Had it not been for pressure from his wife, the Union insists, Raimondi would never have reported Grievant's comments at all. He understood it was merely an idle comment that was not intended to be taken seriously. The Union also points to the six-shooter comment which, it says, shows that Grievant was joking. No one, the Union says, seriously threatens to use his six-shooters, terminology only used in television westerns or cartoons. The Union contends other employees told similar jokes, but they were never reported because they were not intended to be taken seriously. Grievant is not a violent man, the Union says, a fact recognized by his coworkers, who signed a petition asking that he be reinstated. The Union argues that there is a 99% chance Grievant would not have done what he said to Raimondi, which shows that the Company was not able to sustain its burden under the preponderance of evidence standard.

The Union relies, in part, on *ArcelorMittal Case No. 32*, where I upheld the discharge of a short service employee who angrily made repeated threats of bodily harm involving a specific individual. In the instant case, Grievant made only one comment which was not directed at any individual and which was not made in anger. Also, Grievant had 37 years of service. The Union also cites *Inland Award No. 653*, where the arbitrator reinstated a short service employee without back pay, even though during an angry exchange the employee had told his supervisor "I'll kill you." The arbitrator said in the circumstances, the supervisor should have understood that the employee's words were not to be taken seriously. Similarly, the Union says the Company should have realized that Grievant's words were not meant to be taken seriously.

Findings and Discussion

I have no doubt that Grievant made the comments attributed to him by Raimondi. The issue is whether they could reasonably be considered as a threat to harm other employees. The most important evidence for the Company was Raimondi's report to Odle, and the statement Raimondi produced at that meeting. I understand Raimondi's interest in helping Grievant win reinstatement, so it is not surprising that his testimony in arbitration sought to undo the impact of having made the report in the first place. But I cannot accept his claim that he did so only because his wife insisted. There was nothing in Raimondi's statement and nothing in the interchange between Raimondi and Odle, or in the subsequent interview with Smundin that discounted Grievant's comments or characterized them as a joke. Nor did Raimondi tell Odle or Smundin he would not have reported the incident on his own, but came forward only because of his wife's persistence.

I recognize that Raimondi did not report the comments for six days; however, that does not convince me he thought they were of no import. It could not have been easy for Raimondi to decide that he would report the comments to supervision. He and Grievant had known each other for 40 years and they had clearly been close, as reflected in Raimondi having been Grievant's best man. It is obviously significant that someone who had known Grievant so long and so well was nagged with questions about whether he should have taken Grievant's statement seriously. I believed Odle's testimony that Raimondi told him the deciding moment was when Grievant called off the day before the safety meeting, which was the scene of the event Grievant described to Raimondi on August 27.

I have no difficulty believing that other employees – including foremen – have made comments about guns or about hurting other employees. Nor do I question the Union's claim that none of these were reported because no one took them seriously. But the point in this case is that someone did take the comments seriously enough to report them. Contrary to what Raimondi said in arbitration, he clearly did not believe Grievant's comments on August 27 could be dismissed as a joke. Nor, the evidence suggests, was the Union certain that Grievant's remarks were simply playful. The Union asked for a picture of Grievant so the front desk employees would know whether he was trying to enter the Union hall, and there was a police officer present when Smundin interviewed Grievant at the hall. Aubrey testified that the Union had taken such precautions before, but he could think of only 3 instances in a period of about 30 years. The fair inference is that the Union did not regard this as a routine case.

That does not mean there are no factors in the case that support the Union's claim. There is no evidence that Grievant was angry when he made the remarks and they were not directed at a specific person. Nor is there any evidence that Grievant had a dispute with a coworker,

problems with supervisors, or a history of conflict with other workers. In addition, the nature of the comment raises some question about how serious Grievant was. According to Raimondi, Grievant said he would get his six-shooters and pick off employees as they left the meeting. I have heard many cases involving guns and threats of gun violence, but outside of TV westerns I have never heard anyone call a handgun a six-shooter. Invoking the image of a television cowboy is at least some indication that Grievant did not mean his comments to be seen as a threat of violence. Also, the petition and testimony of coworkers is of some value in assessing whether they believed Grievant constituted a threat, albeit given the inevitable after-the-fact nature of such evidence, its usefulness is limited.

The Company was justifiably concerned about what Grievant said to Raimondi. I agree with the Union's claim that the Company could not know whether Grievant was serious or whether Grievant was likely to engage in workplace violence. No one can know that, except Grievant. But the Company is responsible for safeguarding its employees, and it does not have the luxury of discounting comments like those Grievant made. That does not mean, however, that discharge was the appropriate disciplinary response. In *ArcelorMittal Case No. 32*, I found the Company had just cause to discharge an employee who had angrily threatened to kill a coworker. But I also noted that he had made similar comments before that had not been taken seriously and which could not be used to justify discharge. And, the Board of Arbitration's decision to uphold the discharge in *USS-47,815; 816* noted that the employee had made the same threat on two occasions, a factor the Board cited in deciding that the comments could "reasonably tend to threaten or intimidate another employee." Grievant did not repeat the threat, and he did not act in anger or during a confrontation with a coworker. And, while he outlined a scheme for implementing his plan, his terminology – the six-shooter – raises some question

about his sincerity. Although it is a close call, on balance I am not unable to find that Grievant's comments should have been perceived as a serious threat. Nevertheless, whether he was joking or not, Grievant should have realized that at a time when the news media often report incidents of shootings at workplaces and schools, the Company would have to take his comments seriously, as did his good friend Raimondi.

In the circumstances outlined above, and considering Grievant's 37 years of service, I find that the Company did not have just cause to discharge Grievant, but that it did have just cause for serious discipline. Given the controversy generated by Grievant's foolish behavior, it might be better if he exercised his option to retire. However, I do not have the authority to order him to do so. Thus, I will order that Grievant be reinstated without back pay. The period off work shall be considered as a disciplinary suspension.

AWARD

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

Terry A. Bethel

Terry A. Bethel, Arbitrator
December 2, 2016