
In the Matter of Arbitration Between:)

ISPAT INLAND)

and)

UNITED STEELWORKERS OF)
AMERICA, Local 1010.)

Award No. 994

INTRODUCTION

The Undersigned Arbitrator was appointed according to the rules of the applicable collective bargaining agreement. This hearing was held on January 25, 2002 at the Company's offices in East Chicago, Indiana.

APPEARANCES

UNION

Advocate for the Union:

Joe E. Gutierrez

Witnesses:

Robert Simmons - 4 Line Operator

Alan Melody - 3 Line Operator

Floyd Kinsey - Assistant Operator

Robert Guevara - Electrical Technician - Plant 1 Galvanizing - Assistant Griever

Luis Aguilar - Vice Chairman, Grievance Procedure

Gerardo Gutierrez - Grievant

COMPANY

Advocate for the Company:

Patrick Parker

Witnesses:

Dave Jillson - Finishing East, Operating Resource
Jason Henderson - Section Manager Coated Products
Robert Cayia - Manager, Union Relations

Background

This is a case involving the discharge of a long-term employee for falsifying Company records and stealing. The Grievant is charged with manipulating the payroll system to pay himself for turns which he did not work.

Mr. D. Jillson, Finishing East Resource, testified that in 1998-1999 he worked as Turn Manager in the No. 3 Cold Strip and supervised the Grievant, who worked as an Assistant Operator. During this period the Grievant helped the Turn Manager use the TIMES system, the Company's computerized scheduling and payroll system. Work schedules are entered into the TIMES system the week prior to each workweek. When the employee comes to work he "swipes" a card through a scanner at one of the clockhouses, which records the time that the employee swipes in or out. If that time varies from the scheduled time because of a schedule change, or if the scanner does not record a time, the employee may not be paid for the time worked, unless a supervisor enters changes into the computer system. These changes are made by typing a numerical identification number into the TIMES system, followed by a password, and an override code. The parties agree that changes are often made in this way.

The former Turn Manager explained that prior to his becoming Turn Manager some Operators, including the Grievant, were responsible for paying employees. The Grievant had a lot of experience with the TIMES system. There were about ten occasions on which the Turn Manager asked the Grievant to meet him in the office and help him with a problem he was having with the system. On these occasions the Grievant was either standing or sitting next to him, he said, and his TIMES identification number (355) was visible on the screen when the two were working together. The Witness testified that he never asked the Grievant to turn around when he typed in his password, and that he typed one letter at a time, because he is a poor typist. On cross-examination he testified that there were three other employees to whom he gave his password, when he was training them on the TIMES system. The former Turn Manager testified

that he moved from his former position in October, 1999. After that date he was not required to pay people, and was not using the TIMES system or number 355.

The Section Manager for Coated Products testified about what brought the Grievant under scrutiny. He testified that it was noticed that the Grievant was paid for a turn he had not worked. The TIMES identification number 355 had been used to make a change in the system to pay the Grievant. That was not a number associated with a Supervisor in the Department. The Section Manager discovered that the person to whom the 355 number was assigned had not used the number for several years.

The Section Manager requested an "activity report" for that identification number. He found that it had been used to make payroll changes 75-80 times over a six month period, from March to September, 2001. In half of those instances changes had been made involving the Grievant's payroll number. The rest of the instances involved a variety of payroll numbers. None of them occurred with anywhere near the frequency of the Grievant's number.¹ In looking at all the instances in which employees had been paid by an override code because of a failed "swipe in" or "swipe out" for the first nine months of 2001, Management found that the changes were made by a variety of supervisors using many different identification numbers. There was no employee other than the Grievant whose changes were so often made through one TIMES identification number.

Upon further investigation, Management discovered a common theme in the use of number 355: the number had been used to add the Grievant to the payroll for turns on which he was not scheduled to work. Schedules, Operator logs and Supervisor log books were matched against payroll records for the Grievant to establish when he actually worked. These records show that the Grievant was paid for many turns when there is no evidence that he worked. In the more recent cases there was still information about whether the Grievant had swiped in or out on turns when payroll changes were made using number 355. On most of these occasions there is no record of him swiping in or out on the turn.

During the investigation Management also noticed other patterns regarding the changes made to the Grievant's records. Changes to the Grievant's payroll records often were made very close to the end of the pay cycle. Employees have "read only" access to the system, including the records of other employees. Thus, according to the Witness, making changes right before the end

¹ Management speculated that other employees' numbers were associated with TIMES i.d. number 355 because the easiest way to add 8 hours' pay to the Grievant's records was to "cut and paste" (or "highlight and copy") using another employee's position number who had actually worked the shift. Both the Grievant and the other employee would then be paid for the turn. In every case where a change was made to the Grievant's pay with number 355, another employee's number also appeared. The Company also pointed out that in some cases in which the Grievant's pay was changed, it would be unusual to have two employees on a crew holding the position for which the Grievant was paid, such as Welder.

of the pay cycle would leave little time for supervisors or other employees to discover any discrepancies between the Grievant's pay changes and the turns he actually worked. The Section Manager stated that the timing of these changes was unusual because normally employees bring problems to the attention of supervisors quickly and changes are made within several days of the problem turn. Here the changes to the Grievant's records were made an average of 8.1 days after the turn for which changes were made; some of the changes were made as long as 14 or 15 days after the turn was worked, close to the end of the pay cycle.

The Section Manager also testified that the records show that the Grievant was in the plant on all of the days on which the changes were made, except for one day. In contrast, two of the other employees who may have had access to TIMES number 355 were not in the plant, according to the evidence, on many occasions (5 out of 12 times for one employee and 7 out of 12 for the other) when recent changes were made to the Grievant's payroll records. The third employee who may have had access has become a supervisor herself, with her own access number to the TIMES system.

The Company presented evidence that the Grievant had received \$8,876 in wages for turns when there is no record that he was at work between April, 2000 and September, 2001. When changes were made the Grievant usually was paid for 8 hours, and often at the overtime rate. The Company also presented evidence comparing the Grievant's earnings to that of the two other bargaining unit employees whom the former Turn Manager indicated may have had access to i.d. number 355. While the Grievant's annual earnings were somewhat less than one of the other employee's earnings in 1992, his earnings since then have consistently been higher than the other two employees. On cross-examination the Union notes that the Grievant worked as a salaried supervisor for about one year during that period. The Union also raised the possibility that someone to whom the Turn Manager gave his access code might have given it to another employee. When asked if the Company had considered anyone other than the Grievant as possibly guilty, the Section Manager said that initially he considered any employee for whom changes were made using TIMES 355 number, but that the other factors described above led to the Grievant.

The Union presented testimony that there are often discrepancies between the schedule as entered into the TIMES system and what employees actually work. If employees do not bring these discrepancies to the attention of supervisors so that changes can be entered into the system, they are not paid correctly, according to the Union's Witnesses. The Union presented information that if an employee switches a day with another employee, it is possible that both could be paid under the TIMES system. Several Union Witnesses indicated that they checked their hours frequently. Another testified that he rarely checked it.

The Union also presented evidence that it is not unusual for the card scanner which records "swipe in" times to fail to read a card. In such cases the employee may enter his social security number or ask a supervisor to make a change in the TIMES system later. Several Union

Witnesses said that although supervisors care somewhat about employees being paid correctly, it is not their top priority.

The Union presented testimony that sometimes Operators do not fill out their logs correctly to identify each person working. In addition, Operator's logs do not list employees working as Laborers. On cross-examination several Witnesses acknowledged that it would be unusual to misidentify the employee who was working as the Operator or Assistant Operator. The Section Manager indicated that the Grievant normally worked in positions which would appear on the Operator's Log, and even Laborers appear on the Supervisor's log.

The Union Witnesses testified that generally the Grievant is very well-respected by members of the bargaining unit. According to the Witnesses, no one can believe that he would do what the Company has accused him of. One Witness testified that as a supervisor the Grievant was kind and fair. Others testified that he is known as an employee dedicated to his job, and one who expects others to meet high standards as well. Several speculated that when the Grievant worked as a supervisor he might have engendered some bad feelings from some employees because he expected them to work hard.

The Grievant testified that he worked on a special productivity improvement project for the Company for six years. He was selected to go to Japan to study production methods. When he returned to Plant 1 Galvanized, he worked in the office for two and a half years, because the Company needed his help there. The Grievant worked as an hourly foreman for three years and as a salaried foreman for a year. In the latter position he was responsible for qualifying employees, and he disqualified 6-7 employees. For many years the Grievant was not required to swipe in or out, and he said he had difficulty remembering to do so once it was required of him. No one ever asked him why he was not swiping in, he said.

The Grievant denies that he ever manipulated the TIMES system in order to pay himself for time he did not work. He said that he often worked many hours of overtime, working sometimes seven days in a row, doubles, or whatever was needed. Because he was working so much overtime, he said that he did not initially realize that he was being overpaid. The Grievant testified that about a year before his discharge he did notice that there was some extra money in his checks, but he thought that the Company would eventually catch it and make him repay it. He testified that on one occasion he was overpaid for a week of vacation pay, and the Company asked him to repay it about a year later. He said that he was willing to repay anything he might have been overpaid.

The Grievant testified that he was not in the plant on September 9th, one of the days on which changes were made to his payroll records. He said that on Sundays when he is not working he and his wife go to Chicago, and that he leaves about 8:00 a.m. and returns about 7:00 p.m. He had no records showing that he was in Chicago on that day. He also testified that on occasions when he assisted the Turn Manager on the computer, the Manager already had booted up before he helped him, so the Grievant did not see his password.

Several Union Witnesses testified that other employees had manipulated the payroll system causing overpayments, and had not been discharged. In particular one Company Supervisor was overpaying his wife. The Manager of Union Relations testified for the Company that this did occur, but that the changes involved only a few minutes of pay, because the Supervisor was attempting to change the record of his wife's tardinesses. In contrast to this case, the wife there actually worked each of the turns involved, there was far less money involved, and the incidents occurred over a short period of time. The same factors applied to several bargaining unit employees who were found leaving early and having another employee check them out. Although both the Supervisor and the bargaining unit employees received significant discipline, they were not discharged.

The Company's Position

The Company contends that there is overwhelming circumstantial evidence that the Grievant paid himself. He was in a position to have knowledge of the i.d. number used to change his records. The evidence shows that he was in the plant on 10 of the 11 days when the records show that changes were made, which is not true of the other employees who had knowledge of the i.d. number. The Company points out that only the Grievant benefitted from changes made with the number, and it is not clear what motive any other employee would have for paying the Grievant.

In addition, the Company contends that the evidence is clear that the Grievant was not present on the days when these computer records show that he worked. The Company argues that the Operators Logs are reliable. In some cases in which changes were made to pay the Grievant as a second Welder, for example, there would have been no need to have a second Welder on the crew. Furthermore, the dates on which the changes were made were unusually distant from the date to which the changes applied. By his own admission the Grievant knew he was overpaid.

As for any claim of disparate treatment, the Company contends that the Grievant's actions have placed him in a class by himself. In the other examples raised by the Union, the employees stole a few minutes of time by sneaking out early or coming in late. Here the Grievant paid himself for whole turns that he did not work. With fewer supervisors available, the Company must rely upon the integrity of bargaining unit employees. Many arbitration awards have upheld the principle that when an employee steals from the Company, length of service does not prevent a discharge from being upheld. The Company contends that the discharge here should be upheld and the grievance denied.

The Union's Position

The Union contends that this is not a simple discharge. Here the Grievant has not admitted stealing anything, while in most of the cases relied upon by the Company the employees did admit guilt or were caught red-handed. The Union argues strenuously that the Company has not established that the Grievant here was guilty of changing the payroll records.

The Union argues that someone manipulated the system to pay the Grievant more than he was due. The Union suggests that someone arranged for the Grievant to be overpaid, and someone complained to Management about the Grievant being overpaid. The Grievant knew that he was receiving some extra money, but figured that the Company would discover it and have him repay the amount. The evidence shows that mistakes are common, with employees sometimes being overpaid and sometimes underpaid. The schedules placed into the system are not corrected when schedule changes are made. The Operators' logs are only as accurate as the Operators make them.

The Union argues further that Management simply presumed the Grievant was guilty. There was no presumption of innocence, and no eyewitnesses saw him change the records. He was not even asked whether he had done it. The documents center only on the Grievant, and not on any other employee. Furthermore, the documents prove only that the former Turn Manager's number was used, but not that the Grievant used it. In addition, the Union argues that the Company has disciplined other employees, particularly supervisors, less harshly than the Grievant here, for similar conduct. For all of the above reasons the Union requests that the discharge be overturned, the Grievant be reinstated and backpay be awarded.

Decision

This is a case involving the discharge of a long-term employee for defrauding the Company. There is no dispute that the Grievant was overpaid on many occasions. Nor is there any dispute that these overpayments added up to close to \$9,000. The only dispute is whether the Grievant should be discharged for these overpayments.

The Union argues that the Company has not established that the Grievant was responsible for manipulating the system to make the overpayments. The evidence shows that it is not unusual to override the system because of schedule changes or instances where the card scanner does not record an employee's "swipe in" or "swipe out." Employees frequently ask supervisors to make changes to their pay records. However, the evidence points to the Grievant as the person who made the changes at issue here. There is no dispute that the Grievant had the knowledge of how to make the changes. All the instances in which the Grievant was paid where there is no record of him having worked were made through overrides using the "355" i.d. number. There is credible evidence that he had knowledge of this i.d. number (and password) from having worked with the former Turn Manager at his computer. There also is credible evidence that the former Turn

Manager no longer uses that i.d. number. Although there was evidence that several other employees also obtained access to the same i.d. number through training, no evidence was introduced showing that their payroll records had been changed to pay them for turns when they did not work. Furthermore, these employees often were not working on the days when changes were made to the Grievant's records.²

The Union presented evidence that the Grievant may actually have worked turns for which there is no record that he worked -- either on schedules, or Operators' or Supervisors' logs. The Arbitrator concludes that although the computer schedules may not be updated to reflect rescheduling of employees, the logs are normally accurate reflections of which employees actually worked on a crew.³ Based upon the evidence, it is highly unlikely that -- by coincidence or chance -- the Grievant would have worked on so many occasions where there is no record of him having worked, other than the altered payroll records.

The Union argues that there is no direct evidence that the Grievant changed the payroll amounts. However, even though no one saw the Grievant change his payroll records, there is very substantial circumstantial evidence that he did so. The Union suggested throughout the hearing that another employee "set up" the Grievant, that he probably made enemies when he worked as a demanding supervisor. However, most of the evidence indicated that the Grievant was very well-respected by his fellow employees. Furthermore, even if someone had a motive to "frame" the Grievant, this scheme would be a very strange way to do so. It does not make sense that another employee would try to harm the Grievant by manipulating payroll records so as to pay him hundreds of dollars extra per pay period. Even if an employee chose this odd scheme, its success would depend upon the Grievant not reporting the overpayments.

It is the Grievant's failure to report the overpayments which establishes that he is guilty of significant dishonesty. The Grievant acknowledges that he knew about the overpayments (of about \$250 per paycheck) for about a year, but failed to report them. He testified that he believed that the Company would catch the mistakes eventually and demand repayment. If only one or two overpayments were involved, like the mistaken vacation overpayment, the Grievant's testimony might be more credible. However, here the Grievant accepted thousands of dollars in overpayment, paycheck after paycheck, and converted the money to his use. This significantly damages his credibility about his intent to pay it back. If the Company never caught the overpayments, the Grievant's reasoning -- and the facts -- suggest that he would have kept them. Otherwise, it is not clear why he was waiting to return the money. To knowingly keep substantial

² As discussed below, it is difficult to understand what motive these employees would have to overpay the Grievant.

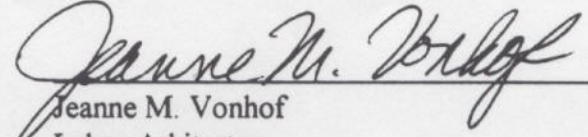
³ In addition, there was credible evidence that some of the crew configurations which would have occurred if the Grievant had in fact worked the positions for which he was paid are unlikely, such as two Welders assigned to crews where normally only one Welder would be assigned.

overpayments, week after week, crosses the line from a simple mistake in judgment to an illegitimate taking and keeping of property belonging to the Company. Even if the Grievant were not responsible for making the overpayments, he had an affirmative obligation to report and return them.

The Union argues, however, that the Grievant is being treated more harshly than other employees, both bargaining unit and salaried, who have manipulated the pay system in the past. The Company points out that a major difference between the Grievant's situation and that of the other employees is the significant amount of money involved in this case. There is no evidence that any of the other cases involved employees being paid for whole turns they did not work or receiving funds anywhere close to \$9,000 total in overpayments. The other cases normally involved much less time, often only a few minutes at the beginning or end of a turn. In addition, the evidence does not disclose that the other employees engaged in a course of fraud over a considerable period of time, as did the Grievant here. Even if the Company could not establish that he masterminded the scheme, he has admitted that he knowingly accepted large overpayments for about a year. This conduct distinguishes this case from others in which an employee acted impetuously to steal something on a one-time basis, as in Inland Award No. 848, where an employee was reinstated who stole a 55 cent snack item from an open vending machine, on an impulse. The Grievant's conduct indicates that he deliberately violated the trust and honesty which an employer has a right to expect from an employee. Therefore the grievance must be denied.

AWARD

The grievance is denied.


Jeanne M. Vonhof
Labor Arbitrator

Issued under the authority of Umpire Terry A. Bethel.

Decided this 14th day of April, 2002.