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In the Matter of Arbitration Between:)
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ISPAT INLAND STEEL COMPANY)
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and)
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UNITED STEEL WORKERS OF AMERICA, LOCAL 1010)
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Case No. 1001
Grievant -A. Mabon

INTRODUCTION

The Undersigned Arbitrator was appointed according to the rules of the applicable collective bargaining agreement. This hearing was held on June 5, 2002 at the Company's offices in East Chicago, Indiana.

APPEARANCES

UNION

Advocate for the Union:

D. Reed, Secretary, Grievance Committee

Witnesses:

A. Mabon, Grievant
L. Moreno, Crane Machinist
B. Sander, Mill Mechanic
E. Barrientez, #3 CSWest Griever

COMPANY

Advocate for the Company:

P. Parker, Section Manager, Arbitration

Witnesses:

H. Betchen, Section Manager - #3 Cold Strip Mill
R. Van Gorp, Maintenance Supervisor - #3 Cold Strip Mill

Background

This is a case involving the discharge of a long-term employee for threatening another employee, for damaging Company property, and for his overall unsatisfactory work record. The Grievant had worked for the Company for more than 26 years at the time of his discharge.

The Grievant was assigned to his regular position as an overhead Craneman on the No. 8 crane in the No. 3 Cold Strip Mill on the midnight turn on March 26, 2002. He was working with Pickle Line Weigher D. Spencer. According to the Company, the two employees exchanged words over the speed with which the Weigher was performing one of her tasks, i.e. to move coils to a spot where the Grievant could pick them up. Part of the Grievant's job was to move the coils to a storage area, where he would later pick them up and move them to the 56" Tandem Mill.

The Company presented a written statement from the Weigher dated May 16, 2002 in which she stated that on March 26th the Grievant said to her over the radio that he was going to"whip your m_____ f_____ ass." The Weigher did not testify at the arbitration hearing. In her statement she said that she called the Supervisor and reported what had happened. The Company contends that Supervisor E. Peshke talked with the Grievant that night about the incident. The Section Manager testified that the Grievant should have been sent home that night.

The Grievant denies that he made this comment to the Weigher on that night. He testified that he only asked the Weigher to cycle the conveyor more rapidly so he could keep up with the Tandem Mill. He denied that Supervisor Peshke ever talked to him that night.

The Weigher reported that the following night the Grievant was trying to contact her but she did not want to talk to him because of what had happened the night before. The Grievant came down off his crane to talk to her. He came down to her shanty and was standing in the doorway and in her statement she said that she felt trapped. The shanty is about 8 feet by 10 feet in size. The Weigher's statement says that she asked him to leave, and that he replied, "I'm not going nowhere m_____ f_____" and said that he was going to "kick your behind." She said that she called the Supervisor, and that she felt threatened, and that she did not believe this was "mill talk." The Company presented evidence that if the Weigher cycled the coils faster, the Grievant could stockpile them and take a break.

The Grievant denies making these statements on the 27th. He said that he called the Weigher on the radio that night, and asked her to cycle the conveyor. She would not answer, so he got off the crane and went to her shanty and asked her, "How are we gonna work together tonight?" He said that at this point she started calling Mr. Peshke and he left.

A Supervisor notified the Grievant at about 1:00 a.m. that he would be required to stay over after the turn and meet with Management over the altercation with the Weigher. About half an hour later the Grievant reported that his crane was down with brake failure. Mechanics were called and found that the copper tube which transports compressed air from the on-board compressor to the air distribution board had been severed. The tubing is located on a platform one level above the cab. After they repaired the broken line the brakes still did not work, and the crane was down for the remainder of the turn. A Maintenance Supervisor recognized the problem quickly after he became aware of it: a coupling underneath the foot pedal of the brake which connects the air treadle was loose but looked as if it were still connected. He testified that the

coupling could not have come loose from just the pressure, since it can withstand much higher pressure. He also demonstrated how a portion of the coupling must be pulled back in order to disconnect it. He concluded that the coupling had been manually disconnected and then set back on to look as if it were still connected.

The Grievant testified that he did not know how the tubing was broken, or how the coupling came uncoupled. He testified that he did not perform an inspection of the brakes that morning before operating the crane, although he did inspect the trolley and hoist. He said that most of the time he uses "plugging" to stop the crane, i.e. slowing the crane without using the brakes, by putting it in reverse. The Grievant testified that he did not know where the copper tubing was located, and that he has unintentionally popped off the coupling previously with his foot.

On cross-examination the Grievant testified that he was aware that he was supposed to check the brakes as part of his crane inspection. He said that he had no problem running the crane without using the brakes for two hours prior to reporting the equipment failure. He acknowledged that it would be difficult and dangerous for someone to jump on top of the crane, where the copper tubing was located, and sever the tubing while he was operating the crane, a possibility which the Union had raised during the grievance procedure. He also acknowledged that although he had worked with the Weigher previously, she had never accused him or anyone else of threatening her previously. He said that normally he takes coils from the line where the Weigher places them and moves them to storage and not directly to the Tandem Mill.

The Union presented testimony from a Crane Mechanic who testified that he has seen the couplings come loose from the brake pedal when a Craneman kicks them accidentally. He said

that the couplings are not the original equipment, and are good for easy on-off access. On cross-examination he acknowledged that he is called to repair coupling failures only twice in a year.

He also testified that he had done repairs on this crane in March before the incident at issue here, and that the copper tubing was weak then. On cross-examination he acknowledged that he took off a piece of tubing in March, and that if the rest had been leaking, he would have replaced it. He acknowledged that he could not think of any other way in which the copper tubing would have been broken other than by someone snapping it manually. There was nothing for it to catch on, and if it had been stepped on, it would not have been crimped in such a narrow spot, he acknowledged. In addition, he said that if the coupling had been kicked off, it would likely be lying on the floor, unless there were a very short hose connected to it, rather than in the position in which it was found, looking as if it were still connected.

The Union called another Mill Mechanic as a witness, who said that the couplings were not being used well on the air treadle, and were not used that way in cranes in other areas of the mill. He said he thought it was reasonable that someone could have kicked it off. He also testified that when the copper tubing is in service, it is easy to break. On cross-examination he acknowledged that he imagined that the copper tube broke because of a "human factor," i.e. someone stepping on it, pressing on it, or running a "come-along" over it on top of the crane. The Witness also stated that if the Craneman had used the brakes that day, he would have known about the problems. He acknowledged that it was rare to answer a call to repair a crane because of the disconnection of one of the couplings on the pedal.

The Section Manager presented information concerning the Grievant's work record over the last five years. The record shows that the Grievant was subject to ten progressive disciplinary

actions, including one, two and three-day suspensions during this period for poor attendance. The most recent discipline (the three-day suspension) was issued five days before the incident at issue here. He also received four disciplines for being out of his work area, culminating in a one-day suspension in September, 2000. In addition he received a one-day suspension for failure to report off in September, 2001. The Union presented documentary evidence that a grievance had been filed over one of these instances of discipline, and the Union presented testimony (but no grievance documents showing) that grievances were filed over others as well.

The Griever testified that when he attended the investigation, he said he thought that Mr. Peshke should be present, especially because the Grievant said that they had not talked on the night of the 26th. The Company said at that time that Mr. Peshke was working a different turn. The Griever said that he knows the Weigher and that he has had problems with her moving coils to keep production going and that she has snapped at him "Wait your turn." He said that "things have to be her way and her way only" and that he has come down from his crane to ask her "How are we going to work today?"

The Witness stated that there was no crane inspection report filled out by the Grievant on the night of the 27th, and that if the Grievant did not check the brakes, he would not know whether they were functioning. On cross-examination he acknowledged that sometimes employees do an inspection and complete the form later in the turn. According to the Witness, "plugging" is a good enough method to stop the crane most of the time. He said that Cranemen are supposed to use the air brakes in areas where employees are working on the floor, such as in the area of the 56" Tandem Mill.

The Company recalled the Section Manager as a witness, who testified that the Grievant had stated during the investigation that he had inspected the brakes on the night in question. He also said that he would expect Cranemen to routinely use the air brakes in the area where the Grievant was working. This is a major intersection, he testified, and people are constantly around the area. The Grievant acknowledged that he was working in the area of the 56" Tandem Mill on that night.

The Company's Position

The Company contends that the discharge should be upheld. According to the Company, the evidence indicates that someone broke the copper tubing, and that the coupling under the brake pedal was placed back on after it was taken apart. The Company contends that the Grievant had the opportunity and the motive to keep the crane down that night. It is highly unlikely, the Company argues, that anyone else would have snuck up on top of the crane to break the tubing. Furthermore, the Grievant's contention that he was operating without brakes for several hours does not ring true, the Company asserts. There were people in the area all the time he was operating, and therefore he would have used his air brakes, according to the Company.

The Company also argues that the Grievant had a motive for sabotaging the crane: he was angry because he was being called to task for threatening another employee. In order to believe the Grievant, the Arbitrator would have to believe that the Weigher made up the story that the Grievant threatened her. There is no evidence to suggest why she would have done so, the Company contends.

The Company argues that when the Grievant sabotaged his crane, he forfeit his job. The Grievant is a long-term employee, but not one with a good record. The Company offered arbitration awards in which arbitrators have relied upon circumstantial evidence to conclude that an employee had engaged in damaging Company property. The Company also argues that the monetary value of the sabotage is not significant, because the act itself is so egregious it violates an implied pact between the employer and the employee. Employees are paid highly to operate expensive equipment and to break that equipment is an offense meriting discharge, the Company argues.

The Union's Position

The Union contends first that the Company has not established that the tubing which the Company brought into the arbitration is in fact the tubing which was broken on the Grievant's crane. The Union argues further that the evidence does not demonstrate that the Grievant was responsible for sabotaging the Company's property. According to the Union, there was no motive, no fingerprints, no DNA, and no witnesses who could corroborate the Grievant's guilt. The Union cites an arbitration award in which the grievant was discharged for running a defective crane, and his overall work record, and the arbitrator overturned the award, finding that something more than ordinary negligence is necessary to sustain a discharge. Here the Grievant notified Management about his defective brakes only to ensure the safety of himself and his co-workers, the Union asserts.

In addition, the Union argues that the Company failed to thoroughly review the altercation between the two employees on the night of March 26th. If Management had reinstructed the

Grievant at that time, then the next night's events would not have happened, the Union argues. The Union disputes the characterization of the Grievant as having a bad work record. According to the Union the only irregularities associated with the Grievant's work record involve absenteeism, and he was not at the discharge level for that offense. Discharge is economic capital punishment, the Union urges, and should be reserved for capital crimes. The Union argues that there is not sufficient evidence in the record to support either the charges of threatening another employee or sabotage. Furthermore, if the Grievant were guilty of any misconduct, the Company could have applied progressive discipline, according to the Union. For all of the above reasons the Union requests that the grievance be sustained, the discharge overturned, and the Grievant made whole.

Findings and Discussion

The Grievant was discharged for sabotaging his crane, for threatening another employee, and for his overall work record. There is no dispute that the Grievant reported his crane out of order, shortly after being told that he was being called to a meeting to discuss the Weigher's accusation that he had threatened her. There also is no dispute about what caused the crane to fail: two separate unrelated problems with the brake system. The Grievant did not report that the brakes had been failing gradually throughout the turn; either they failed suddenly on his turn, or they were damaged on the prior turn. According to the evidence, the problems with the brakes would have been immediately apparent to anyone who tried to use them. Thus, if they were damaged on the prior turn, the Craneman on that turn would most likely have been aware of the problem, and failed to report it, under the Grievant's theory. The Grievant's contentions that he

did not inspect the brakes before beginning to use the crane that day, and did not use them, even once, in the two hours he worked prior to reporting them, are not credible. It is very difficult to believe that a Craneman would inspect his crane at the beginning of the turn, as the Grievant reported, but not try the brakes. It is also not credible that a Craneman would not use his air brakes once in two hours of work, under the conditions present in this department. Both Management and Union witnesses testified that Cranemen may "plug" at times to stop the crane, but that they use their air brakes when other employees are working on the floor nearby. The Grievant said he was working near the 56" Tandem Mill, and the evidence showed that there were normally employees on the floor in that area. In addition, the Section Manager presented credible evidence that the Grievant was operating near an intersection, where employees frequently walk. It is highly unlikely that the Grievant did not use his air brakes once in two hours, working in this area.

With regard to the copper tubing, the tubing had been inspected not long before the incident, and found to be satisfactory. From the evidence the Arbitrator concludes that the tubing was broken by a person -- even the Union's Witnesses who repair cranes acknowledged that they could not suggest any other way that the tubing would have broken. The Union suggested that the copper tubing may have been broken by someone other than the Grievant. For the reasons discussed above, the Arbitrator concludes that it is not likely that the tubing was broken on the prior turn. Moreover, it is even more unlikely that someone would have jumped on the top of an overhead crane while it was working, and sabotaged the air brakes during the Grievant's turn. The Craneman works alone on his machine, which is continually moving, high above the floor of

the shop, from one from part of the department to another. No other employee works in the immediate vicinity of the crane. The evidence clearly points to the Grievant as the person who broke the tubing.

With regard to the coupling, there was evidence that the coupling had come off in the past by an employee kicking it. However, if that happened, it would be more likely for the coupling to come off entirely, rather than be off, but appear to be still connected. The appearance of the coupling suggests that it was probably manipulated by hand, and also suggests that the uncoupling was done in a way to conceal that it was uncoupled. There is no allegation that anyone else was in the crane's cab that night, other than the Grievant. Thus, the evidence indicates that he most likely uncoupled the coupling by hand, and did so in a way so as to conceal it.

Most importantly, it is unbelievable that, by sheer coincidence, two major problems with the operation of the brake system would occur at exactly the same time. The record establishes that these problems were unrelated, and that neither one of them occurred very frequently, on a random basis. In addition, the evidence indicates that both "problems" were created by human manipulation, rather than other causes, such as a part wearing out.

The Union argues that there is no direct evidence -- no eyewitness or fingerprints -- which unmistakably demonstrates that the Grievant was responsible for the problems with the brakes on his crane that night. However, the circumstantial evidence here is very strong. The Grievant's claim of innocence relies upon too many improbable events: that he would not have tested his brakes during his initial inspection of the crane that night, or at any time during the two hours that he was operating it; that two completely unrelated and rare problems with the brakes would occur simultaneously; that these problems could have been caused by another person when there is no

one else who works in the area of the overhead crane; or that they were caused by something other than human intervention. The Arbitrator concludes that there is no other reasonable explanation for the sudden appearance of the problems with the brakes on the Grievant's crane on the night in question other than that he broke them.

The Union argues further that the Grievant had no motive to damage the crane. However, very shortly before the brake damage was reported, the Grievant had been called to discuss with Management the serious accusation that he had threatened another employee. In addition, the Union contends that if the Company had warned the Grievant about his conduct after the first night, the incidents of the second night would not have occurred. This argument suggests that he had done something that he should have been warned about the first night and lends support to the view that his conversation with the Weigher on that night was not as benign as he has portrayed it. However, even if Management failed to adequately address the situation the first night, this would not legitimize or minimize the Grievant's conduct in sabotaging his equipment. When an employee who is upset about a problem at work resorts to damaging expensive equipment in order to express his discontent, he has engaged in misconduct which severs the bond of trust which must exist between employers and employees. To use the Union's analogy, this is a "capital crime." The Grievant's damaging of the crane he operated was sufficiently serious to merit discharge, and the Arbitrator concludes that there is no need to determine whether the Grievant also threatened the Weigher. Therefore, the grievance must be denied.

AWARD

The grievance is denied.

Jeanne M. Vonhof
Labor Arbitrator

Decided this 26th day of July, 2002.
Under the authority of Umpire Terry A. Bethel.