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In the Matter of Arbitration Between:)
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ISPAT INLAND STEEL COMPANY)
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)
and)
)
UNITED STEELWORKERS OF AMERICA, LOCAL 1010.)

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Award No. 1004
Gr. No. 6-W-29

INTRODUCTION

The Undersigned Arbitrator was appointed according to the rules of the applicable collective bargaining agreement. The hearings were held on October 18 and November 8, 2002 at the Company's offices in East Chicago, Indiana.

APPEARANCES

UNION

Advocate for the Union:

D. Reed, Step 3 Representative and Grievance Committee Secretary

Witnesses:
L. Aguilar, Vice Chairman, Grievance Committee
V. Davis, Grievant
K. F. Deel, Griever Area 1
O. Cochran, Griever Area 6
R. Kolbert, Steward Area 6
B. Vereb, Witness

COMPANY

Advocate for the Company:

P. Parker, Section Manager, Arbitration

Witnesses:
E. Chagolla, Spectro Chemist - Quality Department
K. Rajski, RHOB - Pit Supervisor - # 4BOF
J. Federoff, Senior Turn Supervisor - # 4BOF

R. Besich, Section Manager RHOB- Pit -# 4 BOF
R. Allen, Area Human Resources Manager - Iron & Steel Producing

Background:

This is a case involving the Company's discharge of a long-term employee for threatening a co-worker. The Grievant and another employee, Mr. E. Chagolla, worked as Spectro Chemists in the #4 BOF Laboratory. As Spectro Chemists, the employees were required to run tests for quality control during the steelmaking process. The two employees both worked in two adjoining rooms, a prep room, where samples are prepared, and a lab room, where the tests are run.

Mr. Chagolla testified that he had worked for the Company since 1999. He said that at about 7:45 p.m. on the night in question he turned on the pressure equalizer in the lab. This equipment is used to equalize the air pressure in order to reduce the amount of dust being sucked into the lab. He turned off the pressure equalizer when he felt the lab was no longer full of dust. Mr. Chagolla testified that he then began to prepare a test sample, and noticed that the pressure equalizer was on again. He turned the equalizer off again. At that point he said that the Grievant said to him, "Hey, I don't appreciate you running the pressure equalizer while I'm running a test."

Mr. Chagolla said that he told the Grievant that it was within his rights to turn on the machine whenever they were getting "dusted." He said that he left the room, and went to the other room to continue his testing work, but that he could hear the Grievant raising his voice in the other room, and saying, "You've been here how long? You don't know who you're messing with. I'll kick your ass. You don't think I can kick your ass? I'll kick your ass." Mr. Chagolla testified that he ignored the Grievant, saying, "Whatever" to the Grievant's comments, and "blowing him off." At some point Mr. Chagolla returned to the room where the Grievant was

located. He said that the Grievant said something like, "How old are you? I have a son about your age. My son can kick your ass."

Mr. Chagolla testified that he told the Grievant he was threatening him and he was going to call a supervisor. He said that when the Grievant would not stop, he did not want to take the risk to see where this situation might lead. He finished his test and called a supervisor. He testified that the incident lasted about 5-7 minutes, that the Grievant was sitting when it began, but that he stood up and his voice became louder, as the incident went on. While he was waiting for the supervisor to arrive, a Technician came into the lab, and the Grievant sat down and was quiet.

When the supervisors arrived, Mr. Chagolla said that he told them about the incident with the Grievant. He said he told them that other incidents he had heard about concerning the Grievant caused him to question whether the Grievant might act on his threats. Mr. Chagolla said that he became upset when the Grievant denied making the comments, and said to the Grievant, "Why don't you be a man? Tell him what you said."

Mr. Chagolla testified at the arbitration hearing that running the pressure equalizer wouldn't have affected a test. He said that in the past one test might have been affected by turning on the pressure equalizer, but that that was no longer the case. He said that he had tried to explain this to the Grievant on the night in question.

On cross-examination, Mr. Chagolla said that when the Grievant first began talking to him in a threatening manner, they were about 15 feet away from each other, and were not in the same room. He acknowledged that he finished running his test before calling the supervisor. He said that he could not remember speaking to "Scott" on the prior day. He did remember talking to

Mr. Seronis about a week after the Grievant's discharge and saying something like, "I could have kicked his ass" with regard to the Grievant. He also acknowledged on cross-examination that he did not file a police report or call Plant Protection about the incident.

Mr. K. Rajski, Pit Supervisor, testified about his recollection of the events that night. He said that he had received a call from Mr. Chagolla and that he seemed very excited and he was talking very fast. He told Mr. Rajski that he had problems and that he should get there right away. Mr. Rajski said that Mr. Chagolla identified himself, and said that the Grievant had said that he was going to kick his ass. According to the supervisor, Mr. Chagolla threatened to call Plant Protection or the police, but Mr. Rajski asked him to wait until he arrived.

Mr. Rajski asked Mr. Federoff to accompany him as he went to the lab. He said that when he arrived, both men were seated, and a Technician was in the next room. Mr. Chagolla reported that the Grievant had said that he was going to "kick his ass." Mr. Rajski said that Mr. Chagolla related to him that the Grievant had problems with others in the lab in the past. The Grievant denied everything, and Mr. Chagolla asked him to confess. The supervisor decided that it was best to split up the two employees, since there was no supervision in their immediate area, and just the two of them working together. He said he sent the Grievant home because Mr. Chagolla had called him and made the accusation, and the Grievant had no rebuttal other than his denial. He said that the Grievant became very upset, and said, "Why me?"

Mr. Rajski said that when they got to the locker room, the Plant Protection officer was already there. The Grievant said that he was going to sue the Company because he was Black and Mr. Chagolla was Mexican, according to Mr. Rajski. The supervisor said that when he called

Plant Protection he offered to call the clinic for Mr. Chagolla, but Mr. Chagolla said that he was all right.

Mr. R. Besich, Section Manager, testified that he was present at the investigation of the incident. He said that the Grievant said that there was an argument over the pressure equalization system, and that he had a 25-year old son who could handle Mr. Chagolla. The Section Manager said that he believed Mr. Chagolla, and that he regarded the Grievant's comment regarding his son as a threat. Mr. Besich said that he concluded that the Grievant believed that he had not done anything wrong.

The Grievant testified that he had 28 years with the Company, and had worked as a Spectro Chemist for the past five years. He said that normally the Spectro Chemists do not turn on the pressure equalizer unless the lab is so dusty that you need a respirator. He said that he almost never turns it on, that it did not need to be turned on on the night in question, and that he believed that it could affect some test results. The Grievant testified that he turned the fan back on in order to test Mr. Chagolla, to see if he knew that the fan should not be turned on. When Mr. Chagolla turned it off, the Grievant said that he told him that he did not appreciate him turning on the fan while he was running a test, and "next time, don't turn on the fan." The Grievant said that Mr. Chagolla said, "What are you gonna do about it?" which the Grievant took as a challenge. The Grievant testified that he then said, "I have a son about your age. He could probably handle you." Mr. Chagolla then said, "Are you threatening me?" to which the Grievant remained silent, according to his testimony, and Mr. Chagolla picked up the telephone and reported that he was being threatened. The Grievant contends that he never threatened Mr.

Chagolla, or said that he was going to "kick his ass." He acknowledged that he did say at the investigation that he had a son who could probably handle the Grievant.

The Grievant reported that he had had one other incident with Mr. Chagolla on a previous occasion. He said that on that occasion he told Mr. Chagolla that he had a test to do, and Mr. Chagolla said that he did not like anyone telling him what to do, other than his mother and father. The Grievant said that he had had a conversation with a Management official, several months prior to this incident, who told him that Mr. Chagolla had said that he did not like two Black employees in the Electrical Department, but that he liked a White co-worker.

On cross-examination the Grievant acknowledged that he had had little contact with Mr. Chagolla prior to the incident which led to his discharge. He said they were not enemies.

The Technician responsible for repairing the laboratory equipment testified that he was called in from home to repair equipment in the lab on the night in question. He said that he arrived at about 8:00 p.m. and left feeling that Mr. Chagolla, who had called for the repair, was not very cooperative. He said that the Grievant was sitting quietly and that he had no idea that there had been an altercation between the two employees in the lab, until the foreman walked in. He testified that he had seen other occasions when employees had not gotten along, including one case 22 years earlier, in which two employees were shoving each other and yelling at each other, and a supervisor told them that if he saw either one of them do that again, they would get a five day suspension.

The Steward for the Quality Department testified that a Management official had told him that around the time of the incident, Mr. Chagolla had "tried to cut a deal" with Management outside the collective bargaining agreement to receive additional pay, because employees called

him with questions about a computer system in the No 2 BOF. The Steward also said that a Section Manager told him that Mr. Chagolla had asked him about what he should do if he had a problem with the Grievant. This conversation occurred either the day before or a few days before the incident in question. The Steward testified further that a supervisor told him that he saw Mr Chagolla about a week after the Grievant was discharged, and asked him what he would do if he ran into the Grievant on the street. He said that Mr. Chagolla responded that he would "kick him in the knees," and "would knock him down." The Steward said that the supervisor told him he had sent this information on to the Labor Relations official in charge of the Grievant's case.

The Steward said that in the past, when similar situations arose, supervisors and Union stewards talked to employees. He said that he had been "beat up" in the mill in the 1980's, and that on that occasion his supervisor made him shake hands with the other man, and that they are still friends to this day. He acknowledged on cross-examination that he would take it up with Management if one of his members said he was being threatened repeatedly and Management would not do anything.

A Griever testified that if employees have a problem with each other, and one says, "I'm gonna kick your ass," he goes to a supervisor and they talk to the employees. The supervisor separates them, if need be, so that the employees don't lose their jobs by getting in a fight. He said that to his knowledge employees have been fired for fighting, but not for verbal threats.

The Griever reported that he talked to both employees to prepare for the investigative hearing. He said that the Grievant said that he and Mr. Chagolla had a disagreement and that Mr. Chagolla at one point said, "What are you gonna do about it?" According to the Griever, the Grievant said that he knew he had 29 years of service; he denied that he said he was going to kick

Mr. Chagolla's ass, but that he did say, "I got a kid who can handle you." The Griever said that when he queried Mr. Chagolla about the incident, in his role as Griever, Mr. Chagolla became upset and said, "Why are you picking on me?"

The Vice Chairman of the Grievance Committee presented evidence that an employee recently received a written reprimand for threatening to blow up another employee's house. The written reprimand shows that the disciplined employee told another employee that he wished he had the address of a third employee to blow up her or her home. Although both the other employees involved said that they were uncomfortable with what was said by the disciplined employee, Management concluded that "neither took it as an immediate threat" and accepted the employee's rationale that he or she was "blowing off steam."

The Vice Chairman testified that he is aware of many altercations, arguments, fights, and pummelings which have occurred in the mill. He said that in these cases employees have been disciplined, but not discharged. He testified that one employee threw a bolt at another and hit him in the head, but was not discharged. On cross-examination, he admitted that this employee was returned to work on a Last Chance Agreement, and required to attend anger management classes.

The Vice Chairman also testified that he was aware of a foreman who had threatened many bargaining unit members. The Union complained, but nothing was done until the foreman eventually was moved to another Company property. The Vice Chairman said that this foreman eventually was fired for pushing someone down a flight of stairs.

The Witness also took issue with the fact that at the third step meeting Management failed to provide the Union with a written statement from Mr. Chagolla, which they had in their possession. The Union took the position that they should either be able to question Mr. Chagolla,

who did not appear at that meeting, or see his statement. The Company raised, on cross-examination, the fact that the Agreement prohibits Management from calling bargaining unit witnesses against their will, that Management was willing to share the contents of the statement at the third step meeting, and that it attached the statement to the third step minutes. The Witness stated that the practice has been to share as much information as possible as early as possible, in order to resolve complaints.

A Griever at the No. 2 Blast Furnace testified that he filed a complaint in August of this year on behalf of an employee against a supervisor whom the employee said put his hand in his pocket and threatened to cut the employee from head to toe. The employee filed a complaint with the Company and one with the East Chicago Police Department over the incident. The Company sent a response to the employee two days after his complaint was made, stating that the matter had been investigated and appropriate action taken. The Griever testified that he believed that the same rules should apply to all employees, Management and bargaining unit, and he did not believe the Company was imposing equivalent discipline on both groups.

Mr. R. Allen, Human Resources Area Manager for Steelmaking, testified about this incident as well. He advises managers on discipline for exempt employees. He testified that one of his functions is to make sure that discipline is consistent. He said that salaried employees rarely receive time off for discipline; instead they receive warnings or may be denied merit increases. There is little progressive discipline, with the exempt employee usually moving from a written warning to discharge.

The HR Area Manager testified that he conducted an investigation into the incident which led to the employee complaint against a supervisor. The accused supervisor reported that he said

"there was a time when I would cut you from head to foot," and that the employee said that he would "kick his ass." The Area Manager said that the employee involved said at the investigation that he did not feel threatened. He had continued to work the rest of the turn, without calling Plant Protection, or any supervisor to tell them about the incident. The Company concluded that the employee had not been threatened.

The Company's Position

The Company argues first that the Union has the burden to prove its claim of racial discrimination. The Grievant was discharged because Mr. Chagolla made a believable charge that the Grievant threatened him, according to the Company, and he has not been treated differently than other employees who are not African American. Therefore the Union has failed to establish its claim of racial discrimination, the Company contends.

The Company argues that the Union's attempts to undercut the credibility of Mr. Chagolla are not convincing. The evidence shows that the Grievant did not really know Mr. Chagolla before the incident. Although the Union suggested that there was some kind of conspiracy between Mr. Chagolla and the supervisors, the Company argues that the Union did not show a motive for such action. The Union has not shown any reason why Mr. Chagolla would invent the entire incident. In addition, the Grievant has a strong interest in denying that he threatened Mr. Chagolla, and has demonstrated no remorse for what he did. The Company also argues that in the other incidents relied upon by the Union, where employees were not discharged, the persons to whom the comments were directed did not feel threatened.

As for not providing the statement at the third step meeting, the Company argues that the Union did receive the information at the third step. In addition, the Company argues that Sec. 8.1.1 of the Agreement covers the requirement to provide written statements in discharges, but does not apply to the facts at issue here. Both witnesses who provided statements testified at the arbitration hearing. In addition, the Union has not demonstrated any disadvantage from not having the statement sooner, according to the Company.

The Company argues that discharge is appropriate because people do carry out their threats. The Company cannot take the risk that an employee will carry out a threat. According to the Company, if employees are not discharged when they make threats, then other employees will be discouraged from reporting such threats, and fighting is more likely to ensue. The Company argues that the Union should be looking out for the welfare of employees who are threatened, and who report the threats, rather than suggesting that there is something wrong with this conduct..

The Company requests that the grievance be denied. If the Arbitrator does reinstate the Grievant, however, the Company requests that it be a conditional reinstatement, under a Last Chance Agreement, with a requirement to attend anger management classes.

The Union's Position

The Union argues that the evidence shows that Mr. Chagolla challenged the Grievant, both by turning on the fan, and by asking him what he was going to do about it. The Union argues that the Grievant's testimony is more credible than that of Mr. Chagolla. The Union points to the fact that the Technician, who was the first person to enter the lab after the Grievant allegedly threatened Mr. Chagolla, did not realize that any altercation had transpired between the

two people. Yet, when Mr. Rajski arrived several minutes later, he decided that only the Grievant should be sent home, because Mr. Chagolla was upset. However, Mr. Chagolla was not acting upset when the Technician was there, several minutes earlier, according to the Union. The Union questions why Mr. Rajski would believe Mr. Chagolla over the Grievant.

The Union argues that the Company had a plan to fire the Grievant. When Mr. Chagolla talked to the Section Manager on the day before the incident about what he should do if threatened, the Section Manager should have investigated further, and reinstructed employees, if necessary. As further evidence of collusion between Management and Mr. Chagolla, the Union offers the testimony that Mr. Rajski had called to the lab one half hour prior to the incident, asking if anyone had called him.

The Union also objects to Management's failure to provide the statement of Mr. Chagolla to the Union until the third step minutes. The Union argues that this action violates Marginal Paragraph 6.18 of the Agreement. The Union further objects to the introduction of the information from these statements, as a violation of Marginal Paragraph 8.5. The Union presented cases in which grievances have been sustained under this language, because the employer introduced evidence of stale discipline. The Union argues that the same rationale should be applied here.

The Union argues further that even if the charges against the Grievant were true, progressive discipline should have been applied for such a long-service employee. He was treated differently than other employees, who have committed similar offenses, the Union argues, and this fact demonstrates that the Grievant was the victim of racial discrimination. The Union requests reinstatement, $150,000 and full benefits.

Decision

The Union has raised several procedural arguments with regard to the way in which this grievance was processed. First, the Union contends that Management erred by failing to produce, at the third step grievance meeting, either the employee who accused the Grievant or a written statement he had given to Management. The Union relies upon Marginal Paragraph 6.18 of the labor agreement, which states in relevant part,

> At all steps of the grievance procedure, and particularly at Step 3 and above, the grievant and the Union representative should materially expedite the solution to the complaint or grievance by disclosing to the Company representatives a full and detailed statement of the facts relied upon. In the same manner, Company representatives should disclose all the pertinent facts relied upon by the Company....

While it is not clear why Management did not give the written statements of Messrs. Chagolla and Rajski to the Union at the third step meeting, the statements were attached to the minutes of that meeting. The evidence shows that even before this, the Union was aware of the facts and allegations leading to the Grievant's discharge, which were the substance of the contents of the written statements. Union representatives and the Grievant were present at the suspension hearing where the incident leading to the Grievant's discharge was described. The Arbitrator cannot conclude, from this record, that Management failed to disclose the pertinent facts relied upon by the Company in discharging the Grievant. The Union has not provided evidence, moreover, that it was disadvantaged by the failure to provide the actual statements sooner. Under these circumstances, the Arbitrator cannot conclude that the failure to provide the written statement at the third step meeting violates Paragraph 6.18.[1]

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[1] As for Mr. Chagolla, the Company argued that the Agreement prohibits Management from compelling a bargaining unit employee to appear or present evidence for the Company. The Union did not disagree with this assertion, arguing instead that the Company could have

The Union also objects, however, to the inclusion in Mr. Chagolla's statement of references to other incidents in which he claims the Grievant acted in a threatening or violent manner. The Union argues that inclusion of these statements in the third step minutes violates Marginal Paragraph 8.5, which reads,

> The company in arbitration proceedings will not make use of any personnel records of previous disciplinary action against the employee involved where the disciplinary action occurred five (5) or more years prior to the date of the event which is the subject of such arbitration.

The evidence of past conduct in this case is limited to a statement attached to the third step minutes which contains comments outlining the complaining witness' understanding of the Grievant's past behavior. If offered for the truth of the matter, this certainly would be hearsay. It is not hearsay if it is offered simply to show why the complainant may have feared the Grievant. However, there is an additional policy matter involved here. Marginal Paragraph 8.5 precludes the Company from offering a disciplinary history of events that occurred more than five years prior to the event at issue. The information offered here is not a disciplinary history and does not violate the express terms of 8.5. Nevertheless the complainant's statement has only limited relevance and Marginal Par. 8.5 reflects a policy that a disciplinary decision should not be based upon stale information. That policy could be compromised if statements like the one offered here were to become routine. If similar cases arise in the future, there is no need for a detailed rendition of outdated incidents.

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requested at least for him to be present. Given the other provision in the Agreement, however, the Company's failure to produce this bargaining unit Witness in person during the grievance procedure does not violate Par. 6.18

With regards to the merits of the dispute, a bargaining unit employee faces a difficult situation when he reports and testifies against another bargaining unit employee for making a threat. The Union argues that far from lending credibility to Mr. Chagolla's testimony, however, his willingness to report the Grievant demonstrates Mr. Chagolla's ill will towards him, or Mr. Chagolla's desire to move into a salaried position. The evidence shows, however, that there had been little contact between the two employees before the incident at issue here. Although there had been one brief negative discussion between them, neither employee suggested that there was sufficient ill will arising out of that incident to cause Mr. Chagolla to invent the comments which led to the Grievant's discharge. Moreover, even if Mr. Chagolla were trying to improve his position with Management, it is not clear how his actions here would help him in that endeavor. In addition, the Grievant acknowledged that he made some comment about his son "handling" Mr. Chagolla. The Arbitrator concludes that the Grievant did make the comments to Mr. Chagolla that he and/or his son would "kick his ass."

The Union argues that even if the Grievant made these comments, however, discharge is not appropriate. Here the Grievant made threatening comments to Mr. Chagolla several different times. There is some conflicting evidence regarding whether Mr. Chagolla believed that he was in immediate danger of being hurt. However, he testified credibly that he believed the situation could escalate from a verbal altercation into a physical fight. He was not willing to take that risk and so he called a supervisor. The Company makes a convincing argument that an employee should not have to wait to see whether another employee will act on a verbal threat before calling for help. Under these circumstances there is sufficient evidence that the Grievant violated Rule

132 r so as to merit discipline. However, the issue here is whether it was appropriate to discharge the Grievant on the basis of that call.

The Union has presented substantial evidence in this case that the Company has treated other employees more leniently who have engaged in similar misconduct. Written documentation of a recent case was presented where an employee who had threatened to blow up another employee or her house was given a written reprimand, when Management concluded that the employee did not seriously threaten the other employee, but was just "blowing off steam." In the discipline challenged in Inland Award No. 928, the Company concluded that the grievant did seriously threaten a Plant Protection guard, but imposed a 10-day suspension on the employee.[2]

Thus, the evidence demonstrates that Management has imposed differing levels of discipline on individuals engaging in making threatening remarks. Although several employees in recent years have been discharged for making verbal threats,[3] the Company has not demonstrated how the behavior of the Grievant here was significantly different than the behavior of the grievant involved in Award No. 928, who was given a 10-day suspension. Therefore the discharge here will be reduced to a 10-day suspension.[4]

The evidence does not establish that the disparity in discipline issued to the Grievant, as compared with the grievant in Award No. 928 was based upon the race of the Grievant. The

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[2] The Company also relied upon the fact that that employee had an earlier five-day suspension for insubordination and threatening behavior towards a supervisor.

[3] The Union presented uncontradicted testimony that these employees did not remain discharged through the grievance and arbitration process.

[4] Different evidence presented in other cases heard in arbitration where a violation of Rule 132 r was at issue may have resulted in longer suspensions than the one at issue here.

Company has discharged other employees in the last several years for making threatening statements, who were not African-American.

AWARD

The grievance is sustained in part. The discharge is reduced to a ten-day suspension. The Grievant shall be made whole for all backpay and other benefits resulting from his discharge, except for the period of the suspension. The record does not establish that the Company discriminated against the Grievant based upon his race.

Jeanne M. Vonhof
Labor Arbitrator

Decided this 7th day of January, 2003.