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In the Matter of Arbitration Between: )  
ISPAT INLAND )

and )

UNITED STEELWORKERS OF )  
AMERICA, Local 1010 )

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Award No. 1008  
Grievance No. 31-W-089

### INTRODUCTION

The Undersigned Arbitrator was appointed according to the rules of the applicable collective bargaining agreement. This hearing was held on March 20, 2003 at the Company's offices in East Chicago, Indiana.

### APPEARANCES

#### UNION

##### Advocate for the Union:

D. Shattuck, Chairman, Grievance Committee

##### Witnesses:

D. Reed, Secretary, Grievance Committee

F. Godinez, Grievance Committeeman, Area 31

A. Silva, Grievant

#### COMPANY

##### Advocate for the Company:

P. Parker, Section Manager of Arbitration & Advocacy

##### Witnesses:

R. Lofton, Plant Protection

R. Hayes, Lieutenant, Plant Protection

D. Bullock, Supervisor, # 7 Blast Furnace

W. Carter, Manager, #7 Blast Furnace

C. Lamm, Acting Step 3 Representative, Union Relations

### Background

The Grievant has worked for the Company for more than 30 years. His last ten years have been at the No. 7 Blast Furnace. At the time of his discharge, he worked as a Labor Leader. There was no evidence of any discipline in his record. The Grievant was discharged for violation of Rule 135(l), for attempted theft of Company property.

The incident in question occurred on November 26, 2002. The Grievant was exiting the South Gate of Plant No. 2 in a Company pickup truck when two tuyeres fell out of the truck onto the ground. Tuyeres are large cones made of copper, used to direct the hot blast of air into the blast furnace. Each of these tuyeres weighs approximately 525 pounds. When the tuyeres are worn beyond use they are stored for subsequent resale to a scrap dealer.

The guard at the gate testified that when the tuyeres fell out, the Grievant kept on going until she called out to him to stop. The Grievant then backed up into the tuyeres. The guard asked the Grievant where he was going with the tuyeres, and he replied, "Plant 1." She asked him to move the tuyeres out of the intersection. He rolled them to the side of the road, and covered them with the tarp with which they had been covered in the truck. The Grievant then called a fork lift operator from the No. 7 Blast Furnace, more than a mile away, to come and pick up the tuyeres.

A Plant Protection Officer stated that he was going through the South Gate when he noticed the tarp laying up beside the fence, and something shiny underneath it. He thought that this was unusual so he looked underneath the tarp, saw the tuyeres and asked the Grievant what was going on. The Grievant stated that he was on his way to the Safety Center to get some materials for working overtime. He asked the Grievant if his supervisor knew that he was gone, and he said "yes." The Plant Protection Officer requested that the Grievant accompany him to



the Security office. There were two other tuyeres in the truck that did not fall out at the time of the incident. The total scrap value of the four (4) tuyeres is approximately \$1050.

The Grievant's Supervisor stated that the Grievant did not request permission to go to the Safety Center that day or tell him that he was going. He explained that because the Grievant worked as a Labor Leader, he would not be closely supervised, and could be missing from the plant without his supervisor's knowledge. According to the Grievant's Supervisor, the Grievant was due to go on vacation the following week, and he had planned to go to Las Vegas.

The Supervisor stated that there was no legitimate business reason for the tuyeres to be in the pickup truck on that day. According to the third step minutes, these tuyeres were worn out, and ready to be sold for scrap. The Company sells used tuyeres for scrap approximately twice per year. An outside vendor comes into the plant to pick up the used tuyeres.

The Supervisor also stated that it would be difficult for someone not to know that the tuyeres were in the truck. The truck is rated as a one-ton pickup truck, and the four tuyeres weighed more than a ton. The Company presented pictures showing what the truck looked like with four tuyeres in it. The truck appears heavily weighed down, with the back tires visibly flattened, to some extent, by the weight of the load. The tuyeres are visible above the side of the truck bed. The Supervisor said that he drove the truck with four tuyeres in it and found it to be very unstable. He said he would turn the steering wheel but the truck would continue straight on. On cross-examination he acknowledged that he was driving in an area with a lot of pellets on the ground, that cause unstable movement anyway.

The Grievant's Supervisor testified that the truck had been used that morning for a snow detail. The Grievant had assigned Employee Lopez to clean out the truck bed after coffee break that morning, at about 9:30, to prepare for the snow detail. A pallet of salt was loaded into the



bed, and the supervisor and three employees (Lopez, Lynch and Zamco) salted nearby driving surfaces. The Supervisor said that the job was completed at about 11:30 a.m., and the three bargaining unit employees went to lunch in the Mason Building.

The Supervisor testified that the pallet of salt was found in the area where the truck would have been parked, and not where the salt was normally stored. He stated that he believed it would have taken someone around five minutes to unload the pallet of salt and load the tuyeres, with a fork lift. The tuyeres fell out of the truck at about noon. The Supervisor testified that the Grievant and Mr. Lynch could operate a forklift, but not Messrs. Lopez or Zamco. The Supervisor also stated that the Grievant had worked for him for many years with no problems.

The Manager of the No. 7 Blast Furnace testified that he conducted the investigation into this incident. He noted that there are several scrap dealers within a mile of the plant. He testified that at the investigation Employee Lopez reported that he had been assigned, at about 11:30, to flag off an area about 50 feet from where the tuyeres are. According to the Manager, Lopez said during the investigation that he saw the Grievant laying a tarp inside the bed of the truck at about 11:00 to 11:30 a.m. on the day in question. Mr. Lopez signed a statement to that effect during the investigation, but refused to appear or testify at the third step or the arbitration hearing. The Manager testified that he made the decision to terminate the Grievant on the basis of the magnitude of the theft, and the potential for financial harm to the Company, if employees are not discharged for such offenses.

There was a Union Representative present at the investigation. He stated that he did not understand that the investigation involved a possible charge of theft until the parties were far into the meeting, because when he was summoned to the investigation he was told that the charge involved mobile equipment damage. According to the Griever he did not believe that he needed



to speak with the Grievant before the investigative meeting began because he thought that it was a mobile equipment investigation, which rarely leads to discipline. Once he realized the nature of the hearing, it was too late to speak to the Grievant alone, he said. He also said that he heard Mr. Lopez say during the investigation only that he "thought" he saw the Grievant laying on the tarp. The Griever testified that he had the opportunity to ask questions at the investigation, and he said that he did not look at the statement on that date.

The Blast Furnace Manager testified on rebuttal that during the investigative meeting he announced that the subject of the investigation was a possible theft of Company property every time a new witness entered the room. A Labor Relations Representative present at the investigation confirmed that he heard the Manager make these announcements. He also testified that he gave a copy of Mr. Lopez' statement to the Griever at the investigation.

The Secretary of the Grievance Committee testified that the Safety Center is in a parking lot which employees generically refer to as "Plant 1." The Company pointed out that the Safety Center is across Cline Ave. from Plant 1, which is located behind the administrative buildings. The Secretary also testified that the South Gate at noon is very busy and congested, whereas hardly anyone uses the gate at Lot 40. On cross-examination he acknowledged that probably only those going to lunch would be exiting the Lot 40 gate at that time.

The Grievant testified that he was working around the Mason Building on the day in question when the crew returned at about 11:30 with the truck. He said that he anticipated working overtime that day, because of the snow, and thought he would need rubber boots and laces for the snow removal work. According to the Grievant he is responsible for safety equipment, so he would not have to ask a supervisor for the boots or laces. He said that he thought he told his supervisor before 10:00 that he was going to the Safety Center. The Grievant



testified that he did not notice the tuyeres in the truck. According to the Grievant, the truck always handles badly. He noticed the green tarp but did not give it much thought, he said, thinking that it was covering the pallet of salt. He noticed that snow had accumulated on it, he said.

The Grievant said that he did not notice when the tuyeres fell off the truck, until he heard the guard saying, "Whoa, whoa." He said that the tarp and two tuyeres were already on the ground and the guard was adamant that he move the tuyeres immediately, so he did move them. He stated that he moved the tuyeres and the tarp bunched together, and did not intend to cover the tuyeres. He said that he called someone from the Mason Building to help him get the tuyeres back to that area, because that is where they belonged.

The Grievant said that he was sitting in his truck waiting for the operator to come help him move the tuyeres, when Officer Hayes came up and asked what was going on. The Grievant said that he did not know that the tuyeres were in his truck, and gave this same explanation to the Chief of Security and to the Manager of the No. 7 Blast Furnace before his Union Representative was called in for a formal investigation. He stated that he did not request a Union Representative while first being questioned. The Grievant testified that he told the guard that he was going to the Safety Center, but that he might have said, "Plant 1."

The Company presented evidence that there was no recorded snow accumulation on the day in question, according to weather statistics. On cross-examination, the Grievant stated that it was snowing. He also said he knew that there were not any boots in his size at the No. 7 Blast Furnace – he did not need to ask for them from his supervisor. On redirect, he stated that one of his duties as Labor Leader is to check for the availability of safety equipment.



The Company's Position

The Company argues that there is no doubt that the Grievant was caught stealing more than 2000 pounds of copper from the Company. The truck had been used until 11:30 and had contained a pallet of salt when that job was done. The tuyeres were loaded into the truck between 11:30 and noon, when the Grievant was found with them, exiting the plant. There was no business reason for them to be in the truck, the Company asserts.

In addition, the Company relies upon the evidence that Mr. Lopez saw the Grievant laying the tarp in the truck, shortly before he was found with tuyeres. The Company disputes the Union's suggestion that the statement is not reliable, and argues that Management may not call Mr. Lopez to testify, but that the Union may do so, because he is a bargaining unit member. The Company also disputes the Union's suggestion that Mr. Lopez himself may be responsible for attempting to steal the tuyeres. The Company notes that Mr. Lopez is not qualified to operate a forklift. In addition, Mr. Lopez is a fairly recent hire, employed as a Laborer, whose absence would be noted. In contrast, the Grievant is a Labor Leader who could leave the plant without anyone knowing or caring, according to the Company. In addition, Mr. Lopez was working right with his supervisor that morning, so it is unlikely he would try to remove the tuyeres at that time, the Company contends.

The Company also relies upon the fact that the Lot 40 gate is a straight shot out of the plant to the Safety Center, but the Grievant chose instead to drive a very overloaded truck through the plant to a more congested gate. According to the Company he did so because he believed that he was less likely to be stopped at the South Gate, especially at noon, which is a busy time.

The Company further argues that the Grievant's conduct after the tuyeres fell out of the truck indicates his guilt. He did not call his supervisor and report the unusual fact that tuyeres were in his truck. Instead he called someone to drive a fork lift a mile and a half across the plant to pick them up. He covered up the tuyeres at the side of the road, according to the Company, because anyone from the Blast Furnace would have recognized what they were and that they did not belong there. In addition, the Company suggests that the Grievant told the guard that he was taking the tuyeres to "Plant 1" because that is the location of the Machine Shop, where used parts are reconditioned. (Tuyeres are not reconditioned, but it is unlikely that the guard would have known that.) The Company also disputes the assertion that employees refer to the Safety Center as Plant 1. In conclusion, the Company argues that prior arbitration awards between the parties support discharge as the appropriate penalty in a case like this one.



### The Union's Position

The Union contends that there is no evidence to support the Company's suggestion that the Grievant wanted money for a trip to Las Vegas. In addition, the Union contests the Company's assertion that there was no snow accumulation on the day in question, because the evidence shows that the morning crew was sent out on a snow detail. The Union also argues that if the Grievant had wanted to hide the tuyeres by the side of the road, he could have done a better job of it.

The Union asserts that the Grievant failed to call a supervisor when the tuyeres fell off the truck because he had semi-supervisory authority himself. He simply dealt with the situation, as one would expect a Labor Leader to do. In addition, the Union strongly contests the Company's suggestion that the Grievant went out the South Gate in order to avoid detection. According to the Union, there are more guards at the South Gate than at the Lot 40 gate, and it was more likely that he would be stopped at the South Gate.

The Union also takes issue with the Company's suggestion, in the opening statement, that the Grievant said that he was going to "Plant 1" because that is the location of the Machine Shop, and he said that in order to suggest to the guard that the tuyeres were being reconditioned. According to the Union, it is common for employees to say that they are going to "Plant 1" when they go to the Safety Center.

The Union asserts further that the Grievant did not have enough time after 11:30 and before the tuyeres fell off the truck to leave the lunch area, find a forklift, unload the pallet of salt, load the tuyeres, replace the forklift, come back to the truck, and drive the 10-15 minutes through the plant to get to the South Gate. In addition, the Union argues strongly that if Mr.



Lopez was in the area flagging, and saw the Grievant lay on the tarp, then he should have been able to observe who loaded the tuyeres. The Union suggests that Mr. Lopez may have loaded the tuyeres, and then blamed the Grievant, but the Company jumped to the conclusion that the Grievant was guilty. Mr. Lopez never even was asked about his activities that day. According to the Union, the Grievant is a thirty year employee with a perfect record who was in the wrong place at the wrong time.

### Decision

The Grievant's termination resulted from Management's conclusion that he was trying to steal property worth more than \$1,000 from the Company. There is no question that the Grievant was caught trying to drive a truck out of the plant which contained scrap copper tuyeres. Nor is there any question that there was no legitimate reason for the tuyeres to be in the truck.

The Grievant's explanation for his activity is that he just grabbed a truck which he did not know contained the tuyeres. The pictures and testimony indicate that the tuyeres weighed down the truck a great deal. They were heavier than the maximum weight load for the vehicle. They weighed the truck down so much that it is very likely that the rear tires were compressed, and that the truck handled badly when driving. Furthermore, the tuyeres, lying on a pallet, were taller than the sides of the bed of the truck and therefore could be seen if one glanced at the bed of the truck. Even if they were covered by a tarp, they did not look or weigh like a pallet of salt. It is almost impossible to believe that the Grievant was able to ignore all of these details in an hurried dash to obtain safety boots and laces. Furthermore, his argument that he needed to



obtain the safety items in anticipation of an overtime snow detail that might occur later in the day does not ring true. The incident at the gate occurred during the last third of the turn. According to the Grievant's testimony it was snowing all day, and, therefore if he needed snow boots it seems unlikely that that need would have arisen so urgently just towards the end of the turn. There is no evidence in the record that the Grievant had been asked to stay for overtime by that time.

Furthermore, the Grievant's conduct when the tuyeres fell off the truck suggests the behavior of one who was guilty of stealing them. His statement that he did not notice when two tuyeres fell off the truck is incredible. It is not believable that a person would not notice materials that weigh more than half a ton falling out of a one-ton pickup truck that one is driving. Furthermore, the Grievant's conduct after the tuyeres fell off raises serious questions. The Grievant never testified that he believed there was any good explanation for the tuyeres to be in the truck. Therefore, his failure to report their presence to a supervisor immediately is baffling. Furthermore, the fact that he called a fork lift operator to come more than a mile and a half to pick up the tuyeres is also suspect. It would make more sense to request a fork lift operator from a much closer location, if the Grievant had nothing to hide when the tuyeres fell out of the truck. In addition, his statement that he thought he told his supervisor that morning that he was going to the Safety Center also casts doubt on his credibility. On the day in question it was only minutes, or at most a few hours between when he said that he told his supervisor he was going to the Safety Center and when he was questioned about it. It is very unlikely that he could not remember whether he had actually talked to his supervisor about that that day, and therefore his false statement on this point is behavior that makes it look like he had something to hide, and casts doubt upon his overall credibility.



The Union suggests that there was not enough time for the Grievant to unload the salt and load the tuyeres by himself, especially without Mr. Lopez seeing him. However, the evidence shows that the truck was not available until 11:30, and therefore *someone* unloaded and loaded it between about 11:30 and 11:50. The short period of time actually makes it more likely that the Grievant was responsible for the loading the tuyeres (perhaps with the help of someone else). According to the Union's argument, someone else loaded the tuyeres, (presumably in order to steal them), without the Grievant's knowledge, and the Grievant coincidentally grabbed the truck, without seeing the tuyeres, and drove out of the plant with it, all within a very short period of time. This scenario contains too many coincidences over a very short period of time to be believable.

The credibility of Mr. Lopez' statement is weakened by the fact that he reported seeing the Grievant place the tarp in the truck, but did not report seeing anyone load the tuyeres.<sup>1</sup> He did not testify at the arbitration hearing, and therefore could not be examined about how that occurred. Of course the Company cannot call him as a witness if he refuses to testify, since he is a bargaining unit member. However, the Griever did have an opportunity to ask Mr. Lopez questions at the investigation. Given the questions surrounding his statement, the Arbitrator cannot give it the same weight that could be given were these questions not present. However, even if the statement of Mr. Lopez is given little weight, the Arbitrator concludes that there is sufficient evidence that the Grievant was attempting to steal the copper.

The Grievant was apprehended on his way out of the plant with the copper in a truck. There was no legitimate reason for the copper to be in the truck. The Grievant had the ability, as

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<sup>1</sup>There was not sufficient evidence to conclude that the written statement of Mr. Lopez did not reflect what he said at the investigation.



a Labor Leader, to come and go with few questions asked.<sup>2</sup> The Arbitrator concludes that his story that he was hurrying to the Safety Center for boots and laces, and that he did not know what was in the truck, is simply not believable. In addition the way the Grievant acted when the tuyeres fell out also indicates that he had something to hide and harms his credibility. Unlike the grievant in Inland Award No. 802, the Grievant here did not provide a believable explanation for the presence of the valuable material he was driving out of the plant.

The evidence indicates that the Grievant was deliberately removing material worth more than \$1,000 from the plant on December 4, 2002. It is very unfortunate that an employee with so much seniority and such a good employment record was caught taking this material. However, absent a believable explanation of his actions, the Arbitrator concludes that Management did not discharge him without cause. The evidence substantiates that the Grievant's actions required deliberate planning and several steps to carry out. Therefore the Arbitrator concludes that the Grievant breached the standard of trust which must exist between employer and employee, and discharge is the appropriate penalty.

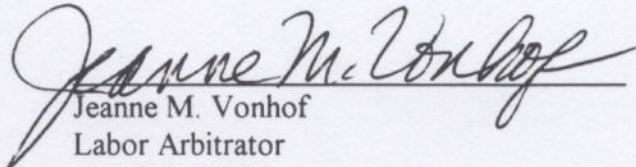
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<sup>2</sup> This is not true of Mr. Lopez. It is also the case that the Grievant and not Mr. Lopez could operate a fork lift.



AWARD

This grievance is denied.

  
Jeanne M. Vonhof  
Labor Arbitrator

Decided this 10th Day of July, 2003.

Under the Authority of Umpire Terry A. Bethel