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In the Matter of Arbitration Between:)
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Cleveland Cliffs,)
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and)
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UNITED STEELWORKERS,)
Local 1010.)
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Grievant: Bryant
Issue: Last Chance Agreement Term.
Arbitrator Docket No. 22035
Gr. No. 4BB0023

Case 128

BEFORE ARBITRATOR JEANNE M. VONHOF

INTRODUCTION

The undersigned Arbitrator was appointed according to the rules of the applicable collective bargaining agreement. The hearing was held on May 25, 2022, via ZOOM.

Mr. Jordan Liphardt, Labor Relations Representative, represented Cleveland Cliffs, hereinafter referred to as the Employer or the Company. Mr. Andre Joseph, Division Manager, 4 Steel Producing, testified on behalf of the Employer.

Mr. Jacob Cole represented United Steelworkers Local 1010, hereinafter referred to as the Union or the Local. Mr. Jim Thomas, Training Coordinator and Union Griever; Mr. Bernard Muhammed, Crane Operator; Mr. Jim Alcock, Crane Operator; Mr. Dave Roque, Griever and Mr. Darryle Bryant, the Grievant, testified on behalf of the Union.

Each party had a full and fair opportunity to present evidence at the hearing. Both parties made closing arguments at the hearing.

Background

In this grievance the Union challenges the discharge of a very long-term employee. On May 21, 2020 the Grievant, Mr. Darryle Bryant, was suspended and subsequently discharged for violation of rules regarding neglect or carelessness in the performance of his duties, and insubordination. The Grievant was discharged for incidents occurring in April 2020. The Grievant was reinstated several weeks later under the terms of a Last Chance Agreement (LCA) signed by the parties and the Grievant. In that LCA the parties agreed that the Grievant had violated Personal Conduct Rule 2.P "Neglect or carelessness in the performance of duties assigned or in the use of Company property" as well as Rule 2.Q. "Insubordination." In 2021 the Company concluded that the Grievant violated the terms of that LCA by performing in a similar careless fashion in October 2021, causing a crane hoist cable to break, for the second time.

On October 28, 2021 the Grievant was working as Caster Crane Operator in the 4 Steel Producing (4SP) Department. He was assigned the task of placing a test weight on the turret weigh beam to check the accuracy of the weight measurements. The test weight is an old ladle filled with 368.5 metric tons of metal, and is loaded onto the turret weigh beam at least once a day, according to the evidence. The Grievant was to place large J hooks on either side of the ladle to lift it, move it over to the turret, lower it, and place it on the turret's weigh beam, and then remove it.

Company Witness Andre Joseph, Division Manager, 4 Steel Producing, used pictures to describe the proper movement of the test weight. The J hooks are each attached at their tops to an equalizer bar, which is in turn attached to four cables which are wrapped around sheaves, wheels on which each cable is wound near the ceiling. Joseph said that the weight should be well-centered when it is lifted and when it is placed down. the J hooks should lift the test weight smoothly and the equalizer bar should always remain level, so that the weight on each J hook is equal. If the bar

is not level, a cable attached to one J hook may go slack. In this situation a hoist cable may come off the sheaves or break.

A video of the incident in question was played, and Joseph explained his view of what happened. According to Joseph, the Grievant lifted the test weight and set it down off-center. Joseph testified that the J hooks were "jumping" at this point, and that the Grievant said he heard a noise like the noise he had heard during an earlier incident which occurred in April 2020. If the J hooks are not moving smoothly, if they are "jumping," Joseph testified, then there is likely something wrong with the cables. The Grievant lifted the test weight and placed it down again. The south J hook became caught up on the weigh beam, and stopped moving, while the J hook on the north side continued to move. Joseph testified that the cables went slack on the south side and a cable either overstretched or came off the sheaves at this point. When the Grievant went to lift the weight again, a hoist cable broke and came down.

Joseph testified that during his tenure at 4SP this lift of the test weight had been done more than 7000 times and that only twice had a main hoist cable broken during the operation. In both cases it was the Grievant operating the crane when the cable broke, Joseph said. He testified further that it cost $40,000 to repair the caster crane after this most recent incident, and it was down for 20 hours. Because there is only one caster crane in the area, he testified that the Company incurred about $2.3 million in lost production. Joseph testified that there were no injuries involved in the incident. However, he said that if the cable had broken slightly later, the test weight could have fallen through the floor into the area below, where other employees were working.

During the disciplinary investigation of the incident, Joseph said that he identified two major mistakes made by the Grievant during this incident: he failed to center the load correctly, and he failed to stop and call Maintenance to inspect the crane when he saw the J hooks jump and

he felt and heard the crane rumbling, which the Grievant said felt "just like the first time," the 2020 incident. Joseph testified that he asked the Grievant why he did not call for a cable inspection, and the Grievant said he looked at the part of the cables he could see and concluded that they were okay. Joseph testified that the Grievant did not follow the procedures which were discussed in the Record Review after the incident in 2020. Joseph said that he told the Grievant at that time that he needed to be very conservative with his moves and to call for Maintenance if the cables were slack. He did not put these instructions in writing.

The Union asked Joseph whether there was a specific rule, procedure, or regulation that the Grievant violated. Joseph testified that a Crane Operator is expected to be in control of the crane at all times and is trained to center the load. The Union pointed out that there was no joint Union-Company safety investigation into the 2020 incident. The Union also introduced evidence of enhanced safety procedures which have been put in place since the Grievant's incidents. The Union presented a Position Safety Orientation (PSO) document for the Caster Crane Operator position that had been revised after the Grievant's April 2020 incidents. It states at Sec. 6.10 that the test weight is narrower than a regular ladle and that the J hook may become caught on the turret weigh beam. The PSO states that the Crane Operator should be careful to center the weight, to check that the J hook is not caught up, and that the equalizer bar is level. It also states that if a Crane Operator is unsure, the Operator may request a spotter. The Union also demonstrated that the turret weigh bar has been beveled, after the Grievant's most recent incident, to help correct the problem of the J hook getting hung up on the weigh bar when a Crane Operator comes in off-center. The Company pointed out that it has been using slightly narrower test weights for at least 20 years.

Mr. Jim Thomas, Training Coordinator and Union Griever for 4SP, testified that he has worked as a Caster Operator for 14 years. He said that he has never experienced or heard of a ladle falling through the caster floor. He presented a document regarding another incident in which a Crane Operator in training was involved in an incident which resulted in a broken cable, but for which he received no discipline. The Company pointed to evidence in the document showing that this employee was a trainee at the time; that there may have been a mechanical failure on that crane; and that it was not a hot metal crane.

Crane Operator Bernard Muhammed has worked for the Company for 20 years, and has spent the entire time in 4SP. He testified that he is qualified on all the cranes in the Department. He stated that he has had many occasions on which a J hook has gotten caught up and causes slack in the cable. He said that this happens so often that the Crane Operators simply continue on, and he had never been instructed to call Maintenance if there is slack in the cables. Viewing the video of the Grievant's most recent incident, he said he would not have done anything differently than the Grievant, and he thought that the Grievant went "above and beyond" in the way he handled the lift. He said that he believed that the beveled edge on the weigh bar will significantly help avoid the problem the Grievant encountered, as will the camera installed in the crane since the incident, so that the Operator can now see the blind-side J hook.

Under questioning from the Company, Muhammed acknowledged that he had never broken a main hoist cable. He also said that there may be different degrees of slack in cables. He agreed that the J hook in the video of the Grievant's incident moved differently than in the demonstration video in which he was asked to operate the crane. He said that he heard that another employee—possibly Jim Alcock—had broken a cable and not been disciplined.

Mr. Jim Alcock testified that he has worked for the Company since 2008 and at 4SP since 2009. He testified that slack cables occur on all of the hot metal carrying cranes and he had never been instructed to call Maintenance every time a cable goes slack. He also watched the video of the incident which led to the Grievant's discharge and said that he would not have done anything differently. He testified that he believed that the cable broke on the crane operated by the Grievant simply due to "bad luck." In looking at the Incident Report for the crane incident in which he was involved, he said that it was his first day on that crane and he called the supervisor because the cables looked "off" after he noticed there was slack in them. The supervisor called a Mechanic to inspect the crane and the cable inspector to inspect the cables.

Mr. Dave Roque, Griever 4SP, testified that he was part of the Grievant's Record Review after his Last Chance Agreement. He said that this was a standard Record Review where the Management representative goes through the employee's past disciplinary record. He testified that the Company representative in the Grievant's case did not provide explicit instructions regarding job performance. He acknowledged that the representative did outline the Grievant's obligations and duties under the LCA.

The Grievant has worked for the Company for 47 years. He has worked as a Craneman since 2009 and has operated all of the cranes in the 4SP. He testified that the Company has not shown a rule or regulation that he violated. The Grievant went through the videos of the incident which led to the termination of his employment. He testified that after placing the test weight on the turret, he picked it up and something did not sound right, so he put it back down again. He said that it was the same sound he heard when he had the April 2020 incident and he did not want to repeat that incident. He said that he brought the J hooks back and down to inspect the cables and did not see any slack in them cables. He picked up the weight again, heard the noise again, and

stopped. The Grievant testified that as he was removing the J hooks from the weight to get the crane checked, the hoist cable snapped and broke. He stated that he was never told to call Maintenance if the cables were slack.

The Grievant acknowledged that as a Crane Operator he knew to center the load, even though he was not told during the Record Review to do so. He also acknowledged that he knew after the initial lift on October 28 that something was wrong. He also acknowledged that he cannot see all the way to the top of the cables from his crane cab. He admitted that Alcock could view the full length of the cables on the crane he was using during the incident he had.

The Grievant also testified that the caster crane drifts and that is what happened in this case; he did not move the crane in a way which caused the weight to be put down off-center. He said that the bridge brakes are supposed to keep the crane from drifting but the bridge brake did not work on this crane. On rebuttal, Joseph testified that during the outage in August of 2021 new crane rails were installed in the caster bay. He said that the holding brake on the caster crane had to be in perfect shape at that time to replace the turret in the correct position.

The Company's Position:

- The Grievant violated the terms of his LCA that he signed only 16 months earlier.
- After the Grievant's initial discharge, the parties signed an LCA that states that the Grievant will be subject to immediate suspension preliminary to discharge if within five years he engaged in any repetition of the conduct which led to his original suspension/discharge or violated any other Company rule within two years.
- The evidence easily demonstrates that the Grievant was negligent and careless in the operation of his crane on October 28, 2021, therefore violating Rule 2P, and by extension, his LCA.

- The Grievant's actions were egregious, unreasonable, and dangerous.
- The Grievant's actions caused $41,000 in equipment damage, and about $2 million in lost production.
- If the worst-case scenario had occurred, the 368.5 metric ton weight would have fallen through the floor, onto the work area of about a dozen employees, resulting in serious injury or death to these employees.
- A proper lift, as shown in the Company's demonstration video, should be very slow and very controlled. On October 28, 2021, the caster crane's J hooks moved erratically after setting the test weight into the turret, which they should never do.
- The Grievant acknowledged that he heard a noise that sounded just like the earlier incident, failed to call Maintenance, and instead decided to visually inspect the cables from his cab.
- The Grievant was unable to see the full length of the cables from his cab.
- The Grievant then continued to lift the test weight in spite of these warning signs, causing the hoist cable to break moments later.
- The Grievant displayed exactly the negligence and carelessness that Rule 2P prohibits.
- This was the second time that the Grievant snapped the main hoist cable in the same manner.
- After the first incident on April 4, 2020, the Grievant should have been acutely aware of the importance of calling Maintenance to inspect the hoist cable, and/or stopping the lift on October 28, 2021.
- Joseph personally explained that requirement to Grievant during his Record Review on July 1, 2020.
- The record is clear that the Grievant was aware of these requirements and simply refused to follow them.
- The Grievant has not apologized, admitted responsibility or expressed any remorse for this conduct, even in the face of video evidence clearly showing that he was solely at fault.
- The Union has presented no evidence or testimony that refutes or mitigates the Grievant's conduct.
- The Union's argument that there has been no policy violation ignores the Company's argument that the Grievant violated Personal Conduct Rule 2. P.

- Any evidence regarding remedial measures taken by the Company after an incident is not admissible in arbitration.

- This Arbitrator has upheld the discharge of another hot metal Crane Operator for performing an unsafe lift, holding that Management may consider the reasonable potential consequences of an employee's safety violations.

- Arbitrators also have upheld Last Chance Agreements in the past. There was no margin for error under this LCA and the Grievances performed the same error as he did in the past, refusing to adhere to basic rules.

- The Arbitrator cannot rewrite the terms of the Last Chance Agreement.

- The Company requests that grievance be denied in its entirety.

<u>The Union's Position:</u>

- The Company has not demonstrated that there has been a violation of the Last Chance Agreement.

- The other Crane Operators who testified at the hearing said that they did not believe that the Grievant was negligent. They testified that they have slack in crane cables all the time and they have not been told to call for a spotter or Maintenance whenever they have slack cables.

- The Grievant paused and inspected the cables after the J hook got caught on the lip. He made careful moves. He did not move the crane without care.

- The Company has not demonstrated how the Grievant was negligent or what rule or policy he violated. Therefore, the Company has not shown that the Grievant violated the CBA.

- It is pure speculation that the test weight would have gone through the floor. No broken cable has resulted in a test weight going through the floor.

- In addition, it is clear that the test weight has a narrower base than a regular ladle, and that the Company has introduced corrective actions to address the problems created by this ladle.

- If there had been a safety investigation after the Grievant's first incident in 2020, the Company could have introduced corrective actions sooner.

- Last Chance Agreements are not outside of the Basic Labor Agreement. Just cause remains in full force, even though there is a Last Chance Agreement.

- Last Chance Agreements do narrow arbitral discretion but do not totally remove the Arbitrator's ability to consider mitigating or aggravating circumstances.

- The Arbitrator should consider mitigating circumstances, including the Grievant's long tenure of 47 years with the Company, and the improvement he showed in the 16 months since the last incident.

- The grievance should be sustained and the Grievant reinstated and made whole.

Findings and Decision

This is a grievance over the discharge of a very long-term employee for violation of a Last Chance Agreement (LCA). The parties and the Grievant, a long-time Crane Operator, entered into a Last Chance Agreement in June 2020 after incidents occurring in April 2020, one of which involved a broken caster crane hoist cable. The Company contends that the Grievant violated the LCA in October 2021 when a second main hoist cable broke on the crane he was operating. The Union argues that there are mitigating circumstances here that argue against termination of the Grievant's employment.

The Grievant's Last Chance Agreement states that the Grievant will be found to be in violation of the LCA and be subject to immediate suspension preliminary to discharge if: 1) within a five-year period, he engages in any repetition of the conduct which led to the suspension-discharge action; or, 2) within a two-year period, he violates any other Company rule or regulation. The LCA makes clear that complying with the Agreement constitutes a final chance at employment with the Company for the Grievant, after the serious incidents in April 2020.

On October 28, 2021, the Grievant was required to lift a 358.5 metric ton test weight onto the turret. The video recording of the incident shows that after the Grievant first placed the test weight on the turret, it was off-center. The J hooks are visible swinging back and forth vigorously in what was described as a "jumping" motion. The Grievant testified that he heard a noise identical to the noise made during the April 2020 incident when the main hoist cable broke. He testified further that the noise led him to stop and inspect the crane cables for any slack or other problems. The Company argues that the Grievant should have called for Maintenance or a spotter to check the crane at this point, especially since the top span of the cables near the sheaves is not visible from his crane cab.

The operating procedures had been revised after the Grievant's first incident to highlight difficulties with the test weight procedure and now explicitly state that a Crane Operator may ask for a spotter during the test weight operation. Even if the Grievant was not provided with this revision before the most-recent incident, however, there is no question that he knew about the difficulties with the procedure and also knew that he could call for a supervisor or Maintenance before proceeding further if he thought there were a problem with his crane or the lift. The Grievant had enough information that something was not right with this procedure on the day in question that he should have stopped and called for someone to inspect the crane before he proceeded. Instead the south J hook became hung up on the turret weigh beam, causing the J hooks to become uneven and the cable to snap and create a "birds nest" of broken cable up at the sheaves. Several Crane Operators testified for the Union that they would have conducted the lift in 2021 just as the Grievant did, and one said that it was just "bad luck" that the cable broke. However, the evidence demonstrates that only the Grievant has had a snapped cable while performing these operations with the Caster Crane over a 20-year period, and it has happened to him twice.

The Union argues that the Company has not pointed to a rule, policy, or operating procedure which requires a Crane Operator to call for Maintenance whenever there is a slack cable. Several Union Witnesses, other Crane Operators, testified that crane cables go slack on other occasions and said that they do not routinely call for Maintenance to check the cables when that occurs. However, this was not a situation in which the only evidence of a problem was a slack cable. Before the cable here snapped, the Grievant heard the same sound from the crane that he heard during the 2020 incident, the only other occasion on which he heard such a sound and the only other occasion when a hoist cable has broken on this crane. Although the Grievant tried to correct for the initial off-center placement of the test weight during this latest incident, he was not able to do so without breaking a cable a second time. The Grievant knew that he was working under a Last Chance Agreement. He should have been especially alert to the need to be very careful while operating his crane. He should have called for additional assistance if he encountered anything unusual, especially a condition identical to one occurring during the incident which led to his signing the Last Chance Agreement.

On the basis of this evidence, the Arbitrator concludes that the Grievant violated the Last Chance Agreement. His negligent conduct in the operation of the crane was similar—and similarly serious—to the conduct which led to the signing of the Last Chance Agreement. He violated the same rule cited in the LCA prohibiting negligence and carelessness in the performance of his duties. In addition, the LCA prohibits any violation of Company rules or policies within two years of its signing. See, Arcelor Mittal and USW Local 1010, (Hamming Discharge) Case No. 82 (Bethel, Arb. 2017).

The Union argues, however, that if the Company had conducted a proper safety investigation following the Grievant's incident in April 2020, certain improvements in the

equipment and procedures which have now been made could have been made earlier, and the problems leading to the second incident would not have occurred. The edge of the weigh beam has been beveled so that it is less likely that a J hook will be caught on it. In addition, a camera in the crane cab now permits the Crane Operator to view the blind-side J hook.

The arbitration process should not discourage the Company from improving safety measures after dangerous incidents. The Arbitrator has no doubt that this Union, with its strong record of concern for the safety of its members, does not wish to do anything to discourage such measures either. For this reason, arbitrators generally do not consider such remedial measures, especially if the evidence does not establish that the situation was so unsafe that the employee could not reasonably perform the procedure safely before the changes were made. Although the test weight is narrower than a regular ladle, the evidence shows that other Crane Operators and the Grievant had performed the test weight operation safely about once a day for over 20 years using the same equipment. The evidence further establishes that only twice during that time period has a hoist cable broken, once in 2020 and then again in 2021. In both cases it was the Grievant who was operating the crane when the cable broke.

The Company has introduced uncontradicted evidence of the significant cost of the damage caused by the broken cable, both for the repair of the crane and for lost production. The Company has also argued that if the cable had broken while the Grievant was lifting the test weight over the shop floor, the test weight may have gone through the floor and injured or killed employees working on the level below. The Union presented testimony that a test weight has never gone through the floor. However, there was no evidence that a test weight has been dropped on that floor after a crane cable snapped. The Company may consider reasonable consequences resulting

from an unsafe act, even if the worst-case scenario did not occur in this case. See, Arcelor Mittal and USW Local 1010 (Krcoski Discharge) (Vonhof, Arb. 2019)

The Union argues that the just cause provision of the Basic Labor Agreement applies whenever an employee is suspended subject to discharge, even one working under the terms of a Last Chance Agreement. The parties and the Grievant have specifically agreed, however, under the terms of this LCA, that if there is a violation of the Agreement, the Grievant will be subject to "immediate suspension preliminary to discharge." The Grievant is entitled to file a grievance and challenge whether there has been a violation of the LCA. However, once a violation is found, the Arbitrator must adhere to the terms of the LCA and uphold the consequences that the parties have agreed to impose for its violation. Failing to uphold the terms of an LCA makes it less likely that the parties will employ them in the future, to provide an opportunity for an employee, usually a long-term employee, to save their employment after serious misconduct or performance problems. See Hibbing Joint Venture Cliffs Mining Co. and USW Local 2705, Case No. IOI – 3298 (Vonhof, Arb. 2019).

The existence of his LCA renders the Grievant's situation significantly different from that of Mr. Alcock. Alcock was not working under an LCA at the time he snapped a cable. Rather, Alcock was on his first day on the crane, while the Grievant is an experienced Crane Operator on the caster crane. Furthermore, there was a suggestion in the record that Alcock's crane, which was not a hot metal crane, may have had mechanical problems. Although the Grievant testified for the first time at arbitration that the caster crane drifted to one side because of a mechanical failure, causing the test weight to be placed off-center initially, the Company presented convincing evidence that the crane had been recently checked and most likely was not drifting. Under these

circumstances, the Arbitrator cannot conclude that Alcock's situation was similar to the Grievant's or that Alcock was treated more favorably than the Grievant for similar negligent performance.

Even the Grievant's current poor performance does not negate the fact that he provided many long years of service to the Company. The Grievant provided a standard of performance in his work that led to 43 years of continuous employment with the Company. However, in the past several years he has performed in a way which caused serious safety situations on a number of occasions. The potential safety consequences of the April 2020 incidents were so serious that the parties and the Grievant agreed to enter into a Last Chance Agreement, even though he had so many years of seniority at the time, providing him with one final opportunity for employment with the Company.

Unfortunately the Grievant continued to engage in the same kind of negligent conduct in 2021 that led to his entering into the Last Chance Agreement in 2020. In the instant case the video demonstrates how just placing the test weight down from the height of a few inches in an uncontrolled or jerky fashion can visibly shake very large and heavy equipment around it, as well as the video camera mounted a considerable distance away. There has been a violation of the Last Chance Agreement. The Arbitrator must uphold the consequences the parties agreed to in that LCA, and therefore, cannot conclude that there was not just cause for the discharge. See, Arcelor Mittal and USW Local 1010, (Hamming Discharge) Case No. 82 (Bethel, Arb. 2017).

Award

The grievance is denied. There was just cause for the discharge, as the Grievant violated his Last Chance Agreement.

Jeanne M. Vonhof
Labor Arbitrator

Decided this 30th day of August, 2022.