

This grievance protests the discharge of grievant Nathan Parojcic, a Labor Grade 5, Senior Operating Technician in the Iron Producing Department of the Company's Burns Harbor Plant, for allegedly violating Plant Rule #1 by "endangering the safety of employees or the Plant and its equipment by improperly disposing a foreign object and/or substance in Sub-Car (No Justice and Dignity)," when, on February 23, 2025, the Company found that he caused an explosion by throwing an aerosol can into a Sub-Car laden with molten iron. At the time of the discharge, grievant had about 12 years' seniority with no citable discipline on his record. The Union claims that the discharge lacks just cause and asks that grievant be reinstated to his former position and made whole for his losses.

The basic facts of the case may be stated briefly. After a Coordinator reported an unusual explosion from one of the sub-cars located under the Cast House, Section Manager Christopher James investigated, including by reviewing available video and interviewing a five-member crew that had been working in the area at the time of the explosion. Based on his review of the available evidence and in light of his experience, James concluded that the explosion was an unusual one, likely caused by what he believed to be grievant's action in throwing an aerosol can – commonly found throughout the plant – into a molten iron-filled sub-car.

In support of this conclusion, James relies on video evidence that he believed to show grievant holding an aerosol can while in the Cast House, exiting the building and then disappearing behind the West Shanty break room to an area that provides ready access through an open railing for someone so inclined to throw a can into a sub-car stationed below, before descending a set of stairs empty-handed along with one of his coworkers. Both grievant and his coworker can be seen looking over their shoulders in the direction of the sub-car as they descended the stairs, which James took to be suspicious in rejecting the explanation that grievant

merely turned because he thought he heard yelling. The remaining crew members then descended the stairs and cleared the immediate area before the explosion, at a time when an incoming locomotive, manned by a Switchman, can be seen headed for the Cast House. To James, it was particularly significant that one of grievant's co-workers, during a subsequent investigatory interview, reached the same conclusion from the video as did James: it looked like grievant was holding an aerosol can when he left the Cast House, and the subsequent explosion was consistent with the type of reaction that would be expected from such a can being thrown into a sub-car filled with molten iron.

In concluding that grievant was the likely responsible party, James rejected grievant's explanation – supported by two of his crew members – that the can he was holding was merely an energy drink, which grievant claimed to have carried out of the Cast House and then thrown down a trash chute accessible from the break room. James disbelieved that account, noting that grievant had no business walking behind the Shanty while holding a can, before descending the stairs empty-handed and suspiciously looking over his shoulder in the moments before the eventual explosion. In James's view, grievant caused the explosion, endangering himself, the crew, and the Plant and its equipment in violation of Rule #1, which provides that, "The safe performance of work, and all work related activities in the Plant, is a condition of employment for all Employees." James testifies that grievant's wrongdoing was exacerbated by his refusal, to and through the instant hearing, to accept any accountability for his actions.

For his part, grievant steadfastly maintains, as he has from the outset, that he was holding an energy drink, not an aerosol can, and that he threw it into a trash chute after exiting the Cast House. Grievant acknowledges that he and his crew had been shoveling in the Galley area of the Cast House, described as a particularly

dirty environment, and that he, alone among the five-member crew, was wearing a dust mask at the time. Grievant's account thus suggests that while in one of the dirtier areas of the Plant, grievant removed his mask, drank the can, then re-situated his mask before exiting the Galley with the empty can. In any case, the Union notes that James did not search the inside of the dumpster to investigate grievant's defense. James admits that he chose not to enter the dumpster, explaining that it would have been unsafe and he therefore confined his efforts to taking pictures of its contents from the outside.

The Company acknowledges that it bears the burden of proof in this case and that it lacks direct evidence to prove that grievant caused the explosion, but argues that the available circumstantial evidence reasonably supports its conclusion that grievant was responsible. The Company argues that grievant, alone among his crew, was carrying an aerosol can when he exited the Cast House, had the opportunity to cause the explosion when he carried that can behind the Cast House where he had access to the open Sub-Car, and then emerged from behind the Cast House empty-handed, supporting its conclusion that grievant threw the can into the sub-car. The Company contends that this conclusion was and remains the most probable and likely explanation for the explosion. By causing the explosion, the Company argues that grievant violated Rule #1, endangering his coworkers and Plant equipment, as well as the locomotive Switchman headed to pick up the sub-car. The Company contends that this is dischargeable conduct, aggravated by grievant's failure to accept accountability.

The Union argues that the Company's case fails for lack of objective investigation and supporting evidence, and that the Company was predisposed against grievant judging from its rejection of supporting eyewitness accounts and its failure to search the dumpster for the can grievant claims to have tossed into it. In

the Union's estimation, there simply is not sufficient evidence to tie the explosion to grievant in light of the due process protections inherent in the just cause provision, especially considering grievant's 12 years of seniority and senior status within the Plant.

The Union is correct and it is undisputed that the Company's right to impose discipline must be exercised consistent with the principles of just cause, including the inherent due process-related requirements of a full, fair, and objective investigation. Notwithstanding the Union's additional claim that direct evidence of wrongdoing is required to support grievant's discharge, it is well-accepted in the field of labor relations that discipline can be founded on circumstantial evidence, so long as the available evidence is substantial and adequate to carry the Company's burden of proof through reasonable inference. *See, e.g., ArcelorMittal and Bricklayers and Allied Workers Local No. 4 of Kentucky Indiana Harbor Works Facilities* (Goldberg 2019), Award at 7. This Arbitrator's Award in *Alcoa Inc. and United Steelworkers, Local 104* (Strongin 2015) is not to the contrary. In that case, not only was there no direct evidence of wrongdoing by the grievant, the facts did not support any reasonable inference of wrongdoing due to a lack of reliable evidence, the possibility that others intervened and may have disturbed the equipment and/or that investigators may have mis-identified the equipment at issue, and questions of credibility.

Here, although there is not any direct evidence that grievant threw an aerosol can into the sub-car, there is credible evidence to support the Company's finding that the explosion and resulting fireball most likely was caused by an aerosol can thrown into the sub-car, that grievant alone carried a can into a location from which it could be thrown into the sub-car before re-emerging empty-handed, and that, conversely, the Company could conceive of no other plausible explanation for

the explosion. Indeed, the Company's conclusion that the explosion was caused by someone throwing an aerosol can into the sub-car is not substantially disputed; the Union's defense principally is limited to the claim that the Company cannot prove that grievant threw the can into the sub-car. There is some suggestion in the record that perhaps water caused the explosion, but James credibly discounts that potentiality.

Reasonable inference supports the Company's conclusion that grievant is the one who threw the can into the sub-car. Grievant can be seen holding a can while in the Cast House, and the video supports James's conclusion that one of the crew members gestured at the can, which seems unlikely if it truly was an energy drink that grievant routinely carried with him. Moreover, as the Company argues, it does seem unlikely that grievant would choose to open and consume a drink in a particularly dirty area of the Plant, when he alone among the five-member crew thought to don a dust mask, meaning that rather than to wait to enter a cleaner environment, he would have had to remove his mask, empty his can, and then re-mask. In any case, that question is a distraction from the fact that the can grievant can be seen holding appears to be dirty, rather than a clean, just emptied drink can. The Company's case finds additional support from the fact that grievant alone carried a can out of the Cast House, and then disappeared behind the shanty, where he had ready opportunity to throw a can into the sub-car through the open safety railing. This evidence plainly establishes opportunity, and grievant's subsequent action in looking over his shoulder after descending the stairs, which he does not otherwise credibly explain – if he truly heard someone yelling, it is difficult to understand why he would have paid so little attention to the cause – reasonably is explained by the Company as consistent with what might be expected from an employee engaged in horseplay, which seems likely. The Union complains that the

Company dismissed the supportive interview statements of two of grievant's coworkers, but neither of them testified at hearing on his behalf, and another of his coworkers shared James's assessment, as does the Arbitrator.

In the end, it is not the Union's principal job in this case affirmatively to prove that grievant did not throw an aerosol can into the sub-car, but the Company has marshaled adequate facts to demonstrate that the only likely cause of the explosion was an aerosol can, and that grievant alone had the opportunity to cause the explosion as he was the only one in the area seen holding a can. It is true that the Company did not dig through the dumpster to find the can, but given the support for James's conclusion that grievant caused the explosion, and James's reasons for discounting grievant's claim that the can he was holding in fact was an energy drink that he threw into the trash chute, the Arbitrator is not persuaded that the Company's decision on safety grounds not to dig through the dumpster is fatal to its case.

Plainly, causing an explosion within the Plant, even if meant only as horseplay, warrants severe discipline. The risk of serious injury simply is too great to overlook such foolishness, and video makes plain that others were in the vicinity, including grievant's crew members and a locomotive Switchman headed to pick up the very sub-car at issue. The act of causing an explosion is inherently unsafe, and those who know the plant best have not tried to minimize the risks of such an action. There is little if any dispute that such conduct is dischargeable if proved, and it is not surprising that an employee would be discharged for exhibiting such reckless disregard for the safety of themselves and those around them.

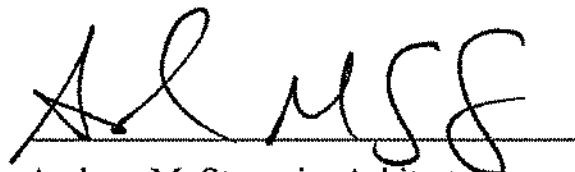
Without regard to whether such conduct, alone, would suffice to uphold the discharge action at issue, the Company reasonably concludes that the misconduct at issue was aggravated by grievant's failure at any time, to and through hearing, to accept accountability for his safety violation. Even if this particular event might

have warranted progressive, corrective discipline if downplayed as mere horseplay, or because grievant did not know that an explosion would occur, that is not the state of play here. Grievant categorically denies causing the explosion; he does not apologize for horseplay or otherwise claim that he did not know what would happen when he tossed the aerosol can into the sub-car. Having found that the Company reasonably concluded that grievant is the culprit, and absent any acceptance by grievant of accountability for that violation, the Arbitrator cannot reasonably require the Company to limit its disciplinary response to some lesser discipline.

Finally, the Arbitrator finds no violation of the Justice and Dignity provisions of Art. V, Sec. I.9(b) of the Agreement. By its terms, that provision does not apply to cases involving offenses that endanger the safety of employees or the plant and its equipment, and the inherently unsafe act of causing an explosion of molten iron certainly qualifies as one that endangers the safety of employees and/or the plant and its equipment. So far as this record shows, grievant's wrongdoing was deliberate and intended to cause the explosion that occurred, even if only intended as horseplay. Such showing is sufficient grounds for the Company to withhold the benefits of the Justice and Dignity provisions.

DECISION

The grievance is denied.



Andrew M. Strongin, Arbitrator

Bethesda, Maryland