

In the Matter of Arbitration Between

INDEPENDENT STEELWORKERS)
ALLIANCE)

and)

KEYSTONE STEEL & WIRE CO.)

Grievance No. OOS-RW-208

OPINION AND AWARD

INTRODUCTION

An arbitration hearing between the parties was held on due notice in Peoria, Illinois on March 19, 2002. The parties were afforded a full opportunity to present evidence, to examine and cross-examine witnesses and to make arguments. The hearing was transcribed. Post-hearing briefs were timely filed. Daniel G. O'Day, Cusack, Fleming, Gilfillan & O'Day, appeared on behalf of the grievant for the Independent Steel Workers Alliance, hereinafter called "the Union." Andy Martone, Bobroff, Hesses, Lindmark & Martone, appeared on behalf of the Keystone Steel & Wire, hereinafter called "the Company."

APPEARANCES

For the Company:

Larry Don Avery, Jr., Raw Materials Transportation Foreman

Kenneth Notaro, Director of Labor Relations

For the Union:

Jesse King, Gantry Arc Craneman

Richard Tannhauser, Grievant

Arbitrator:

Frances Asher Penn

ISSUE

Was the grievant, Richard Tannhauser, discharged for legitimate reason in accordance with the agreement between the parties? If not, what shall the remedy be?

PERTINENT CONTRACT PROVISION

The provision of the collective bargaining agreement cited by the parties as applicable in the instant dispute is:

Article II (Rights of Company and Union)

2.0 Rights of Company. ...The right to manage the business and plants and to direct the working forces include the right to hire, suspend, discharge, or transfer for proper cause and the right to relieve employees from duty because of lack of work or for other legitimate reason...

PERTINENT WORK RULES

The work rules cited by the parties as pertinent are:

General Plant Conduct Rules and Regulations:

Section III, Conduct or Behavior Warranting Immediate Discharge

The following offenses will be cause for discharge (preceded by suspension pending final determination):

- ...
11. Disorderly conduct, horseplay, threatening or abusing another employee.
 15. Insubordination [or] disobedience...

BACKGROUND

The grievant, Richard Tannhauser, was employed by the Company for approximately 28 years. He had worked as an arc shop crane man, handling molten metal. Following a heart attack in 1999 on the advice of his doctor, he was assigned as a yard crane man.

The events that led to the discharge of Mr. Tannhauser occurred on the third turn on November 21-22, 2000. The incident involved Mr. Tannhauser and his supervisor, Larry Don Avery, Jr. The two men were the only people present. They both testified at the hearing and they are in general agreement about most of what occurred that night. They do not agree about whether or not there was any physical contact between them.

Early in the shift, Mr. Avery made two decisions. The first was to keep some railway cars in the yard. Mr. Tannhauser disagreed with this decision and told Mr. Avery so in a manner that Mr. Avery described as "irritated." Mr. Avery also

told the crane operators that because one of the other operators had gotten sick and had been taken to the hospital, they would not be able to follow their regular break schedule but would have to take their breaks when the could.

Mr. Tannhauser, in speaking to another employee on the radio, called Mr. Avery a "moron." Mr. Avery over heard this comment. Mr. Tannhauser testified that he considers Mr. Avery to be a moron because, "he does not know how to do his job."

At around 2:40 a.m., Mr. Tannhauser came down from his crane and entered the employee lunchroom. He opened the door to the outside and left it open. Mr. Avery was working in the main office that adjoins the lunchroom. Mr. Tannhauser put some fish sticks in the microwave oven in the lunchroom and left the room. When Mr. Avery began to feel cold, he entered the room and closed the door. Mr. Tannhauser returned and told him to leave it open. Mr. Avery tried to close the door again, and Mr. Tannhauser opened it. According to both men, this occurred several times. Mr. Avery asked Mr. Tannhauser, "what is your problem?" Both men also agree that Mr. Avery told Mr. Tannhauser to "get your stuff and leave." Mr. Tannhauser removed his fish sticks from the microwave and returned to his crane.

Mr. Avery called security and had Mr. Tannhauser escorted from the plant. Mr. Avery called the police. He filed a police report. The police checked his neck for marks but did not find any. He did not file charges.

The facts that are in dispute involve what Mr. Tannhauser did after Mr. Avery asked him what his problem was. Mr. Avery testified that Mr. Tannhauser came towards him, put his hands around his throat and caused him to take two steps back into his office. Mr. Avery testified that Mr. Tannhauser did not apply pressure to his neck. He stated that Mr. Tannhauser had a 'mean look on his face when he put his hands on my throat." He testified that he was afraid of Mr. Tannhauser and that at the time of the hearing he was still afraid of him.

Mr. Tannhauser flatly denies putting his hands on Mr. Avery and denies having any physical contact with him..

Mr. Tannhauser was discharged effective November 30, 2000, for violating Section III, Article 11 and Article 15 of the General Plant Conduct Rules and Regulations. A grievance was filed and was denied throughout the grievance

procedure. The parties have been unable to settle the dispute between them, and it is now properly before the arbitrator for resolution.

DISCUSSION

The Company maintains that it had just cause to discharge Mr. Tannhauser for insubordination and for threatening another employee in violation of the rules.

The Union maintains that the Company failed to prove that Mr. Tannhauser was insubordinate or that he threatened or abused another employee and that he should not have been terminated.

After analyzing the entire record, the arbitrator finds that the Company has met its burden of proof to show that it had just cause to discharge the grievant. The evidence establishes that Mr. Tannhauser violated the rules against insubordination and against making threats against another employee.

The arbitrator finds that the charge of insubordination is substantiated by the testimony of both men. They had an argument over keeping the door open. Mr. Tannhauser wanted the door open because he was hot. Mr. Avery wanted the door closed because it was getting cold in the office where he was working.

At the arbitration hearing, Mr. Tannhauser testified that he wanted the door to the outside open because he was feeling hot and he was afraid he was having another heart attack. He stated that when he had a heart attack he sweated profusely. He testified that he did not tell Mr. Avery about his concern because he did not want to admit that he was worried. He stated that it was a "male thing" not to want to admit that he might be having another heart attack.

The arbitrator finds that the testimony of Mr. Tannhauser is not credible. The evidence in the record establishes that until the arbitration hearing Mr. Tannhauser never revealed any concern about having a heart attack as an explanation for wanting the door open. With his job at stake, it does not seem believable that, if this were the explanation for his actions, that he would not have mentioned it, male pride or not. The arbitrator also believes that Mr. Tannhauser's behavior is inconsistent with a person who fears that he is having a heart attack. He took his fish sticks to the lunchroom, cooked them and then took them to his crane to eat them. Mr. Tannhauser testified that he feared great pain if he had another heart attack. It seems extremely unlikely to the arbitrator that

someone who thought he was having a heart attack would prepare a meal and then go back onto a crane to eat it.

In any case, the arbitrator finds that concern about his health does not excuse the refusal of Mr. Tannhauser to close the door when instructed by his supervisor to do so. It was insubordination to refuse to follow a clear instruction and under company rules it was a dischargeable offense.

To determine whether Mr. Tannhauser threatened Mr. Avery, the arbitrator has evaluated the comparative credibility of the two men carefully. As stated above, the arbitrator doubts the credibility of Mr. Tannhauser. In contrast, the arbitrator finds the testimony of Mr. Avery to be straight forward and consistent. Twice Mr. Avery demonstrated what he claims Mr. Tannhauser did, and the arbitrator finds his reenactment convincing. The arbitrator accepts as true his statements that Mr. Tannhauser approached him, put his hands around his neck and caused him to take steps backwards while Mr. Tannhauser advanced forward.

The arbitrator has considered the argument of the Union that Mr. Avery is not credible because right after the incident when Mr. Avery called the Union representative to tell him what had happened he used the word "choked." According to the Union, Mr. Avery later changed his description of Mr. Tannhauser's action when he realized that Mr. Tannhauser had not left marks on his neck. The arbitrator is not persuaded by this argument. The use of the word "choked" immediately after the incident does not seem unusual in light of the fact that Mr. Tannhauser put his hands around Mr. Avery's neck.

The arbitrator has also considered the evidence presented by the Union that it was Mr. Avery who was irritable that night. The arbitrator finds it unnecessary to determine Mr. Avery's mood because there is absolutely no evidence to show that Mr. Avery provoked the actions of Mr. Tannhauser.

Therefore, the arbitrator finds that the evidence in the record supports the position of the Company that Mr. Tannhauser threatened Mr. Avery. A threat is an action that conveys the potential of injury. By putting his hands around Mr. Avery's neck and forcing him to move backwards, Mr. Tannhauser was clearly threatening Mr. Avery with bodily harm.

The fact that Mr. Tannhauser did not apply pressure to Mr. Avery's neck and did not hurt him does not change the fact that the actions of Mr. Tannhauser were physically threatening. A threat of physical violence in the workplace is a most serious matter. It threatens the safety and security of everyone. Under the facts presented here, Company was justified in enforcing its rules to protect its employees.

For the reasons discussed above, the arbitrator concludes that Mr. Tannhauser violated Section III, No. 11 and No. 15 of the General Plant Conduct Rules and Regulations. The Company had legitimate cause to discharge the grievant. Therefore, the grievance is denied.

AWARD

The grievance is denied.


Frances Asher Penn, Arbitrator

June 12, 2002
Chicago, Illinois