
In Re the Arbitration between:

FMCS No. 07-51478

American Iron and Steel Company,

Employer,

and

United Electrical Radio & Machine
Workers of America, (UE) Local 1139,

Union.

**GRIEVANCE ARBITRATION
OPINION AND AWARD**

Pursuant to **Article 14** of the Collective Bargaining Agreement effective August 1, 2004 through July 31, 2007, the parties have submitted the above captioned matter to arbitration.

The parties selected James A. Lundberg as their neutral Arbitrator from a Federal Mediation and Conciliation Service list of Arbitrators.

The grievance is properly before the Arbitrator for a final and binding determination.

The grievance was filed on September 27, 2006.

The hearing was conducted on February 27, 2007.

No briefs were posted. The parties submitted final oral arguments at the end of the hearing.

APPEARANCES:

FOR THE EMPLOYER
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FOR THE UNION
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ISSUE:

Whether the Employer had just cause to discharge the grievant, Edward Tibbetts? If not, what is the proper remedy?

FACTUAL BACKGROUND:

The Employer, American Iron and Steel Company, is in the scrap metal business. The Company's production yard is organized by UE Local 1139. The Company's production yard is located at a site in North Minneapolis, Minnesota near the Mississippi River. Since the work done by the Company often involves the recovery of metal from vehicles and large steel construction machinery, it is not surprising that the site has become contaminated as a result of various chemical spills over the years. The recovery of metal from construction machinery and motorized vehicles is likely to and has resulted in various fuel spills of different magnitudes. The kinds of materials that have been spilled at the site over the years pose a significant environmental risk and the Company must minimize and abate the environmental hazard. In response to the environmental hazards that are inherent in the scrap metal business, the Company has a long term environmental safety and abatement program. The Company's existence is to a large extent dependent upon how successfully it cleans up existing environmental contamination and how successfully it prevents and minimizes the environmental impact of additional contamination.

The grievant, Edward Tibbetts, was employed by the Company as a “Maintenance Mechanic”. He was hired on January 3, 1990. By written notice dated September 25, 2006 the grievant was discharged. The discharge notice referenced **Section 12.7** of the Collective Bargaining Agreement, which says “Certain problems, conduct, behavior, attitudes and infractions of rules of conduct may result in immediate discharge without prior disciplinary action. Examples of such conduct are listed below:”

This termination for **Article 12, Section 12.7**: “**P.** Insubordination or refusing a direct order of a supervisor; **G.** Criminal or or unethical conduct; **J.** Deliberately causing injury to another or damage to property; and **N.** Other gross misconduct;”

On September 20, 2006 Jeff Popovich, the Working Foreman at the scrap yard, watched as an obsolete crane (CO-4) owned by the Company was being dismantled. When the Crane was tipped on its side, Mr. Popovich observed red diesel fuel flowing out of a ruptured fuel line. Mr. Popovich had a camera in his possession and photographed the spill. Mr. Popovich believed that the fuel tank was nearly full, about 120 to 130 gallons, because fuel began leaking immediately from the tank. Mr. Popovich and the operator of the Mobil Shear took immediate steps to contain the fuel spill and moved the contamination to an area of the yard, where contaminated soils are being removed under the Company’s clean up plan.

Mr. Popovich learned from the operator of the machine being used to demolish the crane, the Mobil Shear, that grievant, Mr. Tibbetts, had informed the operator that the crane was ready to be demolished.

According to Lorrie Brodle, the grievant’s direct supervisor, Mr. Tibbetts was asked to dismantle the crane CO-4 during the week of September 18 through 22. He was

directed to drain all fluids, take out the engine, remove the pumps and remove the motors to get the crane ready to be cut up. Mr. Tibbetts removed the engine, pumps and motors and told the Mobil Shear operator and Ms. Brodle that the crane was ready to be cut up. Ms. Brodle testified that she specifically directed Mr. Tibbetts to remove fluids from the crane several times and specifically asked Mr. Tibbetts, if he had removed the fluids from the crane several times. Mr. Tibbetts confirmed that all fluids had been drained from the crane and it was ready to be cut up.

Mr. Tibbetts acknowledged that he was directed to prepare the crane to be cut up and that he was given specific directions to remove the fluids from the crane. He testified that he told the operator of the Mobil Shear that the crane was ready to go. He also testified that he thought the first step that the crane operator would take would be to turn the crane to a position on its platform that would allow the grievant to drain the diesel fuel from the tank. However, he did not testify that he instructed the operator of the Mobil Shear to turn the crane on its platform to accommodate draining the fuel tank before cutting up the crane. The Mobil Shear operator was not called as a witness and Mr. Tibbetts did not inform anyone during the investigation or at any step in the grievance process prior to arbitration that he anticipated that the Mobil Shear operator would turn the crane on its platform so he could drain the fuel tank before cutting up the crane.

On September 21, 2006 Lorrie Brodle, the grievant's supervisor, discussed the spill that occurred on September 20, 2006, with the grievant. When asked, if he drained all of the fluids from the crane, grievant said that he had drained all of them. Ms. Brodle asked grievant specifically about the fuel spill and Mr. Tibbetts said it was oily water that collected on the outside of the crane. When asked if water is dyed red, Mr. Tibbetts

wanted to know who told Ms. Brodle that fuel had spilled. He also said “what’s the difference anyways the yard is already contaminated.” When reminded that he had been told to drain all fluids and that the Company is supposed to contain as much fluid as possible, the grievant responded “I am stupid and don’t know any better, so shoot me.”

After further review and investigation of the incident, the Employer discharged the grievant on September 25, 2006. The discharge was grieved.

SUMMARY OF EMPLOYER’S POSITION:

The Employer argues that the grievant was given a direct order to drain the fluids from the CO-4 crane and prepare the crane to be cut up. In fact, it was the practice of the grievant’s supervisor over the past six months of his employment to give the grievant written directions in the form of a “to do” list to be certain that grievant knew and understood what work he needed to perform each day. It is undisputed that grievant was directed to drain all fluids from the CO-4 crane.

It is undisputed that the grievant told the operator of the Mobil Shear that was to be used to cut up the crane that the CO-4 crane was ready to be cut up. There is no evidence that the grievant informed the Mobil Shear operator that the crane was ready but that it needed to be turned and the diesel fuel drained. In fact, the Mobil Shear operator was simply told that the crane was ready to be cut up.

The grievant did not follow the order he was given to drain the fluids from the CO-4 crane. While he did not say he would not follow the order he was given, he did ignore the order. Hence, his failure to comply with a direct order that did not place him in danger or require him to engage in any illegal conduct was insubordinate.

The grievant knew that failing to drain the fuel tank of the crane would result in a diesel spill. He ignored the obvious consequence of his conduct and attempted to justify his failure to follow a direct order by saying that the ground on the premises was already contaminated. The Employer characterizes the grievant's misconduct as both deliberate and unethical. Hence, it contends that **Sections 12.7 P, G, J and N** of the collective bargaining agreement were violated.

The collective bargaining agreement provides for immediate discharge of an employee found to have violated any of the various parts of **Section 12.7**. Hence, the discharge should be upheld.

SUMMARY OF THE UNION'S POSITION:

The grievant admitted that he was directed to drain the fluids from the CO-4 crane and he failed to drain the fuel tank. However, the grievant's conduct was neither insubordinate nor was his conduct unethical. He did not deliberately engage in misconduct. Mr. Tibbetts simply forgot to drain the tank.

Mr. Tibbetts did not refuse an order. He prepared the CO-4 crane to be cut up and told the Mobil Shear operator when the crane was ready. He testified that he expected the Mobil Shear operator to turn the crane to a position that would allow him to drain the fuel tank and did not realize that the Mobil Shear operator had proceeded to tip the crane and cut it up,

Mr. Tibbetts was guilty of failing to communicate well with the Mobil Shear operator and of forgetting to drain the tank but did not deliberately refuse an order from his supervisor nor did he engage in any form of unethical conduct. Mr. Tibbetts forgot to complete one of the many steps in the process of scrapping the CO-4 crane. It is fair to

say that his performance was lacking but characterizing his forgetfulness as insubordination is inappropriate.

The Union acknowledges that Mr. Tibbetts' poor performance should have resulted in some form of corrective action but discharging him for an accident caused by forgetfulness is too severe a penalty in this situation.

The Union argues that the Employer did not have just cause to discharge the grievant and asks that he be reinstated with back pay and benefits.

OPINION:

The Employer established by clear and convincing evidence that the grievant engaged in misconduct that violated **Section 12.7 parts P, G, J, and N**. Grievant admitted that he failed to act on a direct order given to him by his direct supervisor. This is not a case involving a dispute over what happened. It is purely a dispute over whether the grievant's failure to drain the fuel tank on the CO-4 crane was a mistake or an insubordinate refusal to follow a direct order.

The grievant's comments to his supervisor on September 25, 2006 are convincing evidence that grievant did not make a mistake when he failed to drain the fuel tank on the CO-4 crane. First, Mr. Tibbetts tried to explain away his failure to drain the fuel tank by saying it must be oil in some water that had collected on the machine. When confronted with the fact that the fluid was dyed red¹, Mr. Tibbetts said "what's the difference the yard is already contaminated." He did not say, Oh, I forgot to drain the tank. His later statement that "I am stupid and don't know any better, so shoot me" did not make any reference to forgetfulness or mistake. There is simply no credible evidence that Mr.

¹ Diesel fuel is dyed red and Mr. Tibbetts clearly knew that fact.

Tibbetts forgot to drain the fuel tank or that he expected the Mobil Shear operator to turn the crane on its platform so he could drain it.

The grievant failed to comply with a direct order to drain all fluids from the CO-4 crane and prepare the crane to be cut up. His failure to drain the fuel tank was reasonably perceived by the Employer as the refusal of a direct order. Furthermore, the fact that a diesel spill could reasonably have been anticipated and Mr. Tibbetts made a statement that reflected his lack of concern for the consequences of a fuel spill to both the environment and possible dangers to the Mobil Shear operator weighs heavily in support of the discharge. The grievant violated **Section 12.7 parts P, G, J and N** and the discharge was consistent with the terms of the collective bargaining agreement.

AWARD:

The Employer had just cause to discharge the grievant. The grievance is hereby denied.

Dated: March 7, 2007

James A. Lundberg, Arbitrator