

Case 14 - The Creative Reporter ©

By Connie J. Schlosberg

Background

During the nightshift on November 16, 2001, Mr. Scott Richard, Front Helper, admittedly cut off two half spools of 14-gauge galvanized wire from the rotolay machine he was working on and gave them to Mr. Peter Maxwell, Mesh Machine Worker as witnessed by the Company's Night Foreman Mr. John East. These spools were not weighed, measured or tagged properly according to the official responsibilities for the Front Helper position. Mr. Richard's production sheet claimed he cut 4 spools with a total weight of 5,807 pounds within the time period of midnight to 4:45 a.m. which according to the Company is impossible. Mr. Richard could not provide proof of the remaining two spools. Mr. East insisted Mr. Richard rewrite his production sheet to reflect accurately what he had produced. Mr. Richard's updated sheet indicated no spools were created indicating that Mr. East told him he would not be paid which Mr. East denies saying. Mr. Jerry Ho, the Company's Inventory Control Specialist, weighed the two spools given to Mr. Maxwell and concluded that the weights did not match any weights listed on the production sheet and the estimates were higher than the actual weights.

Issue for Arbitration

Is Mr. Scott Richard, the Grievant wrongfully discharged and if not, what should be the solution?

Company's Position

The Company believes the Grievant falsified production records and that is considered stealing from the Company since the Grievant's inflated measurement constitutes work not performed. This falsification is considered in violation of General Plant Group 1 Rules, which states immediate discharge for breaching this rule. The Company also states that the Grievant does not have an overall good record with the Company including several offenses within the last year.

Union's Position

The Union disagrees with the discharge stating that the punishment was too severe. The Union argues that the Grievant is a 21-year employee of the Company, and the actual monetary loss to the Company was only \$1.60. The Union also mentions that there have been similar arbitration cases with several Steelworkers who were charged with falsifying records were discharged but the discharges by the arbitrators were reversed claiming improper dismissal due to their circumstances.

Arbitrator's Decision

The grievance of Mr. Scott Richard is denied on the basis that the Company, under the General Plant Group 1 Rules which specifically states that violation of "...Deliberate damage to, theft, or misappropriation of company or employee property..." is "...subject to immediate discharge..." Both the Company and the Union admit Mr. Richard's action is in violation of the Company's policy.

Arbitrator's Supporting Opinion

Both positions of the Company and the Union were considered for this decision. Although the arbitrator did not have access to the actual labor agreement, the case implied that the Company's policy is part of the acceptable disciplinary actions between the Company and the Union. Both parties were aware of these rules. Employers have the right to discipline employees who are not following policies/procedures to ensure a successful operating business.

Mr. Richard knowingly and admittedly lied on his production report which is essentially stealing from the company. The argument between Mr. Richard and Mr. East concerning what was to be included in the rewritten report is inconsequential since neither has a witness on what was actually said. That conversation was just hearsay. Mr. Richard's poor employment record and mistruths about how much he produced by 4:45 a.m., tarnish his 21 years of service with the company. Although the Union proclaimed that the difference between the estimated weight and the actual weight was only \$1.60, the difference could have been substantially more not including that this may not have been the first occasion where Mr. Richard has overestimated his production report. Also, his action caused non-production of work during the time he was disputing the claim with Mr. East and Mr. Ho. In addition, the legal definition of stealing does not state a dollar or value. Stealing is the "wrongful or willful taking of money or property belonging to someone else with intent to deprive the owner of its use or benefit either temporarily or permanently. No particular type of movement or carrying away is required." Although there was several Steelworker arbitration cases regarding employees' falsifying company records wherein the discharges were reversed, the arbitrator did not have enough information to validate that these discharges were similar to the discharge of Mr. Richard. Each arbitration case is treated individually unless similarities can be afforded to the case at hand. These cases were not indicated to be from the same company where Mr. Richard was employed so past practice is not an issue in this case.

The Company had proof that Mr. Richard had stolen from the Company. As the Labor Relations textbook states, in Chapter 10, Discharge and Discipline, if the management can prove the reason for discharge, the arbitrator can rule in their favor. The Company had the original production report, two witnesses, two spools which did not weigh the same as what was written, and an admission of guilt from Mr. Richard. Also, the rules were specifically clear about misappropriation and theft of company property and falsifying company records. All parties agreed this rule was understood and enacted at the Company. There was no miscommunication of rules. Finally, Mr. Richard was at work when the occurrence happened and, to the arbitrator's knowledge, in able working condition. In other words, he was not incapacitated such as being drunk or mentally challenged. He was fully aware of his wrongdoing and given the fact that he was a long-time employee, his action is a reflection on less senior employees. If he is not disciplined for his actions in accordance with company policy, who is to say that others may follow his lead and justify it by referring to his case? Plus he has committed several offenses within the last year not to mention his employment record has been "highly irregular" over the last few years. As an arbitrator, one has to consider all the facts presented and these personnel facts were too large and could not simply be ignored.