

BEFORE THE ARBITRATOR

In the Matter of the Arbitration
of a Dispute Between

UNITED ELECTRICAL, RADIO AND
MACHINE WORKERS OF AMERICA and its
affiliate, LOCAL NO. 1127

and

STEELTECH MANUFACTURING,
Milwaukee, Wisconsin

Grievance dated 5-22-96 regarding
the discharge of Joel Horton

Case 1
No. 54506
A-5526

Appearances:

Mr. Timothy P. Curtin, UE International Representative, 37 South Ashland, Chicago, Illinois 60607, appearing on behalf of the Union.

Mr. Mark E. Toth, Michael, Best & Friedrich, Attorneys at Law, 100 East Wisconsin Avenue, Milwaukee, Wisconsin 53202-0656, appearing on behalf of the Company.

ARBITRATION AWARD

At the joint request of the parties, the Wisconsin Employment Relations Commission designated the undersigned arbitrator to hear and decide a dispute concerning the above-noted grievance, arising under the parties' July, 1995-June, 1997 Agreement (Agreement).

The grievance was heard by the Arbitrator at the Company's plant-office in Milwaukee, Wisconsin, on December 10, 1996. Following distribution of the hearing transcript, the parties submitted post-hearing briefs which were exchanged on January 31, 1997, marking the close of the hearing.

ISSUES

At the hearing, the parties authorized the Arbitrator to decide the following issues:

1. Was the Grievant discharged for just cause?
2. If not, what is the appropriate remedy?

PORTIONS OF THE AGREEMENT

ARTICLE IV
MANAGEMENT RIGHTS

Section 1. Except as expressly and specifically limited or restricted by a specific provision of this Agreement, the Company has, and shall retain, the full and exclusive rights of management and the direction of its work force and operations. Such rights include, but are not limited to the rights to . . . establish standards for work performance and productivity; to conduct performance reviews and evaluations; to discipline, suspend, discharge or demote for just cause

Section 2. Except as expressly and specifically limited or restricted by a specific provision of this Agreement, the Company has and shall retain, the right to make, publish, enforce, add to, subtract from, alter and/or change employment rules, policies, and practices governing its operation and meeting a legitimate business objective, including, but in no way limited to, productivity, quality, safety standards, drug and alcohol testing; the manner and method of performing work; and employee conduct. . . .

Section 3. It is understood that the right to exercise any of the management rights mentioned in this Article is not subject to the grievance and arbitration procedures of this Agreement, except as provided in this Section. The Union shall have the right to grieve any violation of a specific provision of this Agreement. The Union shall also have the right to grieve the application of new or changed rules, policies or practices to employees. However, the Union shall have no right to contest, challenge or negotiate the establishment or change of the rule, policy or practice itself.

. . .

ARTICLE VI
SENIORITY

. . .

Section 7. An employee shall be considered terminated and seniority lost if the employee . . . is discharged for just cause

. . .

ARTICLE VII DISCIPLINE AND DISCHARGE

Section 1. The Company may discipline or discharge employees for just cause. For purposes of this Agreement, just cause shall be found to exist if the Company proves that the offense or conduct alleged occurred, unless the Union proves the level of discipline imposed was arbitrary or discriminatory; that the employee did not know and had no reason to know the conduct he or she engaged in might be unacceptable; or that the Company failed to consider the employee's prior work record.

. . .

ARTICLE VIII GRIEVANCE AND ARBITRATION

. . .

Section 3. The arbitrator shall not have jurisdiction or authority to add to, take from, nullify, or modify any of the terms of this Agreement or to impair any of the rights reserved to management under the terms of this Agreement, either directly or indirectly. Nor shall the arbitrator have the power to substitute his or her discretion or judgment for that of management. The arbitrator shall be bound by the facts and evidence submitted and may not go beyond the terms of this Agreement in rendering a decision. The decision of the arbitrator shall be based upon a preponderance of the evidence, put in writing, and shall be final and binding on the Company, the Union and the employee(s).

. . .

BACKGROUND

The Company is engaged in metal fabricating with offices and plant in Milwaukee, Wisconsin. The Company specializes in welding and painting. The Union represents the Company's production and maintenance employees at the Milwaukee facility.

The Grievant in this case, Joel Horton, began his employment with the Company in March of 1993. He began as a Material Handler and worked as an E-Coat Operator from November 28, 1994 through his last day of work on May 16, 1996. The E-Coat system moves and dips large metal products such as civilian and military truck frames hanging from overhead conveyors into and out of a series of liquids in tanks by which the metal is pretreated and electrocoated to enhance paint performance. The E-Coat Operator's responsibilities include monitoring the chemical composition of the various tanks (normally twice per shift) to assure that they remain within established specifications necessary to assure proper and reliable electrocoating of the product. That monitoring includes collecting samples from the tanks, conducting lab tests on those samples, adding chemicals as necessary to bring any out of spec tank back within the established specifications, and recording the results of the tests and the actions taken based upon those results. The Operators' responsibilities in those respects are set forth in detail in the Company's Electrocoat Machine Operators Manual.

The Progressive Disciplinary Action Notice regarding the discharge at issue in this case bears a date of May 17, 1996. It identifies the violation involved as "Carelessness work rule #18" and contains the following "Supervisor statement:

Mr. Horton failed to follow his assigned task laid out in his operator's manual.

This subject had been addressed two wks ago and he received a disciplinary before due to carelessness.

An Exit Interview Checklist form was subsequently issued bearing a date of May 21, 1996, stating that Grievant was being involuntarily terminated on account of "Quality of Work." Company witnesses assert that Grievant was suspended pending investigation on May 17 and informed of his discharge at an exit interview conducted on Company premises on May 21, 1996. Grievant asserts that he was informed of his discharge on May 17, 1996 and that he did not attend any exit interview. In any event, the grievance giving rise to this arbitration was filed on May 22, 1996. That form states the grievance as follows:

On or about 5-17-96 the Company violated Union contract Article VII. Joel feels that he never should have been terminated for the reason given simply because he was following orders. Considering the problem that needed fixing on E-Coat Line.

The grievance remained unresolved through the pre-arbitral steps of the grievance procedure and was submitted to arbitration as noted above.

At the arbitration hearing, the Company presented various documentary exhibits and the testimony of Director of Finishing James Riley, Human Resource Coordinator Beatrice Santiago,

Environmental and E-Coat Technician Troy Smith and E-Coat Production Supervisor Oscar Bush. The Union presented various documentary exhibits and testimony by the Grievant and (laid-off) Production Line Supervisor Willie Chandler.

The Arbitrator has reviewed all of the evidence received into the record at the hearing and has considered all of the arguments advanced by the parties at the hearing and in their briefs. It is on the basis of that evidence and those arguments that the Arbitrator issues this Award.

Additional factual background information is set forth in the summaries of the parties positions and in the discussion, below.

POSITION OF THE COMPANY

The Company had just cause for its discharge of the Grievant. The Grievant ran product through the Company's E-Coat system for a total of approximately two and one half hours on May 16, 1996 without doing any titrations to confirm that the system was operating within specifications. He did so contrary to instructions given him during extensive and repeated training, in the detailed Operator's Manual, and in repeated supervisory coaching. He also did so contrary to what Troy Smith testified were Smith's specific instructions prior to the start of the shift that evening that Grievant should get the E-Coat line up to temperature, do his titrations to insure that the process was operating within specifications, and then and only then run product through the system.

The E-Coat line procedures outlined in the Company's Operator Manual and in Grievant's training and reinforced by Smith and Grievant's other supervisors were reasonably related to the orderly, efficient and safe operation of Steeltech's business. As a result of Grievant's conduct, there was no way for the Company to verify that the E-Coat process was within specification during any of that time, exposing it to potential liability for field failures over time and to potential loss of business in the event that its major customers' periodic audits revealed the Company's failure to follow prescribed quality control procedures.

Grievant had clearly been forewarned of the possible disciplinary consequences of the conduct he engaged in on May 16, 1996. Following numerous other disciplinary verbal and written warnings and suspensions, Grievant was issued a five-day suspension on September 11, 1995 for failing to perform his job properly, which expressly warned him that his next violation of the work rules could result in discharge. Thereafter, supervision gave Grievant several second chances and again put him clearly on notice that he was at the last step in the disciplinary system and that any additional violation of the rules would result in discharge. In addition to those specific warnings, Grievant and all other employees received the Company's revised Employee Handbook in October of 1995, which provides progressive discipline for "most" disciplinary matters consisting of verbal warning, written warning, suspension without pay (five-day maximum) and discharge, but which also provides that the Company may bypass the progressive

steps and proceed directly to discharge at its sole discretion. That current Handbook also provides that employees who had received a five-day suspension would revert to a clean slate only if they received no additional disciplinary actions between October 1, 1995 and June 1, 1996, but Grievant failed to meet that requirement.

The Company conducted a thorough, fair and objective investigation before administering the final discipline in this case. Grievant's failure to follow Smith's instructions and the procedures set forth in the Company's E-Coat Operator's Manual and during his extensive training was discovered early in the morning on May 17, 1996. Oscar Bush then contacted Grievant at home by telephone during which conversation Grievant admitted to both Bush and Smith that he had not collected, analyzed or recorded the titrations during the shift in question. A meeting with a Union representative present was arranged later that day during which Grievant again admitted that he had not collected, analyzed or recorded his titrations even though product had been running through the E-Coat line for a substantial period of time during his shift. When he offered no legitimate justification for his failure to do the titrations and to follow the Company's long standing procedures, he was suspended pending the results of further Company investigation of the matter.

Smith and Bush reviewed all pertinent documents, including titration worksheets filled out by Grievant and others during the period leading up to the discharge, interviewed other E-Coat operators and had talked to Grievant to get his side of the story. They found that Grievant was at the last step in the disciplinary process; that Grievant had ignored repeated instructions from his supervisors and clear guidelines set out in the Operator's Manual and during his training as to how to properly collect analyze and record titrations; and that Grievant ignored Smith's specific instructions that no product be run until the titrations were done on the evening in question. On that basis the Company discharged Grievant on May 21, 1996.

There is no evidence that the Company applied its rules in a discriminatory manner. Chandler's testimony that Grievant was subject to no more than a 3-day suspension given the absence of documented disciplinary actions following the September 1995 five-day suspension is of questionable credibility given his admitted friendship with the Grievant and his having recently been laid off by the Company. Even if Chandler's mistaken understanding that the Company's old Employee Handbook continued to apply to Grievant's five-day suspension, the "bank points" arrangement in that Handbook by which employees could improve their record over time was expressly limited to attendance records, rather than to the various job performance problems for which Grievant has been disciplined. Chandler's testimony that Sholita Beyers was disciplined but not discharged in January and again in April of 1996 after having received a five-day suspension in August of 1995 does not establish that the Company's discharge of Grievant was discriminatory. Chandler admitted he could not recall the nature of Beyers' prior discipline (i.e., whether it was for an attendance problem or some other infraction) or even what the April, 1996 discipline that Chandler purportedly gave her was. Moreover, as Riley and Santiago testified, any discrepancy in the discipline may simply have been the result of two different supervisors issuing discipline without being in possession of a full set of documentation regarding her prior disciplinary record. In any event, the new Handbook replaced the old one in all respects and contained no provision

for banking points. Furthermore, both the old and current Handbooks give the Company complete discretion to bypass steps in the progressive disciplinary process, so that Grievant was subject to discipline for his May 16, 1996 misconduct alone.

The degree of discipline imposed in this case was reasonably related to the offense, especially in light of the Grievant's extensive disciplinary history. Grievant's testimony is not credible for several reasons, so his denial that Smith specifically reminded him on the night in question to do his titrations before running product must be rejected as self-serving. Even if Grievant's version of the events on the shift in question is fully credited, it constitutes admissions that he ran product -- in addition to that which had been in the system when it shutdown the previous day -- through the system for a substantial period of time with knowledge that parts of the system were out of specification and without performing and recording the titrations necessary to assure that quality coatings were being applied, contrary to the Company's longstanding and well-known procedures. Even Grievant's May 16, 1996 personal journal entry, which the evidence shows was fabricated by Grievant after the fact, constitutes no valid defense to the discharge. It merely confirms that Grievant ran product through the system on May 16, 1996 for an extended period of time without doing the required titrations. The loading sheet in evidence (Exhibit 30) independently confirms that Grievant ran not only the product that was in the system when it was shut down preceding the shift in question, but also product that was sent up for processing during his shift.

Any contention that Grievant did not have time to do the titrations on the shift in question is not borne out by the evidence and is irrelevant. Meaningful sampling can be performed at any time after the tanks reach operating temperature. Reaching operating temperature from a cold start takes one and one-half to two hours. The entire sample collection and analysis process takes approximately 35-50 minutes to complete (though the analysis of samples from one of the tanks cannot be completed without an intervening drying process that takes approximately four hours during which the Operator is not required to be present.) The evidence establishes that there was time for Grievant to run his titrations before product was run through the system. In any event, time pressures cannot excuse Grievant's undisputed running of product through the E-Coat line at a time when he admits that he knew that parts of the system were not running within specifications. Furthermore, Grievant's claim that getting the E-Coat line running rather than doing and recording titrations was his number-one priority must be rejected both because Riley and Bush testified that getting the line running is a function for maintenance department personnel rather than for the E-Coat Operators, and because the Operator's Manual stresses the importance of doing titrations and making sure that the process is running within specification but says nothing about E-Coat Operators being responsible for getting the E-Coat line running. Finally, while adding four drums of paste to the E-Coat tank on the night in question was a proper part of Grievant's responsibilities, he offered no reasonable justification why he did not do so during the approximately four hours of his shift before the system was restarted.

For all of those reasons, the grievance should be denied.

POSITION OF THE UNION

Grievant's actions at work on May 16, 1996 did not justify any discipline. If the Arbitrator nonetheless finds cause for discipline, there is no justification for a discharge.

The main issue in this case is whether Grievant performed his job adequately on May 16, 1996, and specifically, whether titrations were performed and if not why not. Grievant's testimony about the events of that evening must be credited both because it was detailed and first-hand and because the supervisor on duty during the second shift in question -- Grievant's immediate supervisor Linda Cook -- was not called as a witness by the Company.

As Grievant testified, he came to work before his normal starting time of 3:00 PM. The E-Coat line had been down from the day before for almost 24 hours and remained so until it started back up at approximately 7:00 PM. As the only second shift E-Coat Operator on duty, Grievant was responsible for keeping the line running so production would occur, for taking titrations to measure the chemical balances in each of the tanks on the line, and for adding chemicals to the tanks when needed.

Because the line had been sitting idle for nearly 24 hours, it would take one and one-half to two hours to get the tanks up to temperature before accurate titrations could be taken. Therefore, no accurate titrations could have been performed on the E-Coat line until between 8:30 and 9:00 PM. However, the E-Coat line went down at approximately 8:28 PM and was not operational again until 9:28 PM. Grievant was busy working with Chris Olsen from maintenance to get the line running again. He then spent 40 to 45 minutes putting four 55 gallon drums of paste in Stage 10 as directed by Troy Smith prior to the beginning of the shift. Grievant then went to Stages 1 and 2, took samples, and added chemicals to those tanks.

Grievant admits that he should have written down the results from the samples taken from Stages 1 and 2. However, he did verbally inform third shift E-Coat Operator Richard Moreno when Moreno reported to work, and he Grievant kept his supervisor, Cook, fully informed as to what he was doing throughout the entire shift.

The Company fired Grievant for failing to fill out titration sheets for the shift in question. However, as noted above, it was only at the end of the shift that Grievant could have begun to run titrations accurately. Thus, what Grievant did was to concentrate on keeping the E-Coat line running rather than writing down titration information that would have been inaccurate. Significantly, the Company failed to show that any damage was done or that it suffered any economic harm due to the alleged misconduct for which Grievant was fired.

Admittedly, Grievant has less than a good work record. Grievant admitted that he deserved a five-day suspension in September of 1995 for causing jail cell panels to be improperly

treated. However, the Company's allegations about work-related problems with Grievant after that date and until May 16, 1996 were not documented as disciplinary actions and would not have been valid bases for discipline.

For those reasons, the Arbitrator should conclude that there was no justification for any discipline of Grievant arising out of his conduct on May 16, 1996.

Even if some measure of discipline is warranted, discharge is not. Just cause requires that the Company treat similar situations equally in administering discipline. Supervisor Willie Chandler testified that when he disciplined employe Sholita Beyers for an occurrence in April of 1996, her record included a five-day suspension issued in August of 1995 and a subsequent disciplinary action less severe than discharge issued by Supervisor James Hoover in January of 1996. Thus, Beyers was not discharged even though her August, 1995 five-day suspension was followed by two additional disciplinary actions prior to June 1, 1996. In contrast, the Company is treating Grievant's one alleged violation on May 16, 1996 as sufficient grounds for discharge because he had received a five-day suspension in September of 1995. Chandler testified that Beyers was not discharged in January or April of 1996 because her five-day suspension remained covered by the old Employe Handbook and its "banking points" procedures. By working a period of four months without an intervening disciplinary action, Beyers caused the severity of her prior five-day suspension to be reduced, so that she was not at the last step of the progressive discipline system in January or April of 1996. Grievant has similarly worked a period in excess of four months since his five-day suspension without an intervening disciplinary action, so he should not have been considered at the last step of the progressive discipline system in March of 1996. No one from management could adequately explain how it was that Beyers was not discharged and Grievant was given the similarities of their disciplinary situations. Whether the old Handbook's "banking system" applies to Grievant or not, the disparity in treatment between Grievant and Beyers cannot be allowed to stand, such that Grievant's discharge must be rescinded.

For those reasons, Grievant should be reinstated and made whole for all losses.

DISCUSSION

The parties have set forth a specific definition of "just cause" in Section 1 of Article VII which establishes how that term is to be interpreted and applied in discipline cases arising under the Agreement.

While there are numerous disputes of fact reflected in the record, the Arbitrator finds the facts with a critical bearing on the outcome of this case to be undisputed.

It is undisputed Grievant allowed the E-Coat system to process product -- including product that had not begun to be actively processed in the E-Coat system prior to the night in question -- for a substantial period of time on the evening in question with knowledge that some aspects of the

system were not within specification and without first doing and recording the titrations necessary to document the conditions in which the product involved was processed.

The Operator's Manual (Exhibit 19 at p.2) expressly provides as follows:

In the event an operator has knowledge of a process or test parameter that is out of spec, that operator must:

- A. Contact the shift finishing supervisor IMMEDIATELY.
- B. Review the data or result with the supervisor to insure the accuracy of the findings.
- C. Assist the supervisor in determining if there is defective product on the production floor related to the discrepancy.
- D. Determine if the system is capable to produce good product and, if not, decide with the supervisor's approval if a shutdown is necessary.
- E. Advise the supervisor to make arrangements to notify the customer if bad product has been shipped to them.

Grievant does not claim to have informed Cook that product was being run despite his admitted knowledge that Tanks 1 and 2 were out of spec or that product was being run without his having performed titrations to document the status of the rest of the system. By acting as he did on the night in question, Grievant failed to perform his duties as outlined in the Operator's Manual and in his training, regardless of whether Smith specifically told him prior to the shift in question to do titrations before running product.

The Union's contention that Grievant's abovenoted failures were somehow excused by other competing responsibilities on the evening in question is unpersuasive. There is no claim or showing that Grievant was being pressed or authorized by supervision to allow product to be run through the system when he knew parts of it were out of spec and before he had run titrations to document the system's condition. Rather, the evidence establishes that Grievant failed to properly perform a critically important part of his job for a substantial period of time and with regard to a substantial amount of product during the shift in question.

The Union's contention that the Grievant's misconduct caused the Company no harm is also not persuasive. The evidence establishes that unless the Company can document that its E-Coat processing was performed in accordance with applicable specifications, the Company is exposed to potential liability for field failures that may not occur for many years. Moreover, the Company's ability to keep its customers and their quality auditors satisfied as to its compliance with their process specifications has been shown to be important to the Company's business success.

In light of Grievant's limited length of service, marked as it was by numerous previous disciplinary actions, the Company's imposition of discharge was not arbitrary, capricious or otherwise violative of the Agreement Art. VII definition of just cause. The evidence shows that the Company has invested a good deal of time, effort and money training Grievant to perform the important job of E-Coat operator; that the Company has attempted in good faith to apply progressive discipline in ways that would cause Grievant to bring his job performance into compliance with its legitimate, clearly-communicated and business-related expectations; that the Company put Grievant on fair notice that he was facing discharge if he further violated Company policies and rules when it suspended him for five-days on September 11, 1995; and that despite those efforts and warnings, Grievant committed yet another serious violation of the Company's work procedures on May 16, 1996.

The Union's contention that the Company is guilty of unequal treatment of Grievant relative to its treatment of other employees in similar situations is also unpersuasive. Even if the old Handbook somehow applied after the current one was distributed, the "banking points" provisions of the old Handbook stated that they applied only to offenses related to the employees' attendance record. The Union's reliance on Sholita Beyers being disciplined less harshly than discharge on two occasions between her August, 1995 five-day suspension and current Handbook's June 1, 1996 record clearing date is also unpersuasive. The record does not establish what offenses Beyers committed in August of 1995, January of 1996 or April of 1996. Neither just cause nor the concept of progressive discipline requires lock step imposition of discharge when an employe commits a minor offense in the months following a five-day suspension. Absent evidence that Beyers' misconduct was as serious as Grievant's, the Arbitrator cannot conclude that the Company's discharge of Grievant was discriminatory compared to its treatment of Beyers.

In sum, the record evidence does not establish either that the Company has failed to follow the discipline procedures in either of the Handbooks in evidence or that the Company's discharge of Grievant was otherwise arbitrary or discriminatory.

For the foregoing reasons, then, the Arbitrator has found that the Company had just cause for disciplining Grievant for his March 16, 1996 conduct; that the penalty of discharge was not arbitrary, discriminatory or otherwise violative of just cause as the parties have defined it in Agreement Art. VII; and that the grievance must therefore be denied.

DECISION AND AWARD

For the foregoing reasons and based on the record as a whole, it is the decision and award of the Arbitrator on the ISSUES noted above that

1. The Grievant was discharged for just cause.
2. No consideration of a remedy is therefore necessary

or appropriate.

3. The subject grievance is denied.

Dated at Shorewood, Wisconsin this 24th day of March, 1997.

By Marshall L. Gratz /s/
Marshall L. Gratz, Arbitrator