

IN ARBITRATION

COPY

In the Matter of the Arbitration Between:
NORTHROP GRUMMAN SHIPBUILDING, INC.

Grievance of

and

Oral Warning:
Violation of
Yard Rule 11
(Loafing or Loitering)
Grievance No. 68212

UNITED STEELWORKERS OF AMERICA,
LOCAL NO. 8888

Before M. David Vaughn, Panel Arbitrator

OPINION AND AWARD

This proceeding takes place pursuant to the expedited arbitration procedures of the Collective Bargaining Agreement (the "Agreement") in effect at relevant times between Northrop Grumman Shipbuilding, Inc. ("NGSB" or the "Company") and Local No. 8888, United Steelworkers of America ("USW" or the "Union") (the Company and the Union are the "Parties" to the proceeding) to resolve a grievance filed on behalf of ("Grievant"), which protests the Company's July 10, 2009 issuance to him of an Oral Warning for alleged violation of Yard Rule #11 (Loafing or loitering during scheduled work hours. Inattentive, inefficient performance of duties). The Parties were unable to resolve the grievance through the steps of the negotiated grievance procedure; and the Union invoked arbitration. This proceeding followed.

A hearing was held on November 4, 2009 at which the Union and Grievant were represented by and . Labor Relations Representative and of Labor Relations represented the Company. The Parties stipulated at the outset of the hearing that the matter is properly in arbitration and before me. The Parties were then each afforded opportunity, consistent with the expedited arbitration procedures, to present evidence and argument and to cross-examine witnesses and challenge evidence offered by the other. For the Company testified Makeup Foreman and Trade Foreman . For the Union testified Union Representative . Grievant also testified at the call of the Union and was present throughout the hearing. Joint Exhibits 1-4 ("JX__") and Union Exhibits 1 and 2 ("UX_") were offered and received into the record.

At the conclusion of the hearing, the Parties made oral closing arguments, and the record of proceeding closed. This Opinion and Award is based on the record herein. It interprets and applies the Agreement.

ISSUES FOR DETERMINATION

The Parties are in agreement that the issues for determination are:

Did the Company have just and sufficient cause to issue an Oral Warning to the Grievant for violation of Yard Regulation 11? If not, what shall be the remedy?

FACTUAL BACKGROUND AND FINDINGS

Grievant is an X31 Welder, on loan to X18. He has 21 and one-half years of service. At the time of the incident at issue, he had recently graduated from welding school.

On July 6, 2009, the day of the incident, Grievant was assigned to work on the 17 platten behind the third deck building welding assemblies for the Ford, under the supervision of Make Up Foreman . He received his safety card and instructions, turned in his WIC card to get the proper metal, checked the correctness and went to his job.

In the late morning, and Supervisors and conducted a walk through of areas which , who was newly assigned, would be overseeing. At approximately 11:25 a.m. the supervisors stopped at 17 platten to discuss the work being performed there. noticed that Grievant was not at the work location to which he was assigned. He stated that he not pleased with the amount of work Grievant had done. The supervisors waited until 11:50 a.m. for Grievant to return, but he did not shown up. then instructed to stay at the Platten until the noon whistle, but, according to testimony,

Grievant did not return. Mr. then returned to his office to eat lunch.

Mr. testified that, at 1159, as he was returning from the 17 platten area, he passed Grievant coming out of the boiler shop. He let Grievant pass and said nothing to him. The whistle blew at noon. When returned to the office, he reported that Grievant had never showed up. told to return to 17 Platten at 1220 and wait until Grievant returned.

Mr. instructed Mr. to return to 17 Platten to see if Grievant had returned. Mr. arrived at the job site at 12:25, but Grievant was not there. Messrs. and both testified that Grievant did not arrive at the job site until 12:41, 11 minutes late from lunch. Upon Grievant's return, he said nothing to or with respect to difficulties with his machine or about having gone to seek help, but simply started working. It did not appear to or that his machine had any problems.

There were several supervisors around, including General Foremen and . testified that took over the discussion with Grievant; they talked, but could not hear them and does not know what they said. Mr. testified that, when Grievant returned, Mr. asked Grievant where he had been and why he was not on his job. He reported that Grievant said that his machine had not been working, that he went to the rest room, then looked for a Roaming Instructor to help him fix the machine, but he could not find one, and then went to lunch. He reported that Grievant said he looked again for a Roaming Instructor before he returned to his job site, but could not find one.

Messrs. and made the decision to issue Grievant a disciplinary warning, as Mr. was an hourly employee and has no authority to impose discipline. He simply told his superiors what had happened and gave the times. He conducted no investigation. Messrs. and gave a joint written

statement which confirms the essence of Mr. JX4, p6.

testimony.

Mr. testified that standard procedure for all Welders is that, if the Welder has an issue, the Welder is to see his Foreman. He denied awareness of any exception. He described the procedure for Roaming Instructors to be that, before they can see an employee, they must check in with the employee's Foreman so that the Foreman knows the issues. That was not done in the instant situation, he asserted. He denied that the employee is supposed to look for a Roaming Instructor.

Mr. testified that the restroom in the boiler shop is 2.5 minutes from Grievant's assigned job site, but that there are two restrooms closer. He testified that General Foreman checked with the Roaming Instructor, for whom is Supervisor, but he had no knowledge that she told him.

Grievant testified that he had to use the restroom at 1130. He testified that when he left his job site at 1130, no supervisors were present; and he denied seeing them on his way to the restroom in boiler shop. He speculated that he must have missed them by walking on one side of building while the supervisors came on the other side. Grievant testified that he had been having problems with the heat on his machine. Having been told in welding school to find the Roaming Instructor to help him, he saw the 021 Supervisor and told her his problem. When he could not find a Roaming Instructor, he returned to his job site prior to lunch, met briefly with his co-workers and then went to lunch. After lunch and an unsuccessful attempt to find a Roaming Instructor, Grievant returned to his job. Grievant denied that he had been goofing off; and he testified that he told his General Foreman what he had done and was asked by if he could verify what had happened. Grievant said yes.

Grievant testified that the restroom he used was located in the boiler shop, approximately 120 yards away, then down the

street, past the third deck building. He estimated that it takes over three minutes to walk each way. Grievant testified that, when he returned to his work area, it was almost lunch; and he waited inside the building where the rest of the crew was located. He testified that he could see Foreman standing by the door at the back end of the third deck building. He could have seen.

Grievant acknowledged that he did not make the lunch time safety check, but went straight on to lunch, clocking back in at 1230. He stated that before he returned to his job, he went to see Ms. and to find Mr. , the Roaming Instructor. Ms. had said she would send over to fix his machine. Grievant then returned to his job. arrived at 1246 or so, after the supervisors left, and fixed the machine. Grievant testified that, when he returned to his job, he saw all supervisors - , and - standing together. He explained to them what happened.

Grievant acknowledged that he did not look for his supervisor prior to looking for an Instructor. He testified that, in Welding School, he was instructed that, during the first six months following completion of school, he was to find a Roaming Instructor, not his supervisor, if he had equipment problems.

After Mr. wrote him up, Grievant told and what had happened; they submitted written statements. UX1 and UX2. Ms. statement acknowledges that Grievant came to the training cell after lunch to inquire about a Roaming Instructor. Her statement says nothing about any contact prior to lunch. The statement given by Roaming Instructor states that Grievant was looking for him to help him with his job, says nothing about fixing any malfunctioning equipment and does not confirm that he provided Grievant with assistance.

Grievant complained that he was simply doing what he was supposed to do and that he should not have been written up. He grieved. The Company denied the grievance. This proceeding followed.

POSITIONS OF THE PARTIES

The positions of the Parties were set forth in the hearing. They are summarized as follows:

The Company argues that it met its burden to prove just and proper cause for the Oral Warning issued to Grievant. It asserts that the facts establish that Grievant was away from his assigned work area for an extended period, both before and after lunch. He was absent from his work area, without reason or excuse, for approximately 40 minutes.

The Company argues that Grievant's testimony is inconsistent with the weight of the evidence and implausible. NGSB maintains that, even if Grievant's testimony were to be accepted and he had, in fact, returned at 1150 and saw , his supervisor, Grievant failed to inform of what he was doing and, more specifically, that he was having problems with his machine. As to Grievant's testimony that he returned to his work location at 1150, saw no one there and was ready to go to lunch. It maintains that, given the other time lines, Grievant would have to have packed up to go to lunch by 1120, well in advance of the authorized lunch period.

The Company also argues that Grievant's testimony that he was having trouble with his machine is implausible, pointing out that when he returned, the machine was functioning. It points out that Grievant did not ask for any other instructions/assistance. As to Union Exhibits 1 and 2, NGSB asserts that the documents do not support Grievant's version of events; it points, in particular, to what the documents do not say. The Company maintains that the Union tried to bend the story its way, but contends that there is insufficient support to make it persuasive.

The Company asserts that neither nor had an axe to grind; they just testified as to what happened. It maintains that the evidence is that Grievant was away from his assigned work

area, not performing work, for an extended period of time. That, it argues, constitutes a violation of Y.R. 11 and established just and proper cause for the issuance of the Oral Warning. It urges that the grievance be denied. The Company asserts that the Union's request at the hearing for payment of Grievant's dock time is not contained in the remedy and the request is not proper.

The Union argues that the Company failed to meet its burden to prove that Grievant violated Y.R. 11. The Union points to the testimony of Grievant that the procedure he had been taught in his then-recent training was to contact the Roaming Instructor, instead of his Supervisor, with equipment problems. It also points to the written statements from both _____ and _____ (UX1&2), which confirm that Grievant's equipment was not working and that he was engaging in appropriate work activities, working with them to fix his equipment and not "loafing and loitering". The Union points to Grievant's testimony that, after lunch, he went back to his job, met _____ and they fixed the machine. It maintains that took place after the conversation with the Supervisors, but had been set in motion prior to lunch.

USW points out that Mr. _____ not present and did not testify to rebut Grievant's testimony that he spoke with _____, _____ and _____ about problems he had with machine, both at the time of the initial contact and in the discipline meeting, as was verified by the Union representative. Notwithstanding that testimony, the Union points out that both _____ and _____ testified that they had not been told by Grievant about going to see Mr. _____ and talk with him.

The Union asserts that supervisors are human and make errors. It contends that they were in error in their testimony as to Grievant not being in the work area or otherwise performing work. It contends that UX1&2 support Grievant's credible testimony as to where he was and what he did. It maintains that the Company showed no proof that Grievant violated YR11.

The Union urges that I find the discipline to have been not for just and proper cause, remove the Oral Warning from Grievant's record and make him whole, including dock time.

DISCUSSION AND ANALYSIS

It was the Company's burden to prove just and proper cause for the discipline issued to the Grievant. For the reasons which follow, I am convinced that the Company carried its burden.

Grievant was supposed to be working until 1200 and again after the end of the lunch period. I credit the testimony of the Company's witnesses that the supervisors were at Grievant's assigned work area from 1125 through 1200, but Grievant was not there. They were again at Grievant's assigned area from 1225, at which time Grievant was not there and did not return until 1241. Their testimony was supported by specifics, including checking the time, was internally consistent and was consistent with other information in the record.

It is certainly possible that an employee may have work requirements which require his absence from his assigned work location. However, Grievant's explanations for what he did and when he did it are not convincing. In specific, I find that he was not at his work location until 1130, because the supervisors were there by 1125, and observed that Grievant was not there.

Restroom breaks are necessary, but even taking the times most favorable to Grievant, that was a 10 minute exercise and does not account for the 35 minutes Grievant was away from his work area prior to lunch.

I find that Grievant did not return to his job at 1150, but was, by his own testimony, in the building with the other employees on his crew. The lunch period did not begin for another 10 minutes; he should have returned to work.

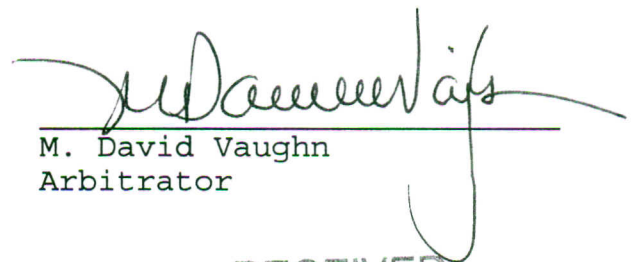
It appears from the written statements submitted that Grievant had communications with Roaming Instructor Supervisor [redacted] and with Instructor [redacted], but those statements do not corroborate that Grievant was dealing with them prior to lunch. Grievant's stated reason for looking for the Instructor - that his machine was not heating properly - is not borne out by the supervisors' observations or by the written statement from Mr. [redacted], which makes no mention of making a repair to Grievant's equipment. Indeed, [redacted] and [redacted] testified that Grievant made no mention of equipment problems when he returned, but simply started working.

Grievant's assertion that he was supposed to direct equipment problems to the Roaming Instructor rather than reporting them to his supervisor is contrary to the normal chain of command, was denied by Management's witness and was not supported by any specific guidance. If he was looking for his supervisor to report the allegedly-malfunctioning equipment, he would have found him at 1125, at Grievant's work location.

A W A R D

The Company proved just and proper cause for the issuance to Grievant of an Oral Warning for violation of Yard Regulation 11. The grievance is denied.

Issued at Clarksville, Maryland this 30th day of November, 2009.


M. David Vaughn
Arbitrator

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