

Award No. 674
In the Matter of the Arbitration Between
INLAND STEEL COMPANY
AND
UNITED STEELWORKERS OF AMERICA
AND ITS LOCAL 1010

Grievance No. 1-N-34

Appeal No. 1277

Arbitrator: Burt Luskin

December 7, 1979

INTRODUCTION

An arbitration hearing between the parties was held in Harvey, Illinois, on October 31, 1979.

APPEARANCES

For the Company:

Mr. T. L. Kinach, Arbitration Coordinator, Labor Relations

Mr. Robert H. Ayres, Manager, Labor Relations, Industrial Relations

P. M. Dunning, M. D., Director, Medical

D. K. Winter, M. D., Associate Director, Medical

Mr. G. A. Walton, Assistant Superintendent, Plant 2 Blast Furnaces

Mr. C. W. Horn, General Foreman, Plant 2 Blast Furnaces

Mr. M. O. Oliver, Safety Engineer, Safety

Mr. M. S. Riffle, Labor Relations Coordinator

Mr. J. T. Surowiec, Labor Relations Coordinator

Mr. V. Soto, Labor Relations Representative

For the Union:

Mr. Theodore J. Rogus, Staff Representative

Mr. Joseph Gyurko, Chairman, Grievance Committee

Mr. Don Lutes, Jr., Secretary, Grievance Committee

Mr. William Gales, Vice Chairman, Grievance Committee

Mr. John Deardorff, Union Insurance Representative

Mr. John E. Meeham, Griever

Mr. George Dawkins, Griever

Mr. Robert H. Hull, Grievant

BACKGROUND

Robert H. Hull was employed by the Company on October 4, 1971. In April, 1977, Hull was established in the Plant No. 2 Blast Furnace Department in the occupation of Sintering Plant Receiving Station Tender (Plant Code 70-0744).

Hull became disabled in November, 1973, with back problems diagnosed by an orthopedic surgeon as spondylolisthesis of the lumbar spine. Medical reports were submitted from time to time by that doctor, and the diagnosis was repeated until July 1, 1974, when Hull's condition was diagnosed as "herniated disc of the lumbar spine." In August, 1974, a disability report was received from Hull's doctor, diagnosing his condition as "acute and chronic lumbar strain." In October, 1974, Hull was released for return to work by his doctor who diagnosed his ailment as "acute and chronic lumbar strain with severe spasm." The etiology was described as "undetermined" and the recommended return to work date was October 18, 1974. The report indicated that Hull's doctor was placing a work restriction on Hull which would prevent him from performing work involving lifting over thirty pounds. Hull was restricted by his doctor from prolonged standing, bending or walking "until further notice." There were no jobs available within the limitations established by Hull's doctor, and Hull remained away from work until March, 1975, when his doctor (Dr. Mott) released Hull for return to work "without restrictions." Hull returned to work on March 25, 1975. Hull continued at work thereafter until April 12, 1977, when he reported off from work due to a disability which was initially diagnosed by Hull's doctor (Dr. Mott) as "acute cervical strain." Reports submitted thereafter by Hull's doctor indicated that Hull was suffering from a "whip lash injury of the cervical spine." Subsequent reports diagnosed his condition as "whip lash injury cervical spine. Acute lumbar strain." A later report diagnosed the condition as "acute lumbar strain," and in October, 1977, Hull's condition was diagnosed as "instability of the lumbar spine." There were subsequent reports indicating treatment for "acute lumbar strain" and "acute cervical strain." There were references to a diagnosed condition of

"degenerative arthritis" and additional references to "spondylolisthesis of the lumbar spine." The latter condition is generally defined to be a congenital condition indicating a forward displacement of one vertebra over another (usually the fifth lumbar over the body of the sacrum), and, in layman's terms, it is described as improperly stacked vertebrae.

In March, 1978, Hull reported to the Inland Medical Department with a release from his doctor (Dr. Mott). That release indicated that Hull's condition had been diagnosed as "acute cervical strain" with an undetermined etiology, with no complications and no limitations and with a recommended return to work date of March 20, 1978. Hull was examined at the Inland Medical Department. He felt pain in the neck area. He was wearing a cervical collar, and he complained of headaches, pain and tenderness on movement of his neck. Company doctors refused to permit Hull to return to work, and he was placed on a medical restriction. The restriction was intended to limit the use of his back while at work and it served to preclude Hull from performing duties and functions involving lifting, bending, stooping or any type of physical work that would place a strain upon his back. The Medical Department was concerned with the diagnosis of spondylolisthesis and degenerative arthritis, which the Company doctors concluded constituted a permanent disability and would have required the placement of a permanent restriction upon Hull that would have precluded his return to the position which he had held at the time of the commencement of his medical disability.

A placement meeting was held on April 11, 1978. Company representatives in attendance at that meeting (members of the Medical Department, departmental supervision, industrial relations, personnel and safety) concluded that the Plant No. 2 Blast Furnace Department did not have a job available which could be filled by Hull and which would fit his medical restrictions. Hull was then placed on lay off status for medical reasons.

On October 4, 1978, a grievance was filed contending that the Company was in violation of the provisions of Article 3, Section 1, of the Collective Bargaining Agreement when it had refused to permit Hull to return to his job. In November, 1978, Dr. Mott submitted a report to the Company which was received by the Company at the Step 3 grievance meeting. That report referred to a diagnosis of spondylolisthesis and a condition of degenerative arthritis of the cervical spine. The etiology was described as "congenital and degenerative," and Dr. Mott again referred to his original recommended date of return to work of March 20, 1978. In answer to a question on the form with respect to whether the individual (Hull) was able to work in all areas of a steel mill doing all types of heavy, physical steel-mill type work, Dr. Mott marked the box indicated with the work "yes."

The Company attempted to communicate with Dr. Mott by telephone in order to ask Dr. Mott for a clarification of his diagnosis. Dr. Mott did not respond to those telephone calls. On January 31, 1979, the Company's Medical Director (Dr. Dunning) wrote to Dr. Mott, referred to his inability to reach Dr. Mott by telephone, and requested Mr. Mott's assistance in answering certain questions. The letter referred to Dr. Mott's diagnosis of spondylolisthesis and degenerative arthritis of the cervical spine, and the letter referred to the lumbar spine condition that had been diagnosed in December, 1973. Dr. Dunning stated that the Company was concerned with Hull's condition and the possibility of further problems if he performed any work involving heavy lifting or straining. Dr. Mott was asked to inform the Company whether, in his (Dr. Mott) opinion, Hull could now and in the future do heavy lifting, straining, bending and those activities common to the steel industry, without damage to and further trouble with his back and spine. Dr. Mott did not respond to that letter.

The parties were unable to resolve the issue in the preliminary steps of the grievance procedure, and they thereafter invoked an agreed-upon procedure which had been established by the parties for the resolution of disputes of this type. They agreed to have Hull examined by an orthopedic specialist heading up the Department of Orthopedic Surgery at a medical school in this geographic area. The next medical school (in rotation) on the joint list was the University of Illinois, College of Medicine. The parties agreed to refer Hull to the head of the Department of Orthopedic Surgery at that medical school. Dr. Robert D. Ray was asked to examine Hull and to submit a report of his findings. The referral to Dr. Ray set forth a history containing information concerning Hull's back problems while employed with the Company. It set forth the diagnoses received by the Company during the periods of Hull's disabilities. The form of that letter was approved by the Union and was prepared by the Company's Medical Director (Dr. Dunning). Hull appeared at Dr. Ray's offices and was examined by Dr. Ray on March 22, 1979. Dr. Ray submitted a report of his findings on April 10, 1979.

Dr. Ray's report set forth the history of the onset of the period of the most recent disability that commenced in April, 1977. It included a reference to the period of disability which had commenced in 1973, and the

diagnosis made by Hull's orthopedic surgeon. It also included a statement made by Hull to the effect that since the summer of 1978, Hull had been able to work as an automobile mechanic, lifting heavy transmissions without any back or neck problems.

Dr. Ray reported that his physical examination indicated a well developed male who "moves without any guarding." Dr. Ray reported that Hull had a full range of active motion, flexion, extension, lateral bending and rotation without crepitus or apparent pain. There was no local tenderness in the cervical area. Reflexes in the upper extremities were equal and active. There was no apparent sensory loss to light touch. Dr. Ray reported that an examination of the back ". . . reveals that the alignment is normal." Hull was able to bend so that his fingers touched his toes with his knees in full extension. Lateral bending and rotation were normal. Straight leg raising was performed without pain. The circumference of the thighs and calves were equal and palpation of the back indicated that there was no malalignment, muscle spasm or local areas of tenderness. X-rays of the lumbo-sacral spine indicated a suspicious area of radio-lucency in an area of L 5 bilaterally but there was no indication of a displacement of the body of L 5 on the sacrum.

Hull had no complaints and Dr. Ray could find no positive physical findings with reference to either the cervical or lumbar spine. Dr. Ray's impressions were "spondylolysis asymptomatic; cervical disc syndrome (by history) asymptomatic." Dr. Ray closed his report with the following comment:

"Although patients with spondylolysis are more apt to have low back pain than individuals with a normal lumbar spine, it is perfectly possible for an individual with this problem to go through life completely asymptomatic. In many instances this defect is discovered incidentally during examination for other problems (e.g. gastro-intestinal radiographic studies). My impression is that the individual under consideration will probably do well, provided he were engaged in an occupation that does not require heavy lifting or excessive bending. Surgery is not indicated at present."

Upon receiving Dr. Ray's report, the parties were unable to reach agreement with respect to the interpretation that should be placed upon the report and especially that portion of the report referring to Hull's avoidance of a job requiring "heavy lifting or excessive bending." The Union contended that the negative findings supported its contention that Hull should be restored to employment with the Company in his former position. The Company contended that the limitation referred to by Dr. Ray with respect to "heavy lifting or excessive bending" would preclude Hull's return to his former position since that position required Hull to use a shovel to lift spilled material and to use heavy tools, bars and picks to clear jams on the conveyor belts, including working in tight and awkward positions and climbing upwards of five flights of stairs.

The parties were unable to reach agreement on the resolution of the issue based upon Dr. Ray's report, and the grievance was thereafter submitted before this arbitrator for his final and binding determination.

DISCUSSION

Hull was restored to employment in March, 1975, after he had been away from work between November, 1973, and March, 1975. The Company was aware at the time of Hull's restoration to employment that Hull suffered from a congenital condition of spondylolisthesis of the lumbar spine. His condition (in that period of time) had also been diagnosed as "herniated disc of the lumbar spine" and "acute and chronic lumbar strain with severe spasm." The Company did not return Hull to work in October, 1974, because of a working restriction placed upon him by his doctor. When the working restriction was lifted, Hull was returned to work and he continued to work thereafter for a period of more than two years without incident and without problem. The condition which caused the onset of the disability in April, 1977, was diagnosed as "acute cervical strain" and subsequent reports referred to the disability as a "whip lash injury of the cervical spine." The only reasonable conclusion that can be drawn was that the problem arose because of some form of trauma, and subsequent reports concerning the condition of Hull's spine were similar in nature to the reports which had been submitted to the Company in the period between November, 1973, and his subsequent restoration to employment in March 1975. There is no showing in this case that Hull's absence from employment after April 12, 1977, was caused by work-related conditions.

When Hull reported to the Company's Medical Department with a full release from his doctor in March, 1978, the Company had every right to refuse to restore Hull to employment despite the recommendation of Hull's doctor that he be returned to employment without limitation. When Hull offered himself for return to employment in March, 1978, he was wearing a cervical collar, and an examination revealed the fact that Hull was still suffering pain and he complained of headaches, pain and tenderness associated with movements of his neck. Hull's placement on a medical restriction at that time (in light of his physical condition) was a reasonable exercise of the Company's right to refuse to permit Hull to return to employment on his former job or on any job that was available to him on the basis of his seniority rights.

The evidence would indicate that a condition of spondylolisthesis and degenerative arthritis would not necessarily be disabling to a point where it would have precluded Hull from returning to employment and carrying out the duties of his classification without danger to himself or to his fellow employees. Hull had never undergone a spinal surgical procedure and, although considerable care should be exercised in placing an employee on a job requiring heavy lifting, bending and stooping where the employee has suffered from recurring back problems, the fact remains that each case must be decided on the basis of its own specific and applicable set of facts and circumstances.

The Company has the right and the obligation to make reasonable provisions for the health and safety of its employees. The Company has the right to withhold an employee from active employment on the basis of reasonable medical evaluations. The Company had the right to refuse to restore Hull to active employment in March, 1978, and it had a right to place a medical restriction upon Hull in April, 1978. Those decisions became subject to reevaluation after Hull's doctor submitted a report to the Company in November, 1978, at which time Hull's doctor again recommended Hull's restoration to employment without restriction. The parties thereafter applied their agreed-upon procedures for a physical examination by a doctor selected in accordance with a prescribed rotation system. It would follow, therefore, that the report submitted by Dr. Ray should be controlling in this manner.

Dr. Ray's report indicated that Hull had no complaints and Dr. Ray could find no positive physical findings with reference to either the cervical or lumbar spine. The only limitation contained in Dr. Ray's recommendation for Hull's restoration to employment was that he be placed on a job that does not require "heavy lifting or excessive bending." In the light of that report it becomes necessary to determine whether the job duties required to be performed by Hull would meet the restrictions recommended by Dr. Ray. The standard title for the job held by Hull is "conveyorman." That employee (by description) operates feeders and conveyors to convey material from the bins to the screening station. To perform that function he responds to signals. He issues signals and he operates the required controls. Those work functions are clearly "light" in nature. He may be required to use a shovel when there is a spill of material off the conveyors. A jam in a chute may require that he use a pick or a bar to free the material that would be blocking the chute. He is prohibited from entering the chute unless the entire system is locked out. If the spill is unusually heavy, the conveyorman is provided with assistance from the labor pool. In the job evaluation for the classification, the factor of physical exertion had been rated as "normal" and the points assigned to that factor would indicate conclusively that the parties did not consider the physical exertion element of the job as anything other than "normal." The use of a shovel to clean up a spill is intermittent. The job does not regularly require "heavy lifting and excessive bending." The conveyorman may at times be required to perform a work function in tight quarters and he may at times be required to climb five flights of stairs while checking the operation of the system. In substance, a reading of the job description would indicate that the job "does not require heavy lifting or excessive bending," and it thereby conforms with the limitation placed upon Hull's work activities by Dr. Ray.

The arbitrator must, therefore, find that, although Hull's medical condition warranted and justified the placement of a medical restriction upon Hull in March, 1978, that restriction should have been lifted and Hull should have been permitted to return to work in his former position based upon the receipt of Dr. Ray's report on April 10, 1979.

For the reasons hereinabove set forth, the award will be as follows:

AWARD

Grievance No. 1-N-34

Award No. 674

The grievance is sustained in part. The medical restriction placed upon the grievant in March, 1978, should have been lifted and Robert H. Hull should have been restored to his former position, with seniority rights, upon receipt of the medical report from Dr. Ray on or about April 10, 1979.

/s/ Burt L. Luskin

ARBITRATOR

December 7, 1979