Award No. 680
In the Matter of the Arbitration Between
INLAND STEEL COMPANY
AND
UNITED STEELWORKERS OF AMERICA
AND ITS LOCAL UNION NO. 1010
Grievance No. 6-N-33
Appeal No. 1284
Arbitrator: Burt L. Luskin
December 31, 1979

INTRODUCTION

An arbitration hearing between the parties was held in Harvey, Illinois, on December 18, 1979. Pre-hearing briefs were filed on behalf of the respective parties.

APPEARANCES

For the Company:
Mr. T. L. Kinach, Arbitration Coordinator, Labor Relations
Mr. J. T. Surowiec, Labor Relations Coordinator
Mr. Robert H. Ayres, Manager, Labor Relations, Industrial Relations
Mr. T. J. Mulligan, Superintendent, Power and Fuels
Mr. W. P. Boehler, Assistant Superintendent, Labor Relations
Mr. M. J. Mezey, Supervisor, Manpower Planing & Utilization, Personnel
Mr. V. Cherbak, Administrative Supervisor, Power
Mr. G. Rubin, Assistant Director, Personnel
For the Union:
Mr. Theodore J. Rogus, Staff Representative
Mr. James Balanoff, District Director
Mr. Joseph Gyurko, Chairman, Grievance Committee
Mr. William Andrews, President, Local 1010
Mr. Don Lutes, Secretary, Grievance Committee
Mr. Jon R. Vasilak, Griever
Mr. Joe Kaminski, Griever
Ms. Mary Elgin, Chairperson, Woman's Committee
Ms. Juanita Holmes, Chairperson, Civil Rights Committee
Ms. Jessie J. Kauffman, Grievant

BACKGROUND

Jessie J. Kauffman completed and signed an application for employment with the Company on February 8, 1978. She commenced active employment with the Company on February 16, 1978. She was assigned to the Power Department where she commenced training under a craft program pursuant to a Federally sponsored Recruitment and Training Program (RTP).

On July 31, 1979, Ms. Kauffman was interviewed in the superintendent's office. She was asked about certain discrepancies which the company had discovered in her application for employment with the Company. Ms. Kauffman at that time readily admitted that she had falsified her previous work history and had failed to record (in the application for employment) the fact that she had attended college for four years and had received a degree from Cornell University (Ithaca, New York). Ms. Kauffman conceded that she was aware of the statements appearing on the application for employment which would have subjected her to the penalty of termination for falsification of the employment application. She readily conceded that she had failed to record the fact that she had attended a college for four years, since she was under the impression that if she informed the Company that she was a college graduate she would not be employed into a Bargaining Unit position. Ms. Kauffman readily conceded that in order to account for the four-year period between her graduation from high school in 1969 and the completion of her college education in 1973, she stated on the application for employment that she had worked at the "Town and Country Store" located in Toledo, Ohio, and that she had been employed in that store as a clerk-cashier, and had left the employ of that store after it had closed. Ms. Kauffman readily conceded that she had never worked for that store in Toledo, Ohio, and she testified that she became aware of a store bearing a similar name when she had visited a relative in Toledo. She conceded that she was aware of the fact that the store which she listed was no longer in business and she thereby assumed that it would be difficult for Inland to confirm and

verify her claimed period of employment. The Company thereupon suspended Ms. Kauffman preliminary to discharge. The Company contended that Ms. Kauffman had violated Rule No. 127k of the General Rules for Safety and Personal Conduct. Ms. Kauffman thereupon requested a suspension hearing. The hearing was held on August 6, 1979, and on August 14,1979, Ms. Kauffman was informed that she had been terminated from employment.

A grievance was filed on October 6, 1979, contending that Ms. Kauffman's termination from employment was "unjust and unwarranted in light of the circumstances." The grievance was thereafter processed through the remaining steps of the grievance procedure and the issue arising therefrom became the subject matter of this arbitration proceeding.

DISCUSSION

The provisions of the Agreement cited by the parties as applicable in the instant dispute are hereinafter set forth as follows:

"ARTICLE 3

"PLANT MANAGEMENT

3.1 "Section 1. Except as limited by the provisions of this Agreement, the Management of the plant and the direction of the working forces, including the right to direct, plan and control plant operations, to hire, recall, transfer, promote, demote, suspend for cause, discipline and discharge employees for cause, . . . provided, however, that in the exercise of such functions the Company shall not discriminate against employees because of membership in or legitimate activity on behalf of the Union.

"ARTICLE 4

"RESPONSIBILITIES OF THE PARTIES

4.2 "Section 2. The Company recognizes and will not interfere with the right of its employees to become members of the Union, and there shall be no discrimination, interference, restraint or coercion by the Company or any of its agents against any employee because of membership in the Union

4.4 "Section 4. It is the continuing policy of both the Company and the Union that there shall be no discrimination against any employee because of race, color, religious belief, sex or national origin. The representatives of the Union and the Company in all steps of the grievance procedure and in all dealings between the parties shall comply with this provision.

4.4.1 "A joint committee on Civil Rights shall be established. The Union representation on the committee shall be no more than three (3) members of the Union, in addition to the President and Chairman of the Grievance Committee. The Union members shall be certified to the Plant Manager by the Union and the Company members shall be certified to the Union.

4.4.2 "The Company and Union members of the joint committee shall meet at mutually agreeable times, but no less than once each month. The joint committee shall review matters involving Civil Rights and advise with the Company and the Union concerning them, but shall have no jurisdiction over the filing or processing of complaints or grievances. This provision shall not affect any existing right to file a complaint or grievance nor does it enlarge the time limits for filing and processing complaints or grievances.

"ARTICLE 8

"DISCHARGES AND DISCIPLINES

8.1 "Section 1. In the exercise of its right to discharge employees for cause, as set forth in Article 3, the Company agrees that an employee shall not be peremptorily discharged, but in all instances in which the Company may conclude that discharge is warranted, he shall first be suspended for five (5) calendar days and notified in writing that he is subject to discharge at the end of such period. A copy of such notice shall be furnished to such employee's grievance committeeman promptly. During such five-day period, if the employee believes that he has been unjustly dealt with, he may request a hearing and statement of his offense before the Superintendent of Labor Relations, or his designated representative, with the employee's grievance committeeman and officers of Union present if the employee so chooses. At such hearing, facts and circumstances shall be disclosed to and by both parties.

8.2 "If a hearing is requested, the Company shall, within five (5) days after such hearing, decide whether such suspension shall culminate in discharge, or whether it shall be modified, extended or revoked, and the employee and the Union shall be notified in writing of such decision. . . ."

All applicants for employment are required to complete an application form. In spaces immediately above the line provided for the applicant's signature, the following statements appear in print:

"1. In making this application for employment it is understood that an investigative report may be made whereby information is obtained through personal interviews with third parties, such as family members, business associates, financial sources, friends, neighbors, or others with whom I am acquainted. This

inquiry includes information as to my character, general reputation, personal characteristics, and mode of living, whichever may be applicable. I have the right to make a written request within a reasonable period of time for a complete and accurate disclosure of additional information concerning the nature and scope of the investigation.

"2. I understand that any omission or misrepresentation of material fact in this application may be considered as just cause for rejection of this application or dismissal from employment. I further understand that employment with the company is contingent upon passing the company's medical examination."

Ms. Kauffman was charged with a violation of Rule No. 127k of the Company's General Rules for Safety and Personal Conduct. The preamble and the specific rule are hereinafter set forth as follows:

"127. The following offenses are among those which may be cause for discipline, up to and including suspension preliminary to discharge:

"k. Falsifying or refusing to give testimony when accidents are being investigated; or falsifying or assisting in falsification of personnel records or any other records; or giving false information in making application for employment."

At the time that Ms. Kauffman was employed with the Company and assigned to the Power and Fuels Department, she was provided with the Company's General Rules for Safety and Personal Conduct which contained Rule 127k, and she was provided with a set of the Departmental Rules. Included within the Departmental Rules was Rule 44 which was identical with Rule 127k of the General Rules.

Mr. Kauffman conceded that she had read the two paragraphs immediately above the signature line on her completed application for employment. She testified that she was fully aware of the fact that she had provided the Company with false, misleading and erroneous information which could have subjected her to termination from employment. She testified that she had concealed the fact that she had attended Cornell University for a period of four years by falsely stating in her application for employment that she had been employed in a store in Toledo, Ohio. She did not provide the Company with information concerning her employment in a cafeteria at Cornell University over a period of some four years while she was a member of a work study program at that university.

Ms. Kauffman testified that she had read a number of articles which led her to believe that companies in the steel industry would refuse to employ persons who they considered to be over-qualified for production jobs or for training in craft positions. She testified that she had learned of the "consent decree" in steel and she expected that opportunities in the skilled-job classifications would thereafter become available to female applicants and members of minority groups. She testified that she was "desperate" for a job and she assumed that if she concealed her educational background and was hired, her subsequent good work performance would assure her retention in employment even though the Company, at some later point in time, might discover that she had made deliberate misstatements of fact on her application for employment.

Ms. Kauffman testified that after her employment she learned that she had been misinformed concerning the Company's policy with respect to the hiring of persons with college educations. She testified that she learned that the Company did employ females in production jobs and training was available for craft positions. She learned that at Inland the numbers of female employees in craft positions were increasing by substantial numbers. She testified that she was afraid to come forward, admit that some of the statements in her application were false and she was afraid to ask for permission to revise and amend her application for employment.

Ms. Kauffman testified that approximately three months after her date of employment she was asked by the Company's Personnel Department to provide the Company with verification of her employment with her two most recent employers. She testified that she provided the Company with copies of W-2 forms as evidence of such employment.

Ms. Kauffman testified that she became active in Local Union affairs and accepted appointments to Local Union committees that were concerned with the rights afforded to women workers. She testified that she attended meetings of human relations committees and commissions, and in June, 1979, she attended a work shop program given by the Hammond Human Relations Commission. She testified that the program was informational in nature and was attended by members of the Commission, members of a Union-appointed committee and a number of Company representatives, all of whom were interested in human relations matters and administration of EEOC matters. She testified that she acted as the spokesperson for the Union members who were present at that meeting, and that she was asked to identify herself by a Company representative. She testified that approximately six weeks later she was called in and was charged with having falsified her application for employment.

The Union contended that the omissions and the errors appearing in Ms. Kauffman's application for employment were minor and inconsequential and did not constitute the commission of an offense so serious in nature as to justify termination from employment. The Union called attention to the fact that the rule upon which the Company relied (Rule 127k) does not provide for mandatory discharge, but calls for the imposition of discipline "up to and including suspension preliminary to discharge." The Union contended that the Company began a further investigation into Ms. Kauffman's employment and educational backgrounds in July 1979, only after it had learned that she had assumed a leadership role in women's affairs within the Local Union.

The Union contended that many arbitrators have held that a failure on the part of a company to proceed against an employee who has falsified an application for employment within a period of approximately one year after date of hire, would preclude a company from imposing any form of discipline. In effect, the Union argued that there should be an implied one-year statute of limitations in cases of this type. The Union also contended that a failure to disclose matters involving employment or educational background should not be viewed in as serious a light as a failure to provide the Company with essential information concerning an employee's medical background that might impose substantial financial liability upon the Company at some later point in time.

The Company contended that for a period of more than thirty-five years it has taken a consistent position that it will enforce the Company rule against falsification of employment applications. The Company contended that in a relatively few instances where applicants for employment have made minor errors on employment applications, the employees were permitted to make corrective revisions and amendments. The Company contended that Ms. Kauffman failed to ask permission to correct her application for employment. She conceded that she had falsified her application for employment only after she was confronted, on July 31, 1979, with the evidence of falsifications.

The Company contended that it knew as far back as September and October, 1978, that Ms. Kauffman had become interested in Local Union affairs and she was treated in no different a fashion than any other person who became a member of Union committees.

The Company contended that it had established an Affirmative Action Program and it had gone to great lengths to offer female employees various craft opportunities when it conducted Craft Opportunity Programs for all newly-hired minority persons and females, especially during their probationary periods. The Company contended that it had administered a Recruitment and Training Program (RTP) in conjunction with the Federal Government and the Company contended that Ms. Kauffman was a RTP participant.

The Company contended that there are currently 262 members of the Bargaining Unit who have achieved baccalaureate degrees (or higher), and the Company pointed to the fact that seven employees who were hired after the grievant's hiring date and who also entered the Power Department had college degrees. The Company pointed to the fact that for many years it has actively encouraged its employees to pursue college-degree programs through the Company's tuition reimbursement program. The Company contended that its college tuition reimbursement program had been in effect for many years preceding the grievant's hire in 1978.

Since 1943, arbitrators at Inland Steel have consistently upheld the Company's right to terminate an employee who deliberately provides the Company with false information in an application for employment. The Company has a right to make an informed judgment before hiring anyone into it employment, and the Company has a right to rely upon the information contained in an applicant's employment application. In Inland Award No. 660, this arbitrator stated that "it is conceivable that minor errors in an employment application or minor omissions in connection with inconsequential fact situations might not constitute fraud or concealment of facts to a degree sufficient to justify termination from employment." This arbitrator further stated that ". . . the Company is entitled to make an informed judgment with respect to employment based upon the information contained in the employment application. . . ." In the instant case the omissions and the falsifications could not possibly be characterized as "minor" or "inconsequential" in nature. The falsifications and the omissions were deliberately planned, based upon the grievant's erroneous impressions and assumptions concerning the Company's hiring practices. Ms. Kauffman erroneously assumed that the Company would not hire a college graduate into the Bargaining Unit, and she erroneously assumed that the Company might not provide a female applicant with the opportunity to enter a craft training program. The fact that Ms. Kauffman performed her work duties in an able and conscientious manner cannot be controlling and cannot serve to justify, condone or excuse the original fraud which she perpetrated upon the Company.

A careful analysis of all of the evidence in the record would indicate conclusively that the Company did not discriminate against Ms. Kauffman because of any Union activities in which she engaged as a member of the Local Union's committees. She was not an elected officer of the Union, and there are substantial numbers of female Bargaining Unit employees who are active in Local Union affairs and who are not subjected to discrimination or harassment because of those activities. There is nothing in this record that would in any way support a contention that Ms. Kauffman was ever denied any of the rights to which she was entitled because of her sex or because of her activities in Local Union affairs. The fact that the Company may have begun a re-examination of the information contained in her application for employment after she had served as a spokesperson for a group of female employees who had attended a Human Relations Symposium, is in no way indicative of an attitude of harassment, discrimination or bias because of her sex or her legitimate Union activities.

In 1943 the Union sought to impose an implied statute of limitation which would preclude the Company from terminating an employee for falsification of an application of employment after the passage of a prescribed period of time. In Inland Award No. 2 (1943) Umpire Lapp would not accept that theory or concept. In 1962 Arbitrator Kelliher, in Inland Award No. 486, referred to the fact that employment by fraud constitutes a void relationship and he refused to accept the limitation concept advanced in that case. In 1975 Arbitrator Cole, in Inland Award No. 623, again rejected the Union's time limitation concept when he stated in part as follows:

"Grievant and the Union again, as in Award No. 614, stress the fact that some arbitrators in other industries or relationships have held that there should be an implied limitation period of one year after which the employer should not be permitted to discipline an employee for falsifications in his employment application. There is no such statute of limitations in the Inland collective bargaining agreement, and the parties have not observed any such rule. In Award No. 486, some 13 years ago, Arbitrator Peter Kelliher sustained the discharge of an employee by Inland more than five years after he made misrepresentations in his employment application, observing that the Company's right to do so had been well recognized, and that there is no duty on the Company to discover all falsifications and misrepresentations during the probationary period."

The Union has submitted a number of decisions of other arbitrators (at different plants) in support of its contention that discharge should not be imposed for minor omissions or minor falsifications of employment applications or in cases involving the imposition of discipline more than one year after a falsification occurs. This Company is not bound by customs or practices concerning the extent or degree of penalties that may be imposed by other companies. This Company, in imposing discipline, has a right to follow the disciplinary procedures which it had adopted many years ago and which have been applied thereafter in a consistent manner. What is of essential import in this case is that in every instance where similar issues have been arbitrated at this plant, the arbitrators have held that deliberate falsification of an application for employment subjects the employee to the penalty of termination from employment.

It is of interest to note that in Inland Award No. 615, issued by Permanent Arbitrator Cole on September 18, 1974, the discharge of a female employee who had falsified her application for employment and who had been found guilty of misstatements and material omissions in her application for employment, was sustained. The fact situation in that case was remarkably similar to the fact situation in this case. In that case (Award No. 615) a female employee provided the Company with false information concerning her former employment and she failed to correctly complete the application form with respect to information concerning her educational background. She did not inform the Company that she was a college graduate and she testified that she concealed that fact because someone in the Calumet area had erroneously informed her that she would not be hired by Inland if she informed the Company that she was a college graduate. The grievant in that case also had falsely stated that she had been employed with a company that did not exist in order to cover the period of time when she was attending the university. The grievant in that case also made an unsupported charge of sex discrimination when she contended that the Company did not want women working in the mechanical occupation for which she was being trained. She then charged that her discharge and her husband's discharge from Inland had been caused by her husband's active opposition to the steel industry's Experimental Negotiating Agreement (ENA). She had also insisted that she had been a good employee and she also insisted (as did grievant in this case) that the Company had not been injured by the misstatements and omissions in her employment application. The grievant in that case also testified that she was aware of the cautionary statements in the application and she was also aware that she could be subjected to discipline, including discharge, for the false information contained in her application for employment. In his decision in Award No. 615, Permanent Arbitrator Cole found that there was no actual

evidence of harassment or discrimination against the grievant because of her sex. He found that the Company had hired and was hiring college-trained persons into Bargaining Unit positions. He found that the Company had a tuition aid program to encourage its employees to take college courses leading to a college degree. He found that the grievant in that case had made no preliminary effort to ascertain the truth concerning the Company's alleged discriminatory policy against hiring college-trained females, and he found that the grievant had failed to make inquiries from either Union or Company representatives concerning any such discriminatory hiring practices. Arbitrator Cole also found that the Company had "consistently followed the practice of discharging employees who had deliberately falsified their employment applications." Arbitrator Cole found from the evidence that forty-two employees had been terminated for employment application falsifications in 1973-74. Arbitrator Cole made specific reference to the Company's long-time established policy of terminating employees when it discovers their misrepresentations in their applications for employment, and he made specific reference to a long line of decisions by himself and other arbitrators serving under the Inland Agreement that sustained the Company's right to impose that form of discipline for the commission of those types of offenses.

This arbitrator must find that Ms. Kauffman admittedly made deliberate falsifications of fact and deliberate omissions of required information in her employment application in February, 1978. She was aware that she thereby subjected herself to termination from employment. When the Company discovered that the grievant had misrepresented her educational background and had claimed employment for a period of four years when she was not employed as represented, the Company immediately elected to exercise its right to terminate the grievant from employment for the violation of a Company rule and regulation that had been in force and in effect for many years. The Company did not delay its actions. It imposed the discipline promptly after receipt of the evidence of the falsifications. The Company applied its rule in a consistent manner and it did not thereby discriminate against the grievant in any manner or form. Other employees who had committed similar and almost identical offenses had been terminated from employment, and the degree of the penalty imposed against the grievant was consistent with the penalty imposed against others for similar and identical types of offenses.

The arbitrator must find that the Company did not in any way discriminate against the grievant because of her Union activities. The Company knew that Ms. Kauffman had been active for some period of time in Local Union affairs and had served on a number of Local Union committees. She was afforded the opportunity to be absent from work in order to carry out her legitimate Union activities and the Company had never interfered with the grievant's right to engage in Union activities.

When the grievant was originally interviewed concerning the newly discovered misstatements, omissions and falsifications appearing in her application for employment, she was afforded the opportunity to have Union representation present at that interview. She informed the Company that she would elect to represent herself. After she was informed that she had been suspended from employment preliminary to discharge, she asked for and received Union representation. She received Union representation at the suspension hearing. A grievance was filed and processed by the Union after she had been terminated from employment. The Union protested her termination from employment in the subsequent steps of the grievance procedure. The Union certified the grievance to arbitration and the grievant was thereafter ably and vigorously represented by an International Staff Representative. The parties agreed that there were no procedural errors present and the issue was properly before the arbitrator pursuant to the applicable provisions of the applicable Collective Bargaining Agreement.

The arbitrator must find that just and proper cause existed for the termination of the grievant's services.

AWARD

Grievance No. 6-N-33

Award No. 680

The Company had just and proper cause for terminating Jessie J. Kauffman from employment. The grievance is denied.

/s/ Burt L. Luskin

ARBITRATOR

December 31, 1979