

Award No. 695  
In the Matter of the Arbitration Between  
INLAND STEEL COMPANY  
AND  
UNITED STEELWORKERS OF AMERICA  
AND ITS LOCAL UNION 1010

Grievance No. 7-P-2

Appeal No. 1303

Arbitrator: Bert L. Luskin

April 30, 1981

#### INTRODUCTION

An arbitration between the parties was held in Harvey, Illinois, on April 22, 1981. Pre-hearing briefs were filed on behalf of the respective parties.

#### APPEARANCES

For the Company:

Mr. R. T. Larson, Arbitration Coordinator, Labor Relations

Mr. R. B. Castle, Senior Representative, Labor Relations

Mr. C. Korkoian, General Foreman, Pits and Labor, Plant No. 2 Mills

Mr. G. Glinos, General Foreman, No. 2 Blooming Mill, Plant No. 2 Mills

Mr. L. Parr, Sergeant, Plant Protection

Mr. J. Oliver, Turn Foreman, Pits and Labor, Plant No. 2 Mills

Mr. R. V. Cayia, Representative, Labor Relations

Mr. J. Sipple, Turn Foreman, No. 2 Blooming Mill, Plant No. 2 Mills

For the Union:

Mr. Theodore J. Rogus, Staff Representative

Mr. Joseph Gyurko, Chairman, Grievance Committee

Mr. Don Lutes, Secretary, Grievance Committee

Mr. Earl Neal, Member, Grievance Committee

Mr. Alexander Jacque, Member, Grievance Committee

Mr. Robert D. Ali, Grievant

#### BACKGROUND

Robert Ali was employed by the Company on September 26, 1978. Shortly after the start of the 11-7 turn of December 3, 1980, Ali and a fellow employee (Foust) were assigned by Turn Foreman Oliver to work in the dry scale hole in the No. 2 Blooming Mill (Plant No. 2 Mills). Foreman Oliver approached Ali and asked him if he knew how to hook up the grab bucket on the No. 11 crane. Foreman Oliver intended to have the crane dig scale that could thereafter be removed from the hole. The events which transpired thereafter are in dispute.

Foreman Oliver contended that he had sent Foust and Ali to the Mill Foreman in order to determine when the crane would be available for service at the hole. Foreman Oliver contended that Faust walked toward the pit office and Ali walked back to the scale hole. Foreman Oliver contended that as Ali entered the hole he asked Ali where he was going, whereupon Ali allegedly turned around and came out of the scale hole so rapidly as to require the foreman to jump out of the way in order to avoid being bumped. In response to Foreman Oliver's question, Ali stated that he was going "back into the hole, where do you think?" Foreman Oliver allegedly then repeated his question. He contended that he had asked that question because he had instructed Ali to stay with Foust in order that Ali could learn how to secure the services of the crane and in order to learn how to hook the grab bucket on to the crane. Foreman Oliver contended that Ali then stated "I'm not playing around any more. I'm tired of you f-ing with me. If you don't quit, you will get yours. I'm dead serious. If you don't quit f-ing with me, you will get yours." Foreman Oliver contended that he was startled by the statements and that he feared bodily harm from Ali. Foreman Oliver contended that he directed Ali to proceed to the pit office after informing another foreman of Ali's alleged threats. Foreman Oliver thereupon communicated with Plant Protection and asked that Ali be escorted from the plant for threatening Oliver with bodily harm.

Ali was suspended from employment for five days after being charged with a violation of General Rule 127-P and for his overall unsatisfactory work record. Ali requested a hearing that was held on December 8, 1980. On December 16, 1980, Ali was informed by certified mail that he was terminated from employment. On December 19, 1980, Ali filed a grievance contending that his suspension and discharge were unjust and

unwarranted in light of the circumstances. He requested restoration to employment and he requested that he be paid all moneys lost. The grievance charged that the Company had violated Article 3, Section 1, and Article 8, Section 1, of the Collective Bargaining Agreement. The grievance was denied and was thereafter processed through the remaining steps of the grievance procedure. The issue arising therefrom became the subject matter of this arbitration proceeding.

#### DISCUSSION

The grievant denied that he had used any words that could be considered to be threatening in nature. The grievant contended that the foreman had instructed Foust to check with the Mill Foreman and to determine when the crane would be available. The grievant contended that the foreman spoke directly to Foust and did not include Ali in the conversation. The grievant assumed that since he had not been directed to walk with Foust, the foreman wanted him (Ali) to return to the hole and to continue to attempt to remove scale until such time as the crane would become available.

The grievant contended that when he was approached by Foreman Oliver and was asked what he was doing in the hole, he responded by stating that he had returned to continue working. He denied that he had run out of the hold or had emerged from the hole so rapidly as to nearly collide with Foreman Oliver. He testified that when he was asked, on three different occasions, by Foreman Oliver what he was doing, Ali responded each time that he was going back down into the hole. Ali testified that after he had been asked the same question three times and had responded each time with the same answer, he stated to Oliver "Why are you giving me a hard time?"

The issue must turn on the question of credibility. There is nothing in this record that would in any way indicate that Foreman Oliver bore any animosity toward Ali. Foreman Oliver had supervised Ali on an intermittent basis and the only exchange between them that was worthy of note occurred approximately two weeks prior to the incident in question when Oliver had observed Ali in the pit throwing pieces of debris at a flashing safety light. On that occasion Foreman Oliver had reprimanded Ali, cautioned him, talked to him "like a father to a son," and had pointed out to Ali that he might want to get married someday and would need his job. Foreman Oliver testified that when he informed Ali at that time that he would not impose any discipline, Ali thanked him and the matter was closed.

Ali denied directing any threats toward Oliver or using any profane expressions. Oliver, on the other hand, was certain that Ali had threatened him when Ali allegedly stated "I'm tired of you f-ing with me. If you don't quit, you will get yours. I'm dead serious. . . ."

From an analysis of all of the evidence in the record it becomes evident that there was a significant failure of communication concerning the issuance of the direction to Ali concerning the crane. It is obvious that Ali would have preferred to have walked to the office with Foust and to have made inquiries of the foreman concerning the availability of the crane. That was a far more simple and pleasant task than going back into the hole where Ali was exposed to heat and dirt. Although Oliver testified that Ali had informed him that he did not know how to signal for a crane and that he did not know how to hook up a bucket to the crane, Ali testified that he had in the past signaled for a crane and that no training was necessary to ask a foreman when crane service would be available for his working area. The fact that Ali turned and proceeded back to the hole would indicate conclusively that he did not understand that he had been expected to walk to the mill office with Foust while Foust asked questions concerning a crane availability.

It would appear that Foreman Oliver did ask Ali on three different occasions what he was doing in the hole and that on three occasions Ali responded by stating that he had gone back into the hole. It is evident that Ali became incensed and believed that the repetitive nature of the questions constituted a form of harassment. He did respond sharply to the foreman, but it is the nature of that response which would determine the degree of the penalty to be imposed against Ali.

The arbitrator is of the opinion that Foreman Oliver did, in fact, believe that the use of the words "don't f-with me" constituted a threat of bodily harm. The arbitrator cannot find from the evidence in the record that Ali used the threatening words "you will get yours." There is nothing in Ali's past record that would indicate that he was a violent person or that he was capable of performing a violent act.

The arbitrator must find that Ali did use profane and insubordinate language. The arbitrator cannot accept Ali's contention that he was sent home and charged with threatening the foreman merely because he had asked the foreman "why are you giving me a hard time?"

The testimony offered by the Sergeant of Plant Protection (Parr) is most revealing in several respects. Sgt. Parr was called to the area to escort Ali from the plant. He asked Ali why he was being sent home and he asked Ali if he had used the words "don't f- with me or you will get yours." Sgt. Parr testified that Ali denied using those words, but he admitted saying to Foreman Oliver "don't f- with me."

The Company has contended that it had given consideration to the employee's disciplinary record indicating a reprimand for absenteeism on August 15, 1979, and a suspension for the balance of a turn of work on March 5, 1980, for being out of his work area. On September 22, 1980, Ali was warned after having been observed carrying a shovel in an unsafe manner. On November 3, 1980, he had been reprimanded for eating in a locker room after employees had been informed that they were not to eat in that area because of sanitary conditions. On November 21, 1980, Ali was suspended for one turn for being out of his work area.

The arbitrator cannot find from the evidence in this record that Ali used words directed toward Foreman Oliver that served to constitute a threat of bodily harm toward Foreman Oliver. The arbitrator must find that there had been a failure of communication and that Ali was in fact under the impression that he was supposed to return to the hole and attempt to shovel scale from that hole while a fellow employee (Foust) had been sent to find out when crane service would be available for the pit. The arbitrator must find that when Ali was questioned by the foreman concerning his activities, Ali became impatient and he did use the words "don't f- with me." The use of those words under those conditions cannot be characterized as mere "shop talk," and those words must be considered to constitute a violation of Rule 127-P of the General Rules for Safety and Personal Conduct.

Ali should have been suspended from employment, but in the opinion of the arbitrator the incident of December 3, 1980, when viewed with Ali's prior record of discipline, would not have justified the imposition of the penalty of termination from employment. Ali should be provided with an additional opportunity to demonstrate that he can answer a reasonable question and can carry out reasonable instruction of supervision without responding with a profane term. Ali should be restored to employment with the Company, with seniority rights, but without any back pay for the period between December 3, 1980, and the effective date of his restoration to employment. The intervening period shall be considered to be a period of disciplinary suspension from employment.

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

AWARD NO. 695

Grievance No. 7-P-2

Robert D. Ali should be restored to employment with the Company, with seniority rights, but without any back pay for the period between December 3, 1980, and the effective date of his restoration to employment. The intervening period should be considered to constitute a period of disciplinary suspension from employment.

/s/ Bert L. Luskin

ARBITRATOR

April 30, 1981