

Award No. 696
In the Matter of the Arbitration Between
INLAND STEEL COMPANY
AND
UNITED STEELWORKERS OF AMERICA
AND ITS LOCAL UNION 1010

Grievance No. 24-P-65

Appeal No. 1313

Arbitrator: Bert L. Luskin

December 3, 1981

INTRODUCTION

An arbitration hearing between the parties was held in Harvey, Illinois, on November 19, 1981. Pre-hearing briefs had been filed on behalf of the respective parties.

APPEARANCES

For the Company:

R. T. Larson, Arbitration Coordinator, Labor Relations
R. B. Castle, Senior Representative, Labor Relations
P. M. Dunning, M. D., Director, Medical Department
W. B. Stallard, Superintendent, Stores & Trucking Department
W. Jaclack, General Foreman, Pickle Tandem East, No. 3 Cold Strip Mill
D. Chism, General Foreman, Stores & Trucking Department
D. Weimer, Mechanical Turn Foreman, Stores & Trucking Department
J. Bean, Clinic Counselor, Medical Department
J. Hanak, Safety Coordinator, Safety & Plant Protection Department
M. O. Oliver, Representative, Labor Relations
V. Soto, Senior Representative, Labor Relations
W. D. Balich, Safety Engineer, Safety & Plant Protection Department
D. Dziewicki, Paramedic, Medical Department

For the Union:

Theodore J. Rogus, Sub-District Director
Thomas Barrett, Staff Representative
Donald Lutes, Acting Chairman, Grievance Committee
John Deardorff, Insurance Representative
Wayne Douglas, Safety Committeeman
Jack Thill, Griever
Joe Guterrez, Griever
Thaddeus Mathews, Grievant

BACKGROUND

Thaddeus Mathews was employed by the Company on October 24, 1977. On September 23, 1980, Mathews (who was driving an end-dump truck) was assigned to transport refuse from the 80" hot strip mill to the dumping area located at the north end of the plant. He was thereafter directed to transport loads of scale from the No. 4 slabbing mill to the north end of the plant. Mathews, who had reported for work on the 3 to 11 turn, proceeded to pick up a load of refuse from the 80" hot strip mill and to dump that load. He performed certain other functions, and at approximately 6:20 P.M. Mathews, while driving north on Route 60 (located within the plant area), was involved in an accident. Mathews was removed from his vehicle and given first aid at the site by Company paramedics. He was thereafter removed to St. Catherine's Hospital, Mathews was placed under the care of Dr. Rudser. Preliminary tests were made. The doctor ordered (on the basis of a history) that a urinalysis be made to determine whether Mathews had consumed any alcohol or had smoked marijuana during any reasonable period preceding the time of the accident. The test indicated that Mathews had smoked marijuana prior to the accident, and that result was reported to the Company's Medical Department and thereafter to Company officials. Mathews sustained a cervical sprain in addition to contusions to his left hip and left flank. He was compelled to remain away from work until February 3, 1981, at which time Mathews was able to return to the plant and to be present when an investigation was conducted concerning the accident which had occurred on September 23, 1980.

Mathews was informed that as a result of the preliminary investigation that had been conducted shortly after the accident occurred, the evidence indicated that the truck being driven by Mathews had gradually

veered from the north-bound lane into the south-bound lane at a point where the truck was adjacent to the 80" hot strip mill transfer car pit (south of the hydrogen plant). The Company had concluded from an examination of the distinctive tire marks made by the truck being driven by Mathews that the truck had traveled within the south-bound lane for a distance of more than 230 feet before it ran off the road and struck a parked trailer. The Company's investigation disclosed the fact that the impact caused the trailer to move for a distance of seventy-two feet and to be turned in the opposite direction from which it had been facing. There was substantial damage to the trailer and to the left front portion of the truck. The trailer, which was used by track employees, was empty. Mathews was the only person who sustained injuries as a result of the accident.

The truck being operated by Mathews was a fifty-ton Wabco end-dump truck. It was empty at the time of the accident. Fully loaded, the truck would have weighed 100 tons (200,000 pounds).

The Company's investigation (based upon an eye-witness account and an examination of the tire marks) indicated that Mathews had not applied the brakes prior to the collision.

Mathews contended that the wheel was "snatched" from his hands when something went wrong with the steering mechanism. Mathews contended that when he attempted to regain control of the vehicle, the steering mechanism did not react and he was unable to slow the movement of the truck before the truck made impact with the parked trailer that had been located several feet on the shoulder of the road and away from the edge of the south-bound lane.

Following the conclusion of the February 3, 1981, investigation, Mathews was informed that he was being suspended preliminary to discharge for violation of Rules 127-b, 127-i and 127-n of the General Rules for Safety and Personal Conduct.

Mathews requested a hearing pursuant to the provisions of Article 8, Section 1, of the Collective Bargaining Agreement. The hearing was held, and the Company thereafter concluded that no new evidence had been established that would justify an alteration or modification of the initial decision made by the department. The suspension was thereafter converted to a discharge, and on February 20, 1981, a grievance was filed protesting Mathews' termination from employment. That grievance contended that Mathews' termination from employment was unjust and unwarranted, and the grievance requested that Mathews be reinstated and paid all moneys that he was caused to lose as a result thereof. The grievance contended that the Company had violated the provisions of Article 3, Section 1, and Article 8, Section 1, of the Collective Bargaining Agreement.

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 Company charged Mathews with violating the following rules and regulations relating to personal conduct:

"GENERAL RULES FOR SAFETY AND PERSONAL CONDUCT

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

"b. Reporting for work under the influence of drugs not prescribed by a licensed physician for personal use while at work; being in possession of, or use of, such drugs while on company property, or bringing such drugs onto company property.

"1. Leaving employee's working place or visiting around the Plant away from your usual or assigned place of duty at any time, either during or outside of your regular working hours, without permission of your supervisor.

"n. Wanton or willful neglect or carelessness in the performance of duties assigned or in the care of use of Company property."

A member of supervision (Jaclack) driving south in the south-bound lane of Route 60 saw the vehicle driven by Mathews veer from the north-bound lane and gradually move into the south-bound lane. Jaclack became concerned when he noted the truck driven by Mathews begin to approach his vehicle. Jaclack stopped his vehicle and attempted to place it into reverse. Jaclack testified that the truck driven by Mathews proceeded in the south-bound lane for a distance of approximately 100 yards before it left the road, struck the trailer, and turned the trailer around. The impact caused the truck to spin and come to a stop facing in the opposite direction. It was Jaclack's opinion that approximately ten seconds elapsed between the time the truck veered into the south-bound lane and the time when the truck struck the trailer. Jaclack testified that the truck did not slow down before the impact and, in Jaclack's opinion, the brakes of the truck were not applied by the driver prior to the impact.

Two members of supervision measured the tire marks made by the Wabco vehicle. Both supervisors testified that the truck driven by Mathews had veered into the south-bound lane and had proceeded in that lane for a distance of 230 feet before the truck struck the parked trailer.

The truck driven by Mathews had been fully inspected several days prior to the accident. That inspection did not disclose anything wrong with the steering mechanism of the truck. Employees who drove that truck on several occasions prior to the accident had made preliminary inspections to the truck and had not reported any problems with the steering. Mathews checked the truck prior to the start of the shift, and he made no report of any mechanical malfunction. There is evidence in the record that would indicate that following the accident, members of supervision found that the steering mechanism was operational, but when it reached the point of maximum steering radius, the wheel continued to turn. A mechanical foreman testified that, in his opinion, the impact had damaged a part in the steering mechanism. The Company had thereafter replaced that mechanism. In the opinion of members of supervision, the damaged steering mechanism which they believed had been caused by the accident could not have caused the vehicle to veer into another lane and it would not have impaired the ability of the driver to steer the vehicle into its correct lane.

Mathews was unable to account for all of his movements during the first three hours of the shift. His log indicated that he had completed one load and had started a second load. Assuming that the second load had been completed and had been dumped, Mathews could not account for the fact that he had handled only two loads while other drivers hauling the identical material were able to complete as many as five loads in the same approximate three-hour period. Mathews conceded that during a portion of the time he drove around looking for a canteen truck. He testified that he was attempting to buy something to help ease a sore throat.

There can be no question but that Mathews had left his work place without permission. There can be no question but that Mathews was not performing his assigned duties for a substantial period of time prior to the accident. The violation of Rule 127-1, however, under those circumstances, may have justified the imposition of some form of discipline, but it would not have constituted cause for Mathews' termination from employment.

There is some question with respect to whether Mathews had violated Rule 127-n. On the basis of the evidence in this record the arbitrator could not find that Mathews was guilty of "wanton or willful neglect or carelessness" in the performance of his assigned duties on the day in question.

The evidence with respect to Mathews' physical condition, however, was positive and certain in all major respects. When Mathews was removed to St. Catherine's Hospital he was conscious. He was interviewed by his attending physician (Dr. Rudser). Dr. Rudser reported that Mathews had informed Dr. Rudser that he had passed out while driving a truck and the truck had thereafter struck a parked vehicle. Acting on that history, Dr. Rudser concluded that it was medically important to determine whether Mathews had ingested a drug or was under the influence of an intoxicant. Mathews provided him with a sample of urine. A urinalysis was performed, and the results were positive for cannabis indica (marijuana). Although Mathews denied that he had smoked marijuana on the day in question, the result of the test conducted at the hospital at the direction of Mathews' physician was positive and certain. The only conclusion that can be drawn therefrom is that Mathews was under the influence of marijuana at the time that he struck the parked trailer with the truck that he had been driving on September 23, 1980.

The accident caused monetary damages in the sum of more than \$9,000. What is of greater significance, however, is that Mathews ingested marijuana while on duty, knowing that he was assigned to drive a 50-ton truck on Company roads. The roads over which Mathews had to drive were busy thoroughfares carrying substantial numbers of Company vehicles. It was essential that Mathews be in full control of his faculties at all times while operating a vehicle on the internal roads.

Mathews had testified that he had lost control of the vehicle for a distance of only 25 feet before it struck the trailer. He testified that he made no attempt to apply the brakes because he was attempting to steer the truck back into the north-bound lane. All of the competent evidence in this record puts the distance over which Mathews drove in the wrong lane at more than 225 feet. The competent evidence in this record indicates that the truck being driven at about 20 miles per hour, could have been stopped (while it was empty) within the space of approximately 50 feet if the brakes had been applied. Mathews offered no reasonable, logical explanation for his failure to apply the brakes and attempt to bring the vehicle to a stop. It is reasonable to believe that Mathews told the truth when he told Dr. Rudser that he "passed out." If he, in fact, had lost consciousness before the accident, it would explain why the truck veered into the wrong lane,

and continued in the wrong lane for more than 200 feet without slowing down before it struck a trailer that was parked three feet off the south-bound lane.

The rule against the use of drugs while on Company property is explicit. The Company was required to establish by clear and convincing evidence that Mathews had, in fact, smoked and ingested marijuana while at work. Mathews' statement to his doctor that he had passed out, the eyewitness testimony of Foreman Jaclack, the measurements of the distance traveled by the truck before it struck the parked trailer, and the laboratory results of the urinalysis, would indicate conclusively that Mathews was under the influence of marijuana when the accident took place.

From an analysis of all of the evidence in the record, the arbitrator must find that the Company has carried its burden of proof and has established by clear and convincing evidence that Mathews had violated Rule 127-b of the General Rules for Safety and Personal Conduct. He thereby subjected himself to the imposition of the penalty of termination from employment. The Company had just and proper cause for terminating Mathews from employment with the Company.

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

AWARD NO. 696

Grievance No. 24-P-65

Thaddeus Mathews was discharged for proper cause. The grievance is hereby denied.

/s/ Bert L. Luskin

ARBITRATOR

December 3, 1981