Award No. 697
In the Matter of the Arbitration Between
INLAND STEEL COMPANY
AND
UNITED STEELWORKERS OF AMERICA
AND ITS LOCAL UNION 1010
Grievance No. 16-N-55
Appeal No. 1299
Arbitrator: Bert L. Luskin
January 26, 1981

INTRODUCTION

An arbitration hearing between the parties was held in Harvey, Illinois, on January 13, 1981. Pre-hearing briefs were filed on behalf of the respective parties.

For the Company:
Mr. R. B. Castle, Senior Representative, Labor Relations
Mr. W. P. Boehler, Assistant Superintendent, Labor Relations
Dr. P. M. Dunning, Director, Medical
Mr. R. C. Weymier, Superintendent, No. 1 & No. 2 Cold Strip Mills
Mr. M. Roglich, Senior Representative, Labor Relations

For the Union:
Mr. Theodore J. Rogus, Staff Representative
Mr. Joseph Gyurko, Chairman, Grievance Committee
Mr. John C. Porter, Acting Secretary, Grievance Committee
Mr. Earl Neal, Grievance Committeeman
Mr. Anthony Sandovall, Jr., Grievance Committeeman
Mr. Raymond Lismon, Grievant

BACKGROUND

Raymond Lismon was employed by the Company on February 28, 1972. In June, 1975, Lismon worked as a member of the labor pool at the No. 1 and No. 2 Cold Strip Department.

On June 5, 1979, Lismon became ill. He was away from work until July 16, 1979, when he reported to the Company clinic with a report form completed by his personal physician on July 12, 1979. The report form stated that Lismon had been treated by Dr. Bornstein for a condition of diabetes mellitus, pulmonary emphysema and bronchitis. The report indicated that Dr. Bornstein had prescribed insulin injections for the diabetes condition, and the report released Lismon for return to work on July 16, 1979, without limitation or restriction.

The Company's Medical Department, relying upon Dr. Bornstein's report, placed a medical restriction upon Lismon effective July 16, 1979, that limited Lismon from working at heights or around moving machinery. Departmental supervision determined that there was no work available within the department at that time that could be performed by Lismon within the work limitations placed upon him by the Medical Department. Lismon was laid off for medical reasons and, in accordance with Company procedures, Lismon continued to receive his S & A benefits.

On July 30, 1979, Lismon returned to the clinic and submitted a second statement from Dr. Bornstein. Dr. Bornstein stated that Lismon had been receiving treatment for diabetes and that, in the opinion of the doctor, the condition was well controlled "with diet alone." The statement indicated that Lismon was no longer taking any injections (insulin) and Lismon could be returned to work on July 31, 1979.

The Company' s Medical Department then removed the medical restriction which had been placed upon Lismon and he was unconditionally released for return to work on July 31, 1979. The Medical Department scheduled Lismon for annual check-up procedures in accordance with its program of monitoring diabetic employees.

In instances where employees are placed under medical restrictions, Company procedures require that the employee's department relate the medical restriction to the employee's regular job and jobs that may be available to the employee in line with his seniority rights. The department then determines whether the employee could be returned to employment within the limits established by the Medical Department. Company procedures require that a placement committee be formed in order that an ultimate determination can be made with respect to whether an employee can return to his former job or be placed on another available job that the employee could safely fill within the limits of the medical restriction. The members of

the Placement Committee would generally consist of the Departmental Superintendent (or his Assistant), a Labor Relations representative, a Safety representative, a representative from the Personnel Department, and (where possible) the physician from the Company's Medical Department that initially established the medical restriction. A placement meeting had been scheduled for Lismon on July 31, 1979. When Lismon was returned to work on that same date, there was no further need to conduct a placement meeting and that meeting was canceled.

A grievance was filed by Lismon contending that Lismon had not been provided with the opportunity to return to work on July 16, 1979, and had been sent home by the Inland clinic. The grievance requested that Lismon be compensated for moneys lost for the two-week period between July 16 and July 31, 1979, based upon an alleged violation of Article 3, 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 Union contended that the unilateral determination made by the Company to impose a medical restriction upon the grievant constituted a violation of the grievant's contractual rights. The Union based its contention primarily on the fact that the grievant's doctor who had treated the grievant for some nine years had unconditionally released the grievant for return to work without placing any restrictions upon the grievant because of the grievant's diabetic condition or the grievant's need to receive regular insulin injections.

The Union contended that the Company could not arbitrarily place a limitation upon the grievant preventing him from returning to work under circumstances where the Company did not examine the grievant nor did the Company's Medical Department make any effort to determine whether the grievant could or could not perform the duties of his job.

The Union contended that the grievant was a laborer and his job consisted primarily of shovel and broom work and be was in no way exposed to moving machinery. The Union contended that the grievant was not required to climb or to work at heights and, under those circumstances, the placement of a medical restriction upon the grievant improperly served to deny the grievant his right of return to his regular position.

The Company contended that the procedure followed in this case is identical with the procedure followed by the Company's Medical Department in all similar situations. The Company contended that its medical restriction policy has been followed without exception for approximately thirteen years, is well known to the Union and the employees, and is based upon the Company's obligation to provide for the safety and well being of its employees.

The Company contended that its policy and the restrictions placed upon employees suffering from diabetes (and who are on insulin) are uniform, have been consistently followed, and meet all of the recommendations of medical specialists in the field of occupational medicine as well as the almost unanimous opinions expressed by doctors who specialize in the care and treatment of persons suffering from diabetes.

The Company contended that it is aware of 116 employees working in the plant who have diabetes and who receive insulin medication on a regular basis. The Company contended that the restriction imposed against Lismon was identical with the restriction imposed against all 116 employees who regularly receive insulin medication. The Company contended that it adopted a program many years ago whereby employees who are diabetics and who are receiving insulin medication are periodically examined.

The Company pointed to the fact that its records indicate that ten employees out of the 116 known diabetics who are receiving insulin have had insulin reactions with resulting syncopal episodes that required that they be removed (by ambulance) from the plant premises. An analysis of those instances indicates that those episodes occurred from two weeks to seven years after the medical restrictions were imposed.

The Company contended that it acted on the basis of the medical report from the grievant's doctor (Dr. Bornstein), and it removed the restriction immediately upon receipt of a report from Dr. Bornstein that the grievant was no longer receiving insulin and that, in the opinion of the grievant's doctor, the diabetic condition was being controlled by diet.

The medical restriction procedures were adopted and followed by the Company for some thirteen years preceding the filing of the grievance in this case. The procedure does not violate the contractual rights of an employee who is diabetic and who is required to take insulin on a regular basis. The procedures adopted by the Company's Medical Department are not unreasonable. The restriction is sound from a medical standpoint and cannot be considered unreasonable in its scope. The evidence will support a conclusion and

finding that the Company position is founded upon the almost unanimous weight of eminent medical authorities.

A diabetic on insulin becomes subject to a sudden loss of consciousness if he fails to follow a regimen of care. Food must be ingested to keep the blood sugar level at constant, and anyone on insulin can be subjected to feelings of dizziness and moments of impairment of faculties. Failure on the part of a diabetic on insulin to follow the precise procedures outlined by his doctor, could result in fainting spells. It is that possibility that would justify the placement of a restriction upon an employee on insulin that precludes him from working around equipment that could cause him serious harm if he sustained a syncopal episode or that might put him in contact with moving equipment.

The Medical Department did not, in this case, make any determination that would serve to disqualify the grievant from returning to his former position. It merely informed his department that he was under an M Code restriction which would preclude him from assignment to a position requiring him to work at heights or around moving machinery. The term "heights" is a relative term. Each set of facts must be individually analyzed in order to determine whether the restriction against "heights" should be applicable. The same procedure would have to be followed in order to determine whether a returning employee under that type of restriction would be exposed to unusual hazards based upon the work duties or the working conditions of the position to which he seeks to return.

In essence, once the restriction is placed upon the employee, departmental supervision must determine whether the job to which the grievant is eligible to return involves the type of work duties that fall within or outside of the medical restrictions imposed by the Medical Department.

The procedure followed by the Company in this case did not necessarily place the Company in a position where it was in disagreement with the opinions expressed by Dr. Bornstein. It should be noted that Dr. Bornstein informed the Company that he had treated Lismon for three different illnesses during the period of Lismon's absence from work and that he was currently treating Listen for a condition of diabetes for which he had prescribed regular insulin injections. The fact that Dr. Bornstein recommended that Lismon be returned to work without limitations would mean only that he believed that Lismon had the physical capacity to perform the duties of a laborer's job. No one questions the fact that Lismon possesses the requisite physical ability to perform all of the manual duties involved in the job. The issue in this case is whether there are duties involved in the performance of the job that would place Lismon in a position where his life could be endangered if he sustained a syncopal episode. While at a later point in time Dr. Bornstein pointed out that the medication prescribed for Lismon could not "render him unconscious under ordinary circumstances," the fact remains that the insulin would not have caused an episode of unconsciousness. A diabetic on insulin who fails to follow the procedures outlined by his doctor after receiving an injection of insulin, could suffer a reaction that would render him unconscious.

The medical restriction placed upon Lisnon was similar to and identical with the limitation placed upon many other Company employees who were diabetics and who were receiving insulin as a treatment for that condition. The position adopted by the Company in that respect is reasonable and completely consistent with the Company's obligation under the safety provisions of the Agreement. The issue that must then be determined is whether Lismon's department followed appropriate procedures in a reasonable manner when it refused to permit Lismon to return to work unless and until appropriate findings had been made by a Placement Committee.

Employees who are on medical restriction can return to work immediately if their department concludes that the job to which the returning employee would be entitled does not involve the performance of duties falling within the restriction. In that event there would be no necessity for establishing a Placement Committee. In the instant case, department supervision was initially uncertain with respect to whether the restriction would be applicable to Lismon and the job he was performing. Department supervision concluded that it would request a placement meeting, and procedures were instituted for the creation of such an appropriate committee. Before the Placement Committee could be formed and before it could act, Lismon's doctor took Lismon off of insulin, reported the matter to the Company, and the basis for the restriction no longer existed. The restriction was removed, Lismon was returned to work, and the department request for the composition and meeting of a Placement Committee was canceled. The Company, therefore, acted on the medical opinions expressed by Dr. Bornstein, based upon Dr. Bornstein's finding that Lismon no longer required insulin and the diabetic condition was being controlled by diet alone.

Lismon was a laborer. When he was performing laboring functions he was not required to work at heights. He performed assigned manual labor work under the direction of a head sweeper and under the supervision

of the General Labor Foreman. He used a shovel and wheelbarrow. The Company conceded that in the normal course of events the medical restriction imposed upon Lismon would not have precluded him from performing the general duties of a laborer. Unless there was an evaluation, however, of positions to which Lismon could have been upgraded on a day-to-day basis, it would have created a most difficult administrative work assignment problem unless a review was made of the jobs to which Lismon would have been eligible for upgrade and a determination made of those jobs to which the restriction would have applied.

A two-week delay in establishing the Placement Committee and having that committee meet and function is not necessarily an unreasonable delay, especially under circumstances where the returning employee is placed in a position where he continues on S & A benefits. Although the arbitrator must find that Lismon could have returned to a laboring position which would not have involved the performance of restricted duties and functions, the fact remains that a much sounder procedure would have required an evaluation of the jobs to which Lismon could have been upgraded in order to determine those jobs to which he could safely be assigned and those jobs (if any) to which the restriction would be applicable.

The arbitrator must, therefore, find that the procedure followed by the Company in placing a medical restriction upon Lismon did not constitute a violation of any provision of the Agreement. The procedure followed by the department in seeking the opinion of a Placement Committee before permitting Lismon to return to his job did not constitute a violation of any provision of the Agreement. The delay in implementing the procedures for the establishment of a Placement Committee did not unduly delay Lismon's restoration to employment, and, under those circumstances, the arbitrator could not find that Lismon's contractual rights had been violated.

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

AWARD NO. 697

Grievance No. 16-N-55

The grievance of Raymond Lismon is hereby denied.

/s/ Bert L. Luskin

ARBITRATOR

January 26, 1981