

Inland Steel Award No. 711

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DISCIPLINE AND RECOGNITION AND BARGAINING UNIT

GRIEVANCE NO. 12-N-54

APPEAL NO. 1315

AWARD NO. 711

SUMMARY: Whether or not the Company had been unreasonable in denying the Union's request for grievant's absence from work for Union business (preparation for and conduct of an election of assistant grievance committeemen and safety committeemen), grievant's conduct in reporting off on three of the days involved was insubordinate and warranted the two-day disciplinary suspension that was imposed on him. Grievant knew that he was scheduled to work on those days and that the Union's request had been denied and he should have reported for work and filed a grievance if he thought the Company had acted wrongly.

COMPANY: INLAND STEEL CO.

PLANT: INDIANA HARBOR

DISTRICT: 31

ARBITRATOR: RALPH T. SEWARD

DATE OF DECISION: DECEMBER 17, 1982

On August 30, 1979, William Mayer, the grievant, was issued the following disciplinary letter:

"The Union requested you to be off August 14 through August 17, 1979 for union business. Because of scheduling problems (i.e., vacations and extended sickness, etc.), and the fact that overtime turns would have been required to replace you, you were informed by management that you could not be excused for union business. In spite of the fact that management informed you that you would not be excused and that you were scheduled to work, you absented yourself for August 14, 15, and 16, 1979 for union business.

"The Union may request, but they do not have the right to grant you time off for union business. Where possible, management will make every effort to excuse you for union business, but there are situations such as the one in question where such an excuse is impossible.

"Your action of reporting off in this situation is not only irresponsible but also insubordinate. As a result, you are being disciplined and are hereby warned that any recurrence of this nature will result in more severe disciplinary action."

Along with the letter, Mayer was given a two-day disciplinary suspension. In this grievance, Mayer contends that the letter and suspension were "unwarranted, unjust and nonfactual" and asks that the letter be removed from his personnel file and that he be paid for all monies lost.

Though there is conflict as to certain key points, the main factual framework is clear and undisputed. The Union had scheduled an election to be held on August 16, 1979, for the purpose of electing assistant grievance committeemen and safety committeemen. In connection with this election, on July 31, 1979, it sent the Company a letter listing the names of 27 employees whom it was reporting off from work on Union business for the four days from Tuesday, August 14, through Friday, August 17, 1979. These employees were to serve as tellers in the election and (as the Union explained at the arbitration hearing) the prospective tellers were needed for training and preparation during the two days immediately preceding the election and for the work involved in dealing with challenges and with the preparation of ballots for computer counting on the day immediately following the election. Mayer, the grievant, was one of the employees thus reported off.

It appears from the testimony that, in the past, the Company had granted most of the Union's requests that employees be permitted to report off for Union business. Over the years, however, a few such requests had been denied, and on this occasion the Company decided that Mayer could not be spared and that the request for his permitted absence should be denied.

There is a sharp dispute over whether Mayer was clearly informed of the Company's decision. The Company says that he was. The Union says that he was not. In any event, Mayer, though scheduled to work on the five days from August 12 through August 16, 1979, reported for work on only the first two of those days and took the remaining three days--August 14 through August 16, 1979--off from work on Union

business. It was this action which caused the Company to give him the disciplinary letter and two-day suspension here protested.

The Union contends that the Company's action in denying Mayer permission to be off on Union business was unreasonable. Mayer works as a laborer in the Galvanizing Department. Though he is regularly called in to fill temporary vacancies in the Continuous Lines Sequence in that department, the Union contends that other qualified employees were available to perform that function and that his permitted absence would have cost the Company little in the way of inconvenience or overtime pay. Furthermore, the Union says, the Company was at fault in not informing the Union that it was denying Mayer the right to be off on Union business on the days in question and in failing to take adequate steps to see that Mayer himself was clearly informed of the denial. Accordingly, the Union submits that the Company's action was in violation of Mayer's rights under the contractual provision governing the granting of permission to report off from work on Union business (Article 6, Section 9(e) and Article 21, Section 4) and barring discrimination against employees for Union activity (Article 3, Section 1, and Article 4, Section 2). Cause for discipline did not exist, the Union says, and the disciplinary letter and two-day penalty should therefore be rescinded with appropriate compensation to Mayer for the wages lost.

Much of the evidence and argument presented at the hearing concerned the question whether the Company had reasonable grounds for denying Mayer permission to report off on Union business during the week in question whether, in other words, the comparatively high level of production in the Galvanizing Department at that time, combined with vacation vacancies and absenteeism, meant that the Company could not reasonably spare Mayer from his job. As I view the case, it is unnecessary for me to deal with this question or with the various contractual contentions listed above. I find that Mayer knew that he was scheduled to work on the days at issue and further that he knew or should have known that the Union's request that he be Allowed to take these days off on Union business had been denied. I find therefore that whether or not the Company acted reasonably or properly in denying the Union's request for his absence, Mayer's proper duty was to come to work as scheduled and, if he thought that the Company had violated any rights he had under the Agreement, to file a grievance. He had no right to ignore the Company's decision, make himself the judge of his rights and take the time off without permission. His action was clearly insubordinate and warranted the discipline imposed.

In reaching this conclusion, I have manifestly resolved in the Company's favor that dispute over whether Mayer knew or should have known that the Union's request that he be allowed to report off had been denied. Mayer testified, it is true, that the only information he received from the Company about the matter came to him on Saturday, August 11, when his immediate supervisor, Foreman Guess, came to him and--after reminding him that he had not been "reported off for Union business next week"--said to him, "Well, the Company hasn't okayed your Union business yet." (Later in his testimony, Mayer recalled Foreman Guess as saying, "Well, the Company might not okay your Union business.") Even if Mayer's testimony be accepted as accurate, however, it seems to me that Foreman Guess was at the very least telling Mayer that as of the time of their conversation the request that he be allowed to report off had not been granted. It is clear, moreover, that at the time Mayer says this conversation took place --Saturday, August 11-- the schedule for the following week had already been posted, and that Mayer was listed on that schedule as being required to work. Clearly, under these circumstances, Mayer should have come to work as scheduled or--if he thought there was a chance that the Company might still change its mind and excuse him--taken steps to find out its decision one way or another. In other words, he should have relied on the posted schedule until he was definitely informed by the Company that he was excused from work. Instead, he relied on the advice of a Union grievance committeeman that since his foreman had not told him directly and clearly that he would have to work as scheduled, he could disregard the schedule and stay away. This advice, apparently given in haste, overlooked the fact that Mayer had been definitely informed by the posted schedule that he was expected to come to work. He should have obeyed that schedule unless and until someone in the Company gave him definite Permission to stay away. If he thought that the Company was wrong in denying the Union's request that he be excused from work because of Union business, the grievance procedure was available to him.

All this has been said on the assumption that Mayer was correct in his report of what Foreman Guess said to him. As a matter of fact, I find it likely that Foreman Guess's account of their conversation is more nearly accurate than Mayer's. According to Foreman Guess, he had been instructed by the Assistant Superintendent of the Galvanizing Department on August 6, 1979, to tell Mayer that the Company had not approved his request for time off for Union business and that he would be on the schedule for the following week and would be expected to work. He failed to find Mayer, at first, but later on that same day, having

been reminded of the matter by a departmental secretary, he went out into the Plant and found Mayer and told him that "the Company had refused his request for time off for Union business." Further, according to Foreman Guess, he told Mayer that "he would be on the schedule for next week and be expected to work." Mayer, he said, asked him "would they," (evidently meaning "would they grant the request that he be allowed to report off?"). Foreman Guess replied that "there was always that possibility," but that as of that time the Company had not okayed the request and that he would be on the schedule and expected to work. Making every allowance for failures of exact recollection and for the tendency of witnesses to put their best foot forward in their testimony, I find, as I have said, that of the two versions of the conversation given by Mayer to Foreman Guess, that of Foreman Guess is the more likely to be true--or at least to approximate what actually was said. Foreman Guess had twice been told to tell Mayer that, despite the Union's request, he would be expected to work. It seems most unlikely that, after receiving these definite instructions he would have told Mayer only that he might not be allowed to be off. Mayer's recollection of the date of the conversation, moreover, was apparently faulty. Foreman Guess testifies that on August 11, 1979, when Mayer says the conversation took place, he was away for the weekend and thus not even in the Plant. But as I view the case, it does not really matter to the decision which version was correct. Under either version, Mayer knew that as of the time of the conversation the Union's request had not been granted and that he either was already on the schedule (if the conversation took place on Saturday, August 11), would be on the schedule (if the conversation took place on Monday, August 6), and expected to work. Knowing this, he should have complied with the schedule and come to work, and his failure to do so justified the penalty imposed.

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The grievance is denied.