

Award No. 742
In the Matter of the Arbitration Between
INLAND STEEL COMPANY
AND
UNITED STEELWORKERS OF AMERICA
AND ITS LOCAL UNION 1010

Grievance No. 4-R-1

Appeal No. 1356

Arbitrator: Bert L. Luskin

December 22, 1983

INTRODUCTION

An arbitration hearing between the parties was held in Harvey, Illinois, on December 1, 1983. Pre-hearing briefs had been filed on behalf of the respective parties and exchanged between them.

APPEARANCES

For the Company:

Mr. John A. Nielsen, Senior Representative, Labor Relations

Mr. Robert B. Castle, Arbitration Coordinator, Labor Relations

Mr. Andrew M. Burns, Representative, Labor Relations

Mr. Charles Vermejan, General Foreman, No. 4 Basic Oxygen Furnace

Mr. Manuel Pacilles, Foreman, No. 4 Basic Oxygen Furnace

Mr. Dennis Hammer, Sergeant, Safety and Protection Services

Mr. Ray Chalifoux, Sergeant, Safety and Protection Services

For the Union:

Mr. Thomas L. Barrett, Staff Representative

Mr. Don Lutes, Secretary, Grievance Committee

Mr. Jim Robinson, Griever

Mr. Gregory Buchanan, Grievant

BACKGROUND

Gregory Buchanan was employed by the Company on April 28, 1976. He worked at the No. 4 Basic Oxygen Furnace until he was suspended from employment as a result of an incident which occurred on May 7, 1983. Following a hearing held in accordance with the contractual procedures, Buchanan was thereafter informed that he was terminated from employment as of June 1, 1983, as a result of a charge of violation of Rule 127-j of the Plant General Rules for Safety and Personal Conduct, and as a result of his overall satisfactory work record during the period between June, 1978, and the effective date of his termination from employment.

Buchanan filed a grievance protesting his termination from employment, and contending that his termination was unjust and unwarranted in the light of the circumstances. The grievance requested that Buchanan be reinstated and paid all moneys he was caused to lose as a result thereof. 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

Buchanan was charged with a violation of Rule 127-j of the Plant General Rules for Safety and Personal Conduct. That rule is 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:

"j. Stealing or malicious conduct, including destroying, damaging, or hiding any property of other employees or of the Company, and the destruction, damaging or pilfering of vending machines or any equipment made available to employees for the purposes of in-plant feeding."

On May 7, 1983, Buchanan was scheduled to work as a general laborer on the 11:00 P.M. to 7:00 A.M.

After reporting for work he was assigned to operate a forklift piece of equipment on the operating floor.

When the foreman lined up his crew, one laborer was assigned to work as the ARA canteen attendant. One of the assigned duties for a canteen attendant is to assume responsibility for a cashbox from which he can make change for employees using the canteen that is equipped with coin operating vending machines. The assigned employee (L. Busch) counted the contents of the cashbox at the time of his assignment and confirmed the fact that the cashbox count was correct. At approximately midnight the labor foreman found it necessary to make a number of move-ups, one of which necessitated relieving Busch of his canteen

attendant duties in order that he could fill a position as labor leader on the service floor. Busch and the foreman then checked the cashbox contents and, with the exception of a ten-cent discrepancy, confirmed the fact that the cashbox count was correct when compared with the amount checked in from the receipts on the prior turn.

The cashbox count was completed in the labor foreman's office while Foreman Pacilles and Busch were present. The foreman then placed the cashbox in a drawer of his desk. The cashbox was locked and the key was placed in the top, middle drawer of the desk. Busch and Foreman Pacilles then left the foreman's office and used the freight elevator to reach the service floor where Busch was to assume his new duties. Foreman Pacilles then circulated among his laborers, and at approximately 12:45 A.M. he returned to the operating floor accompanied by an employee named Gonzalez who was being assuaged to replace Busch as the canteen attendant.

There is evidence in the record that when Pacilles and Gonzalez left the elevator and proceeded toward the foreman's office, Foreman Pacilles observed Buchanan standing outside of the foreman's office.

Foreman Pacilles entered the office, obtained the canteen cashbox, and gave the cashbox to Gonzalez.

When Foreman Pacilles returned to the operating floor at approximately 1:30 A.M., he was informed by Gonzalez that a count of the cashbox receipts indicated that \$31.00 was missing from the cashbox.

Foreman Pacilles thereupon contacted Busch and obtained the paper used by Busch to itemize the contents of the cashbox. That itemization indicated that three rolls of quarters, each containing \$10.00, and an additional amount of \$1.10 was missing from the cashbox. The ten-cent item could be accounted for by the fact that the cashbox count taken at the start of the turn and shortly thereafter had indicated that a ten-cent shortage existed.

Foreman Pacilles thereafter entered the employees locker room and talked with the locker room attendant (Paredes). Paredes informed the foreman that in the period between the start of the turn of 11:00 P.M. and 2:00 A.M. only two employees had entered the locker room. Paredes confirmed the fact that one employee (Savitski), a trackmobile operator working in the north yard, had used the washroom and had immediately thereafter left the locker room and returned to his working area. Paredes reported that the second employee (Buchanan) had entered the locker room at approximately 1:10 A.M. Paredes reported that Buchanan had walked past the position where Paredes had been seated and had entered an aisle, after which Paredes heard a lock being opened and closed. Paredes reported that Buchanan then walked out of that aisle and proceeded to the north end of the locker room where Paredes could hear a second locker being opened and then closed. Buchanan's locker was located at the north end of the locker room in an area where Buchanan was heard opening and closing the second locker that he entered. Paredes reported that Buchanan then used the washroom, after which he left the locker room. The statement made by Paredes to Foreman Pacilles was repeated at a later time in all of its essential details when Paredes was questioned by a member of the Company's Plant Protection Department (Sgt. Hammer).

After talking with Paredes, Foreman Pacilles then called plant protection and reported the series of event. Buchanan was then approached by a member of plant protection (Sgt. Hammer) and was informed that he (Buchanan) was considered to be a "suspect." St. Hammer, Foreman Pacilles and Buchanan then proceeded to the employees locker room. Buchanan was asked to open his locker, and he complied with that request. Buchanan's locker was searched, but did not disclose the presence of the missing rolls of quarters.

Buchanan was then asked to proceed to the fourth aisle, where he was asked to open locker No. 61. Based upon the statements made by Paredes, Foreman Pacilles had concluded that Buchanan (when he was heard entering a locker in that aisle) had, in fact, entered locker No. 61, since the foreman had received information some time prior thereto that locker No. 61 was being shared by Buchanan and by the employee to whom it had been assigned. Buchanan denied any knowledge concerning the ownership of the locker and stated that he did not know the combination to the locker. He denied having opened locker No. 61, and he denied having entered the locker room at any time after the start of the turn. When Buchanan insisted that he did not know the combination to the locker and knew nothing about the ownership or the contents of the locker, a bolt cutter was obtained, the lock was removed, and the locker was entered. Sgt. Hammer searched a pair of trousers hanging in the locker and found the three missing rolls of ARA wrapped quarters in a pocket of the trousers. Buchanan continued to deny any knowledge of the rolls of quarters or of the ownership of the locker. He was then escorted from the plant.

The owner of locker No. 61 (J. Williams) reported for work at the start of the day turn and was informed of the events which had occurred on the previous shift. Williams was asked to check the contents of his locker, and he reported that nothing was missing. When questioned concerning the presence of the three rolls of quarters in a pair of trousers hanging in the locker, Williams stated that three fellow employees had

the combination to the locker and had at one time or another used the locker. A fourth employee had also used the locker, but had become deceased prior to the incident in question. One of the named persons (Kaulk) was a day-turn employee who had been scheduled off on May 7, 1983. A second employee (Brooks) was on lay off from the No. 4 BOF. The third employee was Buchanan.

An investigation was held on May 9, 1983, at which time all of the facts were reviewed, after which the Company concluded that the suspension action had been appropriate and that Buchanan had subjected himself to termination from employment for violation of Rule 127-j and for his overall unsatisfactory work record.

There is evidence in the record that Buchanan was one of several employees working on the operating floor at the time that the three rolls of quarters and \$1.00 in change had been removed from the canteen cashbox. Buchanan was seen in the vicinity of the foreman's office at the same approximate period of time when the theft had to have occurred.

Buchanan at all times denied that he had taken the rolls of quarters, and he denied that he had at any time (in the shift in question) entered locker No. 61. Buchanan (at a later point in time) conceded that he had (in the past) used locker No. 61 for the purpose of borrowing a radio belonging to Williams, and he conceded that at one time he knew the combination to the locker, but had forgotten the combination. Buchanan offered no explanation for what appeared to be some glaring inconsistencies in his statement.

The Union contended that the critical evidence upon which the Company relied was circumstantial in nature. It further contended that the principal witness was a fellow employee named Paredes who did not appear and did not testify in this proceeding.

The evidence which directly linked Buchanan to the disappearance of the money from the cashbox is circumstantial in nature. However, circumstantial evidence is clearly admissible and is entitled to the consideration which it deserves based upon all of the acknowledged facts and circumstances.

It should be noted that Buchanan was placed in the geographic area of the room where the cashbox had been stored by the direct eyewitness testimony of Foreman Pacilles. It is evident that Buchanan had the opportunity to enter the foreman's office, gain access to the cashbox, and remove the three rolls of quarters that were later found to be missing. The fact that Buchanan was seen in the vicinity of the locker room, however, would not necessarily be controlling with respect to whether Buchanan was the person who had removed the money from the cashbox.

During the course of an investigation, Foreman Pacilles learned that Buchanan had entered a locker room. The locker room attendant informed Foreman Pacilles that he had seen Buchanan enter the locker room and had heard him gain access to two different lockers during the period when Buchanan was in the locker room. There is evidence in this record that the locker room in question is located a substantial distance away from the position where Buchanan had been working, and there would have been no logical reason for Buchanan to use the locker room's washroom since there was a washroom much closer to the area where Buchanan was working.

Buchanan was confronted with the fact that the locker room attendant had placed him in the locker room and in the area where the missing money was subsequently found in a pair of trousers in locker No. 61. There is evidence in this record that Buchanan initially denied knowing the person who was using locker No. 61. He initially denied that he knew the combination to the lock on locker No. 61, and he left the impression with members of supervision and a member of the Plant Protection Department that he knew nothing about locker No. 61, the owner thereof, or the combination that would permit the locker to be opened.

Buchanan subsequently changed his position and admitted (after locker No. 61 had been opened and the money had been found therein) that he knew the owner of locker No. 61 and had, at one time, been able to gain entry to that locker. Buchanan later admitted that when he had worked as a locker room attendant he had borrowed a radio belonging to the owner of the locker and had been able to gain access to the locker because he had been given the combination by the owner.

The locker room attendant (Paredes) did not testify in this proceeding. It should be noted, however, that Paredes related his version of the incident in the presence of Company and Union representatives. All of the evidence in the record would indicate that Paredes was positive and certain that Buchanan had entered the locker room and had opened and closed two different lockers in that room before using the washroom and then exiting the locker room.

Under the provisions of the Collective Bargaining Agreement the Company was prohibited from calling Paredes to testify in this proceeding. By contrast, Buchanan or the Union could have called Paredes to testify. Paredes had made a statement to a member of the Plant Protection Department and had repeated

that statement in the presence of Company and Union representatives. Under those circumstances the Company had every right to rely upon the statements made by Paredes in reaching a conclusion that Buchanan, in fact, entered the locker room shortly after the money had disappeared from the cashbox. Since the money was found in a locker owned by an employee who was not at work on that shift, the only reasonable conclusion that could be reached was that it was Buchanan who placed the three rolls of quarters in the pair of trousers that were hanging in the locker owned by a fellow employee named Williams. Suspicion could not be directed toward any other employee, since the two other employees who had the combination to the locker were not at work on the shift in question. One was on an off day and the other had been laid off.

Paredes could not possibly have had anything to do with the disappearance of the money or the placement of the missing rolls of quarters in the pair of trousers hanging in locker No. 61. Paredes was not one of those persons who had been named by Williams (the owner of the locker) as having the combination to the locker. Paredes was geographically removed from the area of the room where the cashbox had been placed for safekeeping. Paredes' statements must, therefore, be viewed as being factually correct. There is absolutely no reason or justification for believing that Paredes had any ulterior motive in implicating Buchanan in this incident.

In the opinion of the arbitrator, the evidence would establish beyond any reasonable doubt that Buchanan had removed three rolls of quarters from the cashbox and had then proceeded to the locker room where he placed those rolls of quarters in the pocket of a pair of trousers hanging in the locker owned by a fellow employee.

Buchanan committed an offense which constituted a violation of Rule 127-j of the Plant General Rules for Safety and Personal Conduct. That rule is well known to all employees. All employees are fully aware of the fact that a theft of Company property of the type involved in this case would constitute just and proper cause for the termination of the services of an employee. In the opinion of the arbitrator, the evidence would establish beyond any reasonable doubt that Buchanan intentionally removed the money from the cashbox with the intention of appropriating that money for his own use. Under those circumstances, Buchanan committed an offense that would warrant and justify his termination from employment. The Company had just and proper cause for its actions, and the grievance must be denied.

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

AWARD NO. 742

Grievance No. 4-R-1

The Company had just and proper cause for the termination from employment of Gregory Buchanan. The grievance is hereby denied.

/s/ Bert L. Luskin

Arbitrator

December 22, 1983