Arbitration Award No. 751
IN THE MATTER OF ARBITRATION
Between
INLAND STEEL COMPANY
Indiana Harbor Works
and
UNITED STEELWORKERS OF AMERICA
Local Union No. 1010
Grievance No. 4-R-5
Arbitrator: Clare B. McDermott
Opinion and Award
September 26, 1984
Subject: Discharge
Statement of the Grievance: The aggrieved, Arthur Santos, Payroll No. 7323, contends the action taken by the Company, when on March 6, 1984, his suspension culminated in discharge, is unjust and unwarranted in light of the circumstances.
"Relief Sought - The aggrieved requests that he be reinstated and paid all monies lost.
Agreement Provisions Involved: Article 3, Section 1 of the March 1, 1983 Agreement.
Statement of the Award: The grievance is denied.
Grievance Chronology
Filed: 3-7-84
Step 3 Hearing: 3-20-84
Step 3 Minutes: 5-4-84
Step 4 Appeal: 5-9-84
Step 4 Hearings: 5-31-84, 6-28-84 and 7-13-84
Step 4 Minutes: 8-10-84
Appealed to Arbitration: 8-13-84
Heard: 8-20-84
Appearances
Company
Robert B. Castle -- Arbitration Coordinator, Labor Relations
Charles T. Hansotte -- Assistant Superintendent, No. 4 BOF
Glenn Snider -- Pit & Mold Yard General Foreman, No. 4 BOF
Charles Vermejan -- Auxiliaries General Foreman, No. 4 BOF
Ray Lubs -- Foreman, No. 4 BOF
Andrew M. Bruns -- Representative, Labor Relations
Union
Tom Barrett -- Staff Representative
Joe Gyurko -- Chairman Grievance Committee
Don Lutes -- Secretary
Jim Robinson -- Griever
Art Santos -- Grievant
BACKGROUND
This grievance from No. 4 BOF Department claims that grievant's suspension and discharge for leaving his working place without permission of his supervisor, in violation of General Rules for Safety and Personal Conduct No. 127-1, and for his overall work record were without cause and contrary to Article 3, Section 1, and Article 8, Section 1 of the March 1, 1983 Agreement.
Grievant began with the Company in 1973 and was working as a Stripper Craneman at No. 4 Stripper in February of 1984. He had qualified on that job in May of 1979 and had been scheduled on it more than 100 times since January of 1982.
Grievant says when he reported for work on the 7-3 turn on Sunday, February 12, he was told by the Clerk that activity would be hectic that turn. He says he worked steadily throughout the morning and, except for coming down from the crane to take a telephone call and perhaps two other gaps in the work, that he had no time to get and eat his lunch.
Having just about finished stripping a set, grievant called on the communications system to the Clerk and asked what time it was. The Clerk told him it was 1:05 p.m., and grievant asked when he would get his

lunch. Turn Utility Foreman Lubs was in the office four or five feet from the Clerk. The Clerk told Lubs grievant was asking when he would get his lunch. Lubs checked the schedule and saw that the next heat would be ready for stripping at 1:25. He says he told the Clerk to tell grievant he had twenty minutes for lunch and that the next heat would be ready for stripping at 1:25. The Clerk told grievant that, and Lubs said he heard it, and grievant said "OK."

There is no canteen facility at No. 4 Stripper, but it is serviced on routine rounds by a food truck. The truck ordinarily arrives at the area at about 10:30 or 11:00 a.m., and stays about ten minutes. It did so on this day. The arrangement apparently is that Stripper Cranemen are on an honor system as to lunch breaks. They are aware production cannot go on without them and, therefore, they eat lunch whenever they get some free time. If they are busy throughout a turn, the foreman will give them twenty minutes to eat. Ordinarily foremen are not in those decisions, since the Cranemen know how things are done and take lunch time so as not to delay production. All employees see the food truck when it arrives and, if the Craneman is actually stripping then, so as to be unable to come down for food, the Clerk will call him to see if he wants anything and will place his order.

The mext heat came, as scheduled at 1:25, and Foreman Lubs called grievant on the intercom to say that they were ready to strip but got no answer. Lubs called again and again got no answer. He went to the crane runway but could not see grievant on the crane. He called grievant's name but got no answer. Lubs searched the stripper building, the washroom, change room, and the office, and grievant was not in any of those places. Lubs walked to No. 3 Stripper, about 100 yards away, and checked the runway, office, and locker room and could not find grievant. He says his search took five or six minutes. Lubs then called Plant Protection to help in the search, which he says is standard procedure when a supervisor cannot find an employee. He re-searched the No. 4 Stripper area but could not find grievant.

As he stood outside the stripper office, at about 1:40 p.m. he saw grievant coming toward the area, riding the rear pilot car of the remote-control, ingot-delivery locomotive. Lubs asked grievant where he had been, and grievant said he had gone to the Mobile Equipment Canteen to get his lunch. That is five hundred to seven hundred yards away from the No. 4 Stripper. Grievant gave no explanation aside from saying he figured he had some allowable travel time for his lunch, i.e., ten minutes travel time, in addition to the twenty minutes for eating his lunch. Foreman Lubs said he was sending grievant home for leaving his working place without permission, and he did so.

The Company conducted an investigation on February 15, and it says grievant said then that he had not obtained permission from Foreman Lubs to leave the area nor to ride the engine. It claims he said then he had asked Engineer Brooks and was given permission by him to ride the engine to the Mobile Equipment Canteen. The Company says Brooks and Conductor Gonzales were questioned, and both said that grievant did not ask for permission to ride the engine and that neither gave such permission. They said they were not even aware he was on the train until after they left No. 4 Stripper and that they did not see him get off until they were back at No. 4 Stripper. Following that investigation, grievant was suspended, preliminary to discharge, for violation of Rule 127-1 and for his overall record, and this grievance followed.

Management says that at the pre-discharge hearing grievant denied speaking to Engineer Brooks but said that he gestured to him to indicate his intent to ride the engine. Grievant said there might have been a misunderstanding between him and Foreman Lubs regarding the procedure to be followed for him properly to leave No. 4 Stripper area to buy his lunch at the Mobile Equipment Canteen. He said he has ridden the train to get his lunch there or at No. 3 Cold Strip on several occasions without express permission of the foreman, and never had been disciplined for doing so, but he admitted he was not aware of anyone in Supervision who might have known about that.

The Union suggests that both grievant and Foreman Lubs were fill-ins and not familiar with procedures, thus causing confusion between them. Grievant said that, since he had taken the train to get his lunch in the past without discipline, and since Foreman Lubs allegedly had given him permission to take the train to get his lunch about one year before this event, he assumed he did not need the Foreman's permission on this occasion. Grievant said Lubs never told him of the requirement to get permission to leave the Stripper area. Grievant said Foreman Lubs gave him permission through the Clerk, to take his lunchbreak at 1:05 p.m. The Clerk allegedly said, "Lubs says go to lunch," and grievant says he acknowledged that by blowing the crane siren. He says he did not hear that he was to return to the crane by 1:25, but he said he crane siren may have drowned out the Clerk's telling him that. He says he blew the siren to tell the Switchman and Conductor that he was finished with the set and in order to notify the Clerk that he had received the lunch message. Foreman Lubs said he heard no crane siren then. In any event, grievant says he came back by 1:35, only ten minutes late, so that little harm was done.

The Step 3 Minutes, uncorrected on this point, say that grievant said there that he spoke to both Engineer Brooks and Conductor Gonzales, and that both gave permission for him to ride the engine to the Mobile Equipment Canteen. He allegedly said they told him where the train was going and the expected duration of the trip. Grievant says he rode as far as the Mobile Equipment Canteen, got off, bought a sandwich and bottle of pop, and returned to the track and reboarded the train on its way back.

The Company does not believe there was a breakdown of communication between Foreman Lubs and grievant. It notes that grievant had been at the plant for over eleven years. He admits he knew about the rule against leaving his work area without permission. The Company stresses that grievant has been disciplined several times for closely related offenses, i.e., leaving his job early before his relief arrived, without permission. He was given "final warnings" in July and December of 1983, the last following a three-day suspension only seven weeks before this incident.

The Company notes that grievant said he had asked Foreman Lubs for permission to leave the No. 4 Stripper area when they were working together about one year before this incident. That is said to show that grievant would know of the requirement that he get permission and that it undercuts his assumption that he had such "permanent" permission, which would cover this event. It says grievant agreed he usually asked other Stripper Foremen, with whom he works more regularly, for such permission. Foreman Lubs said he could not recall ever working with grievant at No. 4 Stripper, and the Company said a review of work schedules back to January of 1982 showed that the two had not worked together before.

The Company says grievant's absence caused a fifteen-minute delay in production and that grievant displayed a total absence of concern about the duration of his absence. He had no watch and did not know what time he came back to the area until he saw the wall clock in the office. The Company says he thus left the area without checking the stripping schedule and without knowing and, apparently without caring, when he would return and without knowing how much time had elapsed since he had left. It says he rode the train and thus could not have known how long it would be before he could return, since the train well could have been delayed, as it often is by activities at No. 3 Bloomer or by traffic. The Company appears to believe that grievant got no lunch at all and did not intend to but just took a joyride to No. 3 Bloomer, one mile away. It argues it need not prove where grievant was but only that he was not where he was supposed to be.

Foreman Lubs said he thought grievant's 1:05 p.m. request to go to lunch was odd because he had seen grievant down at ground level at about 11:00 a.m., when the food truck was there. The Company says a review of Production Reports for all heats stripped showed that grievant was idle between 9:50 and 10:20 a.m. and between 11:00 and 11:25 a.m. and could have--may have--eaten his lunch then.

Management then stresses grievant's ten disciplinary offenses and penalties from July of 1979 up to the time of this offense, including two reprimands, one suspension for the balance of the turn, one for the balance plus one turn, two suspensions for one turn, three for three turns, and one for five turns, in addition to two record reviews with Supervision for related offenses.

The Company says that grievant made several inconsistent statements, which should be considered in assessing which view of events should be credited here. It notes that he first said he asked Engineer Brooks to ride the train and then, after Brooks denied that, said only that he had gestured to Brooks to show that he wanted to board the train; later yet, at the Step 3 Meeting, he said he had asked both Brooks and Gonzales to ride the train. Both denied any such request. Management notes also that grievant said he came down from the crane to call his girl friend and later that she had called him and he came down to accept the call.

The Company says the heat was there and ready to be stripped at 1:25 p.m. and that it was necessary ultimately to get a Stripper Craneman from another area. The Union notes that grievant was available to begin stripping the heat no later than 1:40 and, after refusing to allow grievant to go to work and after sending him home, no substitute Stripper Craneman was obtained to begin stripping the heat until 2:05, for a thirty-five- or forty-minute delay in production.

The Union argues that, since there is no canteen service at No. 4 Stripper, aside from the 11:00 a.m. food truck, Foreman Lubs's allowing grievant to get his lunch at 1:00 p.m. was permission also for him to leave the area, since there was no other way grievant could get his lunch. Lubs said he knew nothing about that and thought grievant well could have brought his lunch, as he says most employees do, so that his saying grievant could come down for twenty minutes to get his lunch had nothing to do with grievant's leaving the area.

At the hearing grievant denied that he ever said he had asked the Conductor and Switchman for permission to ride the train. He said, therefore, that the Step 3 Minutes and testimony of Assistant Department Superintendent Hansotte to the effect that he did ask them for such permission, were untrue. He claimed he

had reported that alleged error to the grievance committeeman. No correction to the minutes were made. Grievant said the Step 3 statement that he "gestured," to the Engineer to signal his intent to ride the train was correct.

Grievant says he felt he had twenty minutes for lunch, plus reasonable travel time to and from the Mobile Equipment Canteen. He says he could not see where the train was when he came out of the Canteen and was not aware what time it was then.

Grievant agrees that at his record review with Assistant Department Superintendent Hansotte in December, 1983, he was told he was on very thin ice and that the next disciplinary incident would cause his termination.

Rule No. 127-1 reads as follows:

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

"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."

Grievant's relevant disciplinary record is as follows:

"Date	Infraction	Action
7-12-79	Rule No. 127-g (sleeping)	Discipline - balance of turn plus 1 turn
11-22-80	Absenteeism	Reprimand
5-11-81	Absenteeism	Discipline - 1 turn
9-17-81	Left job early without permission	Reprimand
11-17-81	Rule No. 127-o (insubordination)	Discipline - 1 turn
9-15-82	Left job early without permission	Discipline - 3 turns
10-14-82	Rule No. 127-o (insubordination)	Discipline - balance of turn
11-1-82	Absenteeism	Discipline - 3 turns
12-15-82	Left job early without permission	Discipline - 5 turns
7-15-83		Record review with assistant superintendent
12-22-83	Rule No. 127-o (insubordination)	Discipline 3 turns
12-22-83		Verbal warning re record review of 7/15/83"

FINDINGS

Several points are clear. Grievant left his working place, and he admits he did not expressly ask Foreman Lubs for permission to do so.

He suggests, however, that permission to do so was implied in Lubs's allowing him to go to lunch. The thought apparently is that, since there is no canteen at No. 4 Stripper, Lubs's allowing grievant to go to lunch carried with it permission for him to leave the area.

But that will not wash. There is not even a hint of evidence that Lubs knew or reasonably should have known that grievant's going to lunch necessarily meant his leaving the area. For all that Lubs knew, grievant had brought his lunch, as most employees apparently do, and meant to go down from the crane to eat it.

Equally unavailing is grievant's suggestion that Lubs allegedly had given him permission to go to the Mobile Equipment Canteen when he says he asked expressly for such permission about one year earlier (whether or not by way of the train need not be pursued here), somehow made it unnecessary for him to ask for permission this time. Even assuming that grievant actually had done so a year before, and the evidence is far from clear on the point, that permission would not cover this event, also, so as to make it unnecessary to ask and obtain such permission this time. No more helpful is the suggestion that other employees ride the ingot-delivery engine to and from the Mobile Equipment Canteen. It was not established that other employees did that, but even if it had been, there was no showing that anyone in Supervision was aware of that. The more important consideration on this point is, however, as the Union points out and the Company agrees, that grievant's riding the train, with or without permission, is not the charge here. The charge is not the manner by which grievant left his area without permission. The offense was grievant's leaving his area without permission and not the vehicle by which he went away.

Accordingly, grievant did leave his working place without permission of his Supervisor, in violation of Rule 127-1.

Grievant said he did not hear the Clerk tell him he must be back at 1:25, and he suggests that his blowing the crane siren might have drowned out that part of the Clerk's message. He says he blew the siren to tell the Engineer and Conductor that he was finished with that set and in order to acknowledge to the Clerk that he had received the message.

But Lubs heard no siren, and it is difficult to understand why grievant would have used the siren to acknowledge receipt of the Clerk's message, when he admits that, at the end of the message he said "OK" to the Clerk. Since the message already had been acknowledged by grievant's "OK," it is not clear why he would need the crane siren to perform the same function over again.

In different circumstances and committed by a different employee with a clean or at least a good disciplinary record, such an offense might be treated in a different light, but grievant had three related offenses among the ten in his relevant disciplinary record. He left his station early and without permission in September of 1981 and in September and December of 1982. His relevant record includes also a discipline for sleeping on duty, two for absenteeism, and three for insubordination. Having found by a preponderance of the evidence that grievant had left his area without permission, Management was entitled to look to his past disciplinary record to determine the extent of the penalty that should be imposed, and nothing in that consideration was of any help to grievant. Indeed, it tended to his disadvantage.

Even so, however, he was by Lubs's account only about fifteen minutes late in returning to his station, and if that were all there were to the case, there might have been serious doubt whether this offense, even in light of his poor disciplinary record, reasonably amounted to cause for discharge.

But there was more to the offense. Grievant was not just a few minutes late returning from an unauthorized lunch trip. Knowing that in only twenty minutes he would have to be back in the crane cab in order to strip the next heat he went off on the ingot-delivery engine a distance of approximately 700 or 800 yards and relied on it to get back, even though he knew the train very probably would not return in time to meet his deadline. He says he did not know what time it was and had no watch. His explanations of where he got off the train on his trip to the canteen and where he got back on for his return trip do not make sense. Accepting his version of the events, he got off several hundred yards before the canteen and then, after allegedly buying his lunch, walked about that distance in the wrong direction in order to reboard the train to come back. In addition, the train then was making a push into No. 3 Bloomer, that is, going away from grievant's work area, when he says he reboarded it.

Grievant's stories about whether he spoke to the train crew for their permission to ride the train or merely gestured his intent to do so are at least confusing and well may be conflicting, but it is unnecessary to resolve that here. It is also unnecessary to resolve whether grievant actually got his lunch as he said, or just took a joyride as the Company believes. Neither the train crew nor Lubs saw grievant with a lunch. In either event, he was away from his working place without permission for about thirty-five minutes, and his being only fifteen minutes late for production purposes is not the relevant time to measure. He simply left his station without permission, without telling anyone where he was going, without knowing how long he would be gone, and without knowing what time it was or how long his trip was taking and, in the face of all that, he agreed he simply added to his twenty-minute lunch time and on his own authority, a "reasonable travel time" over and above time for his lunch. That shows such wanton disregard for his responsibilities in general and for his significant part in the production process as to indicate that he just did not care for his job.

Consequently, in light of all evidence, grievant's violation of Rule 127-1, when viewed in light of his poor disciplinary record, including a final warning in July and December of 1983, amounted to cause for discharge, and the grievance must be denied.

AWARD

The grievance is denied.

/s/ Clare B. McDermott

Clare B. McDermott