Award No. 799
IN THE MATTER OF THE ARBITRATION BETWEEN
INLAND STEEL COMPANY
and
UNITED STEELWORKERS OF AMERICA
LOCAL UNION 1010
Grievance No. 11-S-80
Appeal No. 1410
Terry A. Bethel, Arbitrator
March 13, 1989

INTRODUCTION

The hearing in this case was held in Hammond, Indiana on February 9, 1989. Both sides filed pre-hearing briefs. Grievant Delbert Browder was present throughout the hearing and testified in his own behalf. Prior to the start of the hearing, the parties stipulated that this award would be without precedent.

APPEARANCES

For the Company
Michael T. Roumell -- Attorney
Kevin McKenna -- Senior Rep., Union Relations
Robert Cayia -- Supervisor, Union Relations
Douglas Venable -- Production Supervisor
Brad Smith -- Rep., Union Relations
Dennis Mills -- Sec. Mgr., Plt 1, Galvanize
Andrew Ptashnick -- Associate Engineer

For the Union
Jim Robinson -- Arbitration Coordinator
Don Lutes -- Secretary Grievance Comm.
Delbert Browder -- Grievant
B. Donaldson -- Griever

THE FACTS

The issue in this case is whether the discharge of grievant was for proper cause. Although some of the facts are disputed, I have had no great difficulty determining what I think happened. At the time of his discharge, grievant was a plier-tractor operator (craneman) in the continuous line sequence of Plant 1 Galvanize. On the day of what the parties refer to as the culminating incident, grievant was operating number 12 crane, which was servicing number 3 line, the only line in operation that day. At approximately 2:30 p.m., the line operator notified supervisor Douglas Venable that he was wanted at the entry end of the line. Venable immediately went to that location, accompanied by Andrew Ptashnick, an associate engineer who was on a training schedule at the time.

Upon Venable's arrival at the entry end of the line, the welder feeder informed him that the scrap box was full and that he had no place to put scrap. It was the crane operator's job to empty the box, but there was no one in the crane. Venable said he decided to look for grievant in the locker room. He found him there, in the shower. Venable said he told grievant that the scrap box was full, that his relief was not yet on location, and that grievant had to dump it. He said grievant replied that he thought he had seen his relief. By the time of the hearing, there was no dispute that grievant's relief had not, in fact, arrived at the time of the encounter in the shower. Moreover, both Venable and Ptashnick testified that grievant was lathered up with soap. Venable assumed grievant was preparing to leave for home, an assumption that seems warranted in light of grievant's comment about his relief.

This confrontation occurred at approximately 2:40 p.m. Venable testified that he left the locker room and waited by number 3 line for about 10 minutes. He then returned to the locker room and observed that grievant was finishing getting dressed. Grievant apparently followed Venable from the locker room and returned to the crane. He ran it over to the scrap box and was waiting for the welder feeder to hook it up when his relief arrived.

Grievant does not deny that he was in the locker room prior to the end of his shift, that his relief had not yet arrived, or that Venable found him in the shower. However, he does deny that he was preparing to leave the work place without having been relieved. Grievant claims that he had been suffering both from constipation and a cold and that he had taken a Red Mountain cold laxative the night before his shift. He testified that at around 2:30 p.m. he had an unexpected bowel movement and that he had gone to the locker room to wash

himself off and change clothes before returning to the crane. He claimed that he was in the shower only to "wash off my backside" and that he was not lathered with soap. However, he did say that he had soap with him and that he was preparing to wash at the time Venable appeared. He said he tried to tell Venable what happened but that he turned and walked away.

I don't believe grievant's story. There may be such a thing as a Red Mountain laxative, and grievant may very well have taken one. But I have never heard of a cold laxative and I doubt seriously that any such thing exists. This embellishment on his story did little to foster my confidence in the rest of his tale. I think he left the work area early and was showering with the intention of leaving the plant and that he got caught. If story were true, I simply refuse to believe that someone with grievant's record would have left the work place that day without proving it.

I believed both Venable and Ptashnick when they testified grievant said nothing about any bowel emergency when they found him in the shower. And if grievant's story was true, why did he not retrieve from the trash the physical evidence of his soiled clothes and present them to Venable? Grievant knew before he left work that Venable intended to discipline him. He also knew that he did not have a good work record. Although the soiled clothes may have been an offensive exhibit, they could not have failed to have captured Venable's attention. They certainly would have lent some credibility to grievant's story. But he did nothing and said nothing, I am forced to conclude, because the story did not occur to him until after he had left the work place.

DISCUSSION

The hardest part of this case has not been determining what happened. I have little doubt about that and, frankly, I don't think anyone could seriously consider grievant's account. But the hardest part of the case has been whether grievant's action justified his discharge. The action, standing alone, is a serious breach of rules, but not one that I think should result in the discharge of a long service employee. Grievant's action was foolish and without excuse, but it had no effect on the operation and, importantly, he did return to the work place when ordered to do so. But, of course, grievant's action in June 1988 does not stand alone. As I noted above, grievant's work record has not been admirable. I have not given much weight to his occasions of absenteeism or safety glasses violations. But those are not the only items in his record.

On July 5, 1985, grievant was reprimanded for failure to empty the scrap box. On November 16, 1985, he was given one day off for insubordination. On September 24, 1986, he was given another day off, this time for poor work performance which again involved failure to empty the scrap box. On October 3, 1986, grievant lost more than 2 days as discipline for leaving work early. Then, as now, he was found in the shower before the end of his shift. On May 2, 1987, grievant received a three day suspension for being out of his work area. Those most recent problems apparently led to a record review on July 24, 1987. And then, on June 16, 1988, the culminating incident occurred.

Of these previous occurrences, I think the most relevant are the one instance of leaving early and the infraction for being out of his area. There was significant testimony about grievant's alleged refusal to empty the scrap box. There is no question that grievant did not empty the box. But I cannot find that he refused.

It is true that grievant left the work area without having emptied the box. Indeed, it was that omission that probably caused him to be found in the shower. It may be that the company could have disciplined him for not having emptied the box. But it did not do so. Indeed, his failure to empty the box is not even mentioned in his suspension letter, company exhibit 1. Moreover, I cannot find that grievant refused to empty the box when he returned from the shower. The undisputed testimony is that he ran the crane to the box, but that his relief appeared before anyone could hook it up for him. There may be some similarity between a refusal to perform, as Grievant has done before, and leaving early, which he did this time. But he did not refuse an order to perform work this time and, while he may not have done what he was supposed to, the company made more of that fact at the hearing than it did during the disciplinary proceedings. I do not mean to suggest that grievant's actions on June 16, 1988 were justified. But this is a discharge case and the company, which has the right and the obligation to state and prove its case, elected to fire grievant, not because he failed to empty the box, but because he left early. That is the occurrence that grievant was obligated to defend during the hearing and prior similar offenses are of the most value in assessing this case.

I can understand the reaction of grievant's supervisors to this most recent offense. Not only did he do something he had done before, but he tried to exonerate himself by telling a fantasy no reasonably intelligent adult could be expected to believe. But I think the absurdity of his defense could have influenced the disciplinary decision. I thought Mr. Roumell did a very good job of making grievant's actions sound

appropriately heinous. But he only presents the facts -- he doesn't create them. And the facts themselves do not justify discharge, a reaction that Venable himself apparently had as an initial matter.

I have no intention of defending anything grievant has done and this opinion should not be read as an exoneration of his actions. He left the work area early and then lied about it. But there was no testimony that his absence had any significant effect on production. That fact, certainly, does not excuse his conduct, but it is relevant in considering the appropriate punishment. I know that his absence could have had more serious consequences. But, fortunately for all concerned, it did not.

I am also not convinced that grievant's prior record warranted such an extreme penalty. Although he had numerous prior offenses, there were relatively few directly in point. And the one offense that was directly in point had occurred more than a year and a half before his discharge.

I am also influenced by a statement in the company's brief that I think fairly reflected the testimony I heard at the hearing. As noted, grievant returned from the locker room at Venable's direction, but was relieved before he could empty the scrap box. On his way back to the locker room, the brief says "Venable informed Grievant . . . that he would receive a reprimand for the incident." As noted, I think that comment fairly characterizes Venable's testimony at the hearing. But I think it also means that, while Venable was mad at grievant, he did not take grievant's action as seriously at the time as it subsequently became. I do not mean to say that the company has to determine the appropriate disciplinary action on the spot or that it is bound by the casual comments of one of its supervisors. But I do not think the offense in this case is serious enough to justify discharge of an employee with more than 15 years service and I take Venable's comment to indicate that that was his first reaction, too.

As often happens, both sides presented me with cases that they hoped would influence my decision. Sometimes they do. But in this case, I did not find the previous awards to be of much assistance. For example, company exhibit 6, USS-7613-S involved the reprimand of an employee who had failed to perform assigned work. That is not the reason for grievant's discharge. Company exhibit 7 does involve the discharge of a long service employee who had left work in order to avoid performing duties he found objectionable. But unlike here, that employer had a demerit point system which made even unrelated incidents of some significant importance. And, perhaps most important, the employee had previously been discharged for misconduct, but reinstated in an agreement with the union. Company exhibit 8 also involves the discharge of employees who left work without permission. But those employees acted in concert to disobey a direct order from management not to take a lunch hour. Finally, I do not find the other cases submitted by the company to be of any greater value.

In the final analysis, this case cannot be decided on the basis of what other arbitrators have done. I have the responsibility of deciding what to do and, while I can accept guidance from the decisions of other arbitrators, I cannot hide behind them. I understand the company's argument that management is for management -- that once an offense has been proven it is for management, not some outsider, to determine the appropriate penalty. But the company has also agreed that it will not discharge employees without cause. I am not naive enough to believe, as I know some arbitrators do, that I am a better judge of the proprietary of disciplinary action than is the company. Being a neutral is worth something, but it does not alone establish superior judgment. I do not pretend to have that. But I think the gravity of grievant's offense in this case does not warrant the ultimate penalty of discharge. I know the company will disagree with that judgment. The best I can do is explain my reasoning. Had grievant's action caused the line to shut down, I might view this case differently. It might also matter if his previous discipline for the same offense had been closer in time. But on these facts, I do not think his conduct warranted the loss of his job.

REMEDY

Because I believe grievant's discharge was not for proper cause, I will order the company to reinstate him. But I do not intend to order any back pay or other benefits. The discharge shall be converted to a period of disciplinary suspension. I realize that this amounts to a substantial period of lost pay. But this is, after all, the second time grievant has committed the same offense. This penalty should serve as notice of the seriousness of his action and as a warning that there is a point at which the company need no longer tolerate such misconduct.

AWARD

The grievance is sustained in part. The company is ordered to reinstate grievant but without any back pay or other benefits. The period of discharge is converted to a disciplinary suspension.

Respectfully submitted,

/s/ Terry A. Bethel

Terry A. Bethel, Arbitrator

Bloomington, IN
March 13, 1989