

Arbitration Award No. 807
IN THE MATTER OF ARBITRATION
Between
INLAND STEEL COMPANY
Indiana Harbor Works
and
UNITED STEELWORKERS OF AMERICA
Local Union No. 1010
Grievance No. 5-S-30
Arbitrator: Clare B. McDermott
Opinion and Award
December 27, 1989

Subject: Discharge--Malicious Conduct And Leaving Work Place without Permission--Explanation of Innocence Incredible.

Statement of The Grievance: "The Aggrieved, Gregory Richmond #16859 contends the action taken by the company when on 11-17-88 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.

"Violation is Claimed of Article 3, Section 1, and Article 8, Section 1."

Agreement Provisions Involved: Article 3 of the August 1, 1986 Agreement.

Statement of The Award: The grievance is denied.

Chronology

Grievance Filed:	11-22-88
Step 3 Hearing:	3-1-89
Step 3 Minutes:	4-29-89
Step 4 Appeal:	4-4-89
Step 4 Hearing:	5-25-89
Step 4 Minutes:	5-25-89
Appealed to Arbitration:	5-25-89
Arbitration Hearing:	5-26-89

Appearances

Company

Michael T. Roumell -- Murphy, Smith & Polk
Robert Castle -- Section Manager, Union Relations
Frank Nahlik -- Section Manager, No. 2 BOF
Kent Kahl -- Senior Caster Supervisor, No. 2 BOF
Tim Halls -- Caster Foreman, No. 2 BOF
Steve Nelson -- Representative, Union Relations

Union

J. Robinson -- Arbitration Coordinator
M. Mezo -- President
J. C. Porter -- Vice Chair, Gr. Comm.
A. Jacque -- Griever
G. Garza -- Griever
G. Richmond -- Grievant
T. Roberts -- Asst. Griever

BACKGROUND

This grievance from the No. 2 BOF/CC Department of Indiana Harbor Works claims that grievant's suspension and discharge for leaving his work area without permission, malicious conduct, and an overall unsatisfactory work record were without cause, in violation of Articles 3 and 8, Section 1 of the August 1, 1986 Agreement.

Grievant began with the Company in January of 1981. He was scheduled as a Caster Operator on the B turn (6:30 a.m. to 2:30 p.m.) on Saturday, October 29, 1988. Only a skeleton crew was out that turn. At about 8:00 a.m. Senior Caster Supervisor Kahl had a problem with the slab machine and sought help in working on it but could not find grievant on the Caster Floor. Kahl learned that another Caster Operator (Holiday) had given grievant a break and was working the combination machine. Kahl looked for grievant in the

lunchroom, canteen, and twice in both the slab and combination washrooms. At about 8:15 a.m. Kahl called Casting Supervisor Halls on the PA system and told him to search for grievant. Kahl was concerned about grievant's whereabouts because of his past disciplinary offense of leaving his work area without permission. Kahl had warned grievant about that approximately one month before this incident.

Halls looked for grievant in the lunchroom and then went to the locker room, a separate building several hundred yards away, and finally saw grievant in the last locker row, standing in front of an open locker, No. 5. Grievant's pants were undone, and he was tucking his shirt inside his pants. Halls then was standing in the main aisle, about ten or twelve feet from grievant.

Halls says the locker doors before which grievant was standing were open at about 90° to the plane of the closed locker doors. He is sure about which locker it was because there were two white strips of metal wire hanging out through the louvers. He said it was the only locker on that side of the aisle on which there were such hangers. Apparently employees use them for hanging clothing or a towel. Halls did not know whose locker that was. He says he assumed it was grievant's.

Halls asked grievant what he was doing there, and grievant said he was dropping off a note for another employee. Halls could see no note or any paper in grievant's hands. He did not ask to see the note or for whom it was being left.

Halls turned and started out the door. Grievant called to him and said he needed a green jacket. Halls went to the greens room, got a jacket, and gave it to grievant. Halls told grievant to return to the casting floor. Grievant returned to the locker room for his hard hat, and Halls went to the third floor of the locker building to telephone to Kahl that he had found grievant in the locker room and that he (grievant) should be heading back to the floor. Kahl said then that he would send grievant home for being out of his area, and Halls suggested to hold off on that until they could investigate and find out what grievant had been doing in the locker room.

Halls returned to the locker room and looked in each locker row to see if anything was out of order. He found that the open locker in front of which grievant had been standing was now locked. He found that three key locks had been cut and that three combination locks were open. He jotted down the numbers of those lockers. Halls checked all that because lockers had been broken into on the B turn in the recent past. Supervisor Nahlik had told him to keep an eye on that situation.

Halls returned to the furnace pulpit and met Supervisors Ladwig and Belashopka. He told them what he had seen because they had been assigned to monitor the locker room on B turn because of an increase in reported thefts there. All three Supervisors returned to the locker room and checked it. They ran into an Hourly Maintenance Foreman, and Halls asked him if grievant's locker was in the first row (coming from the other direction) and was told that it was not. Grievant's locker was eight locker rows, plus the shower area, away from where he was seen standing. Halls thus became very suspicious about what grievant might have been doing in a locker row which did not contain his locker. The three Supervisors went to the third floor of the locker building and called Section Manager Nahlik, who was in charge.

Halls told Nahlik what he had seen and gave him the numbers of the lockers with damaged locks. Nahlik and the three Supervisors went to the locker room to see all that. They made a list of the lockers with cut locks and open combination locks and found out whose lockers they were. They then checked the schedule to see if any of those employees were working on this Saturday B turn, and two employees were, Harris and Gonzalez. Gonzalez came to the locker room and said his locker had been tampered with three times in the past and that he just grew tired of that and had not replaced the lock, leaving his locker open but keeping nothing in it.

Halls called employee Harris, and he came to the locker room. Nahlik asked him to open his locker to see if anything had been taken. He did and nothing was missing.

They checked the locker with the white hangers, in front of which grievant had been standing. It was assigned to employee Lopez. Management learned later that Lopez had not given anyone permission to go in his locker and that he had not left it unlocked at the end of his turn on Friday, the day before.

Nahlik asked employee Harris, the person whom grievant by then had said he was leaving a note for in his locker, whether he had given anyone permission to enter his locker, and Harris said he had not. Harris said also that, aside from a greeting as they might pass at work, he had not communicated with grievant since they had attended training classes together about a year before this.

Halls then went to grievant on the Casting Floor and asked him whose locker it was he had been standing in front of. Grievant said he would ". . . rather not say unless I have to."

Kahl told grievant he was being relieved from his job, and Kahl says grievant did not ask the reason for that.

Grievant was brought to the Labor Foreman's office. Present there were Kahl, Halls, Nahlik, Belashopka, Ladwig, a Plant Protection Officer (Mrs. Thomas) who had been called, and grievant. Nahlik asked grievant what he had been doing in the locker room earlier, and grievant gave several answers. He said he was dropping off a note for somebody, then that he went there to use the toilet, and then that he was leaving a dollar in Harris's locker in return for rides to work which Harris had given him. The Plant Protection Officer asked if grievant had said one dollar, and grievant said, "Yes. One dollar."

Grievant was told he was being sent home for being out of his area and while an investigation was being conducted. Grievant was taken out of the plant.

Nahlik had Halls bring employee Harris to the Communication Center. Harris came, and they asked him if he had given grievant rides, and Harris said he had not and that there was no reason for grievant to want to give him money. He said he did not even know where grievant lived and could not explain why grievant had singled him out.

Halls said he had had no prior problems with grievant aside from his being out of his work area in the past and therefore, that he had no reason to want "to get" grievant.

Section Manager Nahlik said he had had reports of thefts from the locker room, that is, of lockers' having been entered and money taken and some entered and nothing taken. There had been a stream of such reports over the three months just before this incident. Nahlik had made a list of those break-ins and correlated them by dates and turns, and he saw that they were narrowed to weekends on B turns. Nahlik said there were no reports of lockers' having been entered improperly after this incident.

Supervisors Nahlik and Siasko called those employees not at work whose lockers might have been opened and asked them about the locks' being cut. They said they had been cut before. The Supervisors asked those whose combination locks were opened if they had forgotten to lock them and asked them to check when they next worked in order to see if anything was missing. They heard nothing further about any missing property.

The Company stresses that grievant never produced the note. Nahlik asked why grievant had not given the note to Harris in person, since he was at work on that turn. The Company points out also that grievant's saying he went to the locker room to use the toilet there is very strange, since it is so far from his work station on the Casting Floor and since there are several other toilets ten or fifteen, twenty or twenty-five, and a third and fourth perhaps forty yards from where grievant was working.

The Company learned from talking to employee Lopez, in front of whose locker grievant was found standing, that he often carries a lot of money with him, from his sale of soft drinks which he brings in. That requires that he have bills and change with him. Moreover, Lopez collects for flowers to be sent by employees for deaths and to employees who are ill. He gets one or two dollars from each employee for that. Nahlik said grievant admitted he was out of his work area and that he knew he was wrong about that, but he said he had been relieved by Holiday. Grievant said Supervisor Kahl had warned him about that perhaps only a month before.

Nahlik noted that at Step 3 grievant said he had had trouble with using the toilets at the caster and that he had been leaving two dollars for Harris, which contradicted his earlier statement that he was leaving Harris one dollar.

At a later meeting, grievant was suspended for being out of his area without permission, for malicious conduct, and for his overall unsatisfactory work record. He was discharged on November 17, 1988, and this grievance followed.

Grievant's past disciplinary record is as follows:

"Date	Infraction	Action
8/14/84	Failure to work as scheduled.	Reprimand
3/17/87	Failure to work as scheduled.	Reprimand
5/11/87	Violation of General Rules for Safety and Personal Conduct Rule No. 127-1. (Leaving work area without permission.)	Discipline - balance of turn plus 1 turn
5/11/87	Failure to work as scheduled.	Discipline - 1 turn
12/14/87	Poor work Performance	Discipline - 1 turn
4/12/88	Failure to work as scheduled.	Discipline - 3 turns."

Grievant said that he and Holiday would spot each other. It was his turn for relief, and thus Holiday relieved him for a one-half-hour break. He had to use a toilet and found that the one on the Casting Floor was not clean enough to use. He went downstairs to the second-floor commode, and it was occupied, so he went to the locker room to use the toilet there and to give Harris a gift for the rides he had given grievant

when his car was not operating. He used the toilet and then took a note to Harris's locker and intended to put it, with two dollars, through the louvers in Harris's locker door, when Halls appeared. At first he did not know who Halls was and, therefore, he kept the note. After he recognized Halls, they chatted. He returned to the Casting Floor after getting the green jacket.

He was working when Halls came later, put his arm around grievant's neck and said, "Greg, what were you doing in the locker room?" Grievant replied that he would rather not say unless he had to, because it was personal.

Grievant insists that, when first told by Halls that he was going to be sent home, he did ask why and that Halls said for being out of his area.

Grievant says no locker doors were standing open in the aisle when Halls saw him.

Grievant agrees that he got the balance of the turn and one day off in May of 1987 for being out of his area. He says he and two other employees had left the area at about 10:30 p.m. because their work was finished and had gone to the locker room. One employee had showered and left the plant, and grievant and the other employee were in the shower. Halls sent them home. He did not grieve that discipline.

Grievant says he went to the locker room on this occasion with no intent to steal, that he did not tamper with any lockers, and that he does not know Lopez.

Grievant said there is no set, scheduled break time at the Casting Floor and that the employees arrange their own relief. The supervisors do not always know where grievant is when he is on a break. He says he was gone this time about twenty or twenty-five minutes.

Grievant said he did not see Harris that day. He said Harris worked that shift but for different hours than grievant does. He says he knew which locker was Harris's because he has spoken with him while sitting there.

Grievant says he wrote a note to Harris while in the locker room, saying, "Here's a couple dollars for the rides you have given me." He said Harris had driven him to work and to the training sessions at Ivy Tech. Grievant said his last ride with Harris had been a couple of months before this event and that Harris had driven him to Hammond, where he lived then, as does Harris. Grievant lived in Gary at hearing time.

Grievant said that Harris would not accept money from him for gas and that was why he was trying to put money into Harris's locker on October 29. He said he had once bought lunch for Harris in Gary. For grievant to walk from his work station to where Harris worked that turn was as far as grievant had walked from his work station to the locker room.

Grievant named five other employees who he says had given him rides. He says he had paid Harris for rides before and had bought his son a sweatshirt and had given money to employees Hunter and Berry for rides. Bradshaw would not take any money, so grievant says he bought him a drink.

Grievant said he threw the note away a long time before this hearing, but he does not recall throwing it away. He still had it when he returned to the Casting Floor. He was so upset then that he forgot his keys when he left the plant. He did not walk out of the locker room with Halls, explaining that he did not do that because Halls, too, could steal. Grievant agreed he had no reason to believe that Halls was a thief. Grievant says Halls did see him putting something into the vent in the locker door. He says he did not put the note in Harris's locker after he got the green jacket because his time was up, presumably referring to his relief time. The Company put great weight on the fact that, not only did Harris not come forward to support grievant's version here, but he gave a written statement that contradicted everything of significance that grievant said about Harris. Harris denied that he ever had given grievant rides to any destination.

He said he did not know where grievant lived and that nothing had gone on between the two that could have caused grievant to owe him, or even to think that he might owe him, any money. He said, finally, that it had been over a year since he had had anything to do with grievant. He denied that grievant ever had bought lunch for him.

Grievant seeks to explain Harris's statements by alleging that Harris was upset then because he had had a deformed baby just before he gave the signed statement. Grievant said also that Harris told him Halls had tricked him and that he just did not want to be involved. Grievant said he could not recall if Harris had said Halls had forced him to sign the statement.

Grievant agrees he was aware of the rule against leaving his area without permission, but he says he did not know he could be discharged for that.

Union witness Porter, Vice Chairman of the Grievance Committee, said that at the investigative meeting on November 1, questions were asked of Plant Protection Officer Thomas about grievant's riding to and from work with Harris, and that Thomas, speaking from her notes, said that Harris had acknowledged he had given grievant such rides on several occasions. Porter says he then asked the same question and that

Thomas gave the same answer. Porter did not speak directly with Harris at all or with Plant Protection Officer Thomas after the investigative meeting. He did not ask to see Thomas's notes or to have her testify at this hearing.

The Company stresses that there is no mention of these questions and answers in the rather detailed Step 3 Minutes.

The parties then read over Porter's notes of the investigative meeting, which Porter said related what he had testified to here, and they got into a dispute about argued ambiguities in them and whether the last part, saying, supposedly by Thomas's reporting what Harris had said, "We did ride together," was in a different writing style--script--while all else in those notes was printed. Porter's notes were not introduced, the Union saying it did not seek to have them come into evidence and that it relied upon Porter's testimony.

The Company cites a dictionary definition of "malice" as intent to commit an unlawful act and that it does not require that the act be carried out. Management feels certain that grievant did engage in malicious conduct, in that he was in the locker room with intent to steal from employees' lockers. It says its positive evidence from Halls establishes that clearly, but that the most compelling proof of that conclusion comes from the facts showing grievant's explanation of innocence to be absurd.

For example, grievant says he was trying to put a note and money in Harris's locker, but he was not in front of Harris's locker. He was at Lopez's locker. Grievant never did produce the note or the money.

Then, the clincher is said to be Harris's denial of all the otherwise significant points that grievant sought to establish in support of his innocently being where he was in the locker room. Finally, the Company stresses that the Union chose not to call Harris as a witness in grievant's support here, and the Company notes that Article 7, Section 1 of the Agreement prohibits it from calling him.

The Union urges that three main points be kept in mind here. Grievant has not been accused of any action involving theft and, indeed, nothing has been shown to be missing. Grievant has only one prior discipline for being out of his area and none for theft or any other related malicious conduct. His other five offenses were for instances of absenteeism and one poor work performance. And, finally, it is said grievant has reasonably explained his actions.

FINDINGS

Grievant's violation of the rule against leaving his work area without permission is clear and admitted. But that, standing alone, probably would not have resulted in his discharge.

It is the charge of malicious conduct that likely brought that result, when coupled with his leaving the area without permission. Malicious conduct is a general charge. Its more specific content here is that grievant was found standing before an open locker not his own, indeed, eight locker rows and the shower area away from his own locker.

There had been a run of break-ins of lockers in this locker room, and Management's plotting of those events suggested it was happening, too often for mere coincidence, on weekend B turns. Thus, grievant brought upon himself a degree of suspicion as to his reason for being there. No clearly innocent one was apparent. Grievant then began "explaining" his presence there, and the more he "explained," the less innocent his presence became. He said, that is, that he meant to push a note and either one or two dollar bills (depending upon which of his accounts be accepted), into Harris's locker, but he did not do so. He neither put any paper into Harris's locker before Halls came along, while Halls was there, or after Halls left. Neither did he produce the note and the bill or bills to back up his story. Finally, on this point, he could not put anything into Harris's locker while standing in front of Lopez's.

In any event, why did grievant have to go through this indirect and complicated process to pay Harris for rides? Harris was at work on the same turn and no farther away from grievant than he had to walk in order to get to the locker room. Why not follow the direct, simple method and walk to Harris and hand him the note and money in person? That never was explained.

Why, if grievant's story were accepted, that his last ride with Harris had been in August, had he not paid Harris directly and long before this? If the sum were no larger than the one or two dollars grievant speaks of here, it is not easy to understand his claim that he had not paid Harris sooner because his funds had been too low over that period.

Thus, taking at face value all else that grievant says here, he was standing in front of the wrong locker to accomplish the purpose he insists he was trying to carry out. He was trying to give a note and money to Harris by standing in front of Lopez's locker. On this point, Halls's testimony of where grievant was is more credible than is grievant's.

With all that impeding acceptance of grievant's version, his account then is totally exploded when Harris's statement is looked to for corroboration or contradiction. With no motive suggested to cause Harris to lie

about grievant, he denied every critical assertion that grievant made. He said he gave grievant no rides; did not know where he lived; had no significant contact with grievant for over a year; and that grievant had not bought him lunch or gas.

Harris's version is much more persuasive than grievant's. Thus, grievant's only explanation which would render innocent his presence at an odd place and strange time in the locker room is not believable. Grievant was there either innocently or maliciously. His innocent explanation will not wash, and thus he must have been there with intent to break into and steal from other employees' lockers. That is a clear case of the malicious conduct charged. It, coupled with his being away from his work area without permission, which must be taken as part of his malicious scheme, was cause for his suspension and discharge. Consequently, the grievance must be denied.

AWARD

The grievance is denied.

/s/ Clare B. McDermott

Clare B. McDermott

Arbitrator