Award No. 817
ARBITRATION
In the Matter of the Arbitration between
INLAND STEEL COMPANY
Indiana Harbor Works
and
UNITED STEELWORKERS OF AMERICA
Local Union No. 1010
Grievance No. 27-S-79
Appeal No. 1428
Arbitrator: John Paul Simpkins
December 26, 1989
Appearances:
(October 26, 1989)
For the Company:
Ann C. Kolasa, Representative, Union Relations Department
For the Union:
Jim Robinson, Arbitration Coordinator
Subject: Discharge for Excessive Absenteeism; Application of Attendance Improvement Program; Mitigating Circumstances; Evidence
Statement of Grievance:
(June 23, 1989)
"The aggrieved . . . contends that the Action taken by the Company when on June 22, 1989 his suspension culminated in discharge is unjust and unwarranted in light of the circumstances."
Remedy Requested: "The aggrieved requests that he be reinstated and paid all monies lost."
Contractual Provision Involved: Article 3 of the August 1, 1986 Agreement
Statement of the Award:
(December 26, 1989)
The grievance is sustained. See Award.

Chronology of Grievance:

Grievance filed (Step 3)	June 27, 1989
Step 3 hearing	July 6, 1989
Step 3 minutes	August 14, 1989
Step 4 hearing & minutes	October 18, 1989
Arbitration hearing	October 26, 1989
Award issued	December 26, 1989

BACKGROUND
Company witness James Crompton is Section Manager of Furnace and Auxillaries of the No. 1 Electric Furnace and Billet Caster Department and he participated in the discharge of the grievant for excessive absenteeism under the Company's Attendance Improvement Program (AIP). The AIP is a computerized method of monitoring employee attendance with the focus on a rolling 90 day window. It is intended to be a standard way of accessing absences in relation to the number of turns to which an employee is scheduled and daily or consecutive day, extended absences. If absences for the period exceeds six (6%) percent of the scheduled turns the employee is disciplined with first a one day followed by a two day suspension. The percentage is then changed to five (5%) percent of absences for the scheduled turns for the period and continued absences call for a suspension for three days which is followed by a final warning, record review and possibly a suspension. As the section manager, Crompton administers the AIP and discipline.
Crompton explained the grievant's duties as a Sequence Ladle Craneman of the No. 1 Electric Furnace and Billet Caster Department. The grievant operates a crane to transfer liquid steel in a ladle car. There are 15 employees in the crane sequence with the ladle craneman being the top job. If absent, a lesser trained qualified employee will be assigned. Under those circumstances there is a greater chance of missing the connection with the liquid there is a greater chance of missing the connection with the liquid steel and losing the production.
Cranemen are not necessarily scheduled on a regular rotation, Crompton stated. Rather, their scheduling is based on the schedules of operations. If the plant is working full out, the master schedule would reflect five days midnight turn and two days off, five days 3:00 p.m. to 11:00 p.m. and two days off, then five days at

7:00 a.m. to 3:00 p.m. followed by two days off. The Company would like to be able to give employees a normal schedule of rotation so they can plan days off, but since it cannot, employees are expected to check the posted schedule on Thursdays to find out when they are scheduled to work the following week.
The grievant's rate of absenteeism was higher than the average of the Electric Furnace Department, even plantwide, Crompton stated. He also stated that the grievant was familiar with the AIP guidelines and he had experienced discipline in accordance with the program. In reviewing the grievant's record of absenteeism Crompton saw no improvement and agreed with D. Diehl that he should be suspended.
Union Steward, John Winkler is assigned to the No. 1 Electric Furnace. In his testimony, Winkler stated that the schedule is prepared by Tom Curran, a non-bargaining unit employee. According to Winkler, Curran acknowledged that the grievant's schedule in the crane sequence was revised but neither the original nor the revision could be found in order to make a copy. Winkler never saw the revised schedule and he was not present at the Step 3 hearing. The arbitration hearing was the first time Winkler has provided this information in a Union/Management setting. Winkler also acknowledged that there is a person with the same last name and a similar first name who worked at the Bag House.
The grievant, a Ladle Craneman with 23 years of Company service, initially testified about his absences during 1984, 1985 and 1986. He recalled that the crane sequence schedule for the week of May 28, 1989 reflected his assignment to be: third turn on Sunday, Monday and Tuesday; off on Wednesday and Thursday; and second turn on Friday and Saturday. The grievant stated that he worked as scheduled on Sunday, Monday and Tuesday but when he called home about 12:30 a.m. on Friday morning June 2, 1989, his daughter informed him to call the mill. He placed the call about 12:45 a.m. and a foreman informed him that the schedule was revised and he was held responsible for knowing about the revision. He was informed that he was supposed to be at work and he responded that that was not the case according to the schedule he saw originally.
Later that day, June 2, 1989, the grievant reported on the day turn, 7:00 a.m. to 3:00 p.m. and saw that the schedule had been revised. He did not work. He contacted the grievanceman immediately and pointed out that the revision had him working midnight and that he was previously scheduled for day work.
The grievant further stated that he did not believe he had a absentee problem because he had a heart attack. He recalled that discipline was waived at times by supervision but, in his opinion, his attendance has improved greatly in the last five years.
Union President, Michael Mezo, stated that he objected to Management's consideration of "No Action" documents in the grievant's file. In discussions he had with Management in the fall of 1988, he expressed the Union's intention to grieve such documentation since its purpose was to decide whether an employee should be disciplined. According to Mezo, he was informed by Management that the department would keep the information but it would not be included in the personnel record of employees.
Vincent Soto, Project Representative in the Union Relations Department, investigated the grievant's claim at the suspension hearing relative to the schedule change. Soto stated that he also spoke to Curran and he learned that the change only affected a Bag House employee whose name could not be recalled by Curran. When asked whether he had a copy of the original schedule, Soto stated that he did not; that the original schedule was altered to make the revised schedule.
The grievant's five year record of discipline is as follows:

Date	Infraction	Action
06/26/84	Absenteeism	Reprimand
02/25/85	Absenteeism	Discipline (1 turn)
08/30/85	Absenteeism	Discipline (3 turns)
02/20/86	Absenteeism	Record Review/Final Warning
09/21/86	Absenteeism	Discipline (3 turns and Record Review
12/01/87	Absenteeism	Discipline (3 turns)
03/31/88	Absenteeism	Discipline (3 turns)
06/13/88	Absenteeism	Discipline (3 turns)
11/14/88	Absenteeism	Record Review/Final Warning
03/20/89	Absenteeism	Record Review/Final Warning

CONTENTIONS OF THE PARTIES
The Company
The Company contends that there is just cause for the grievant's discharge. It argues that the grievant has been absent 209 days over a five year period and that progressive, corrective disciplinary measures have not helped him overcome the problem. Every occasion for discipline did not result in discipline because

supervision took into consideration the grievant's medical problem. This consideration is reflected by the "No Action" passes which show Management's leniency towards the grievant. Thus, the Company argues that the "No Action" documents have been used correctly.

The Company further argues that it may consider the grievant's legitimate absences due to illness within the past five years, contrary to the Union's position that it may not. It argues that use of the entire record of absence is supported by arbitration precedent. In the Company's opinion, the grievant did not take seriously his responsibility to report to work. His absenteeism is excessive, he does not believe he has a problem and efforts to rehabilitate him through corrective discipline indicate a poor likelihood for good attendance on his part. There is no requirement to retain an employee who refuses to abide by the rules other employees accept. If the AIP is to remain useful for all employees, the grievant's discharge must be upheld, the Company maintains.

Regarding the Union's claim that the grievant was affected by a schedule change, the Company argues that there was no change to the schedule for the week of May 28, 1989, which affected the grievant; only the Bag House. No other employee is claimed to have been affected by the schedule change. Yet, supervision had to call an employee to cover for the grievant. This, the Company argues, is further evidence in support of its contention that there was no change to the schedule applicable to the grievant. The June 2, 1989 absence should be viewed as failure on the part of the grievant to report off and as a breach of his responsibility to report to work as scheduled.

The Union

The Union contends that just cause is lacking for the grievant's discharge and argues that the "No Action" documentation in the grievant's file should not be made part of the record. Management may not keep a document in an employee's file which is not part of the employee's record and subject to being grieved. To maintain such documents for future use violates industrial justice and the agreement Management reached with the Union that the "No Action" letter would be for personnel department uses only, the Union argues.

The Union contends that the grievant's extended absences are not the bases for concluding that he was excessively absent. The evidence, in its view, shows that the grievant's daily absences are consistently below the level that would necessitate calling his attention to them for purposes of review. Considering the five year period excluding 1989, the number of absences reflects a downward trend.

The Union maintains that an employee's discharge is considered industrial capital punishment. Before such drastic action can be taken employees have the right to be sure that there is "cause" for the action. It further asserts that even if there is excessive absenteeism on the part of the grievant, there is still the question of cause for his discharge. Missing work because of uncontrollable serious problems such as those involving his heart, hand, mouth, and car accidents involving the grievant and his wife, and the schedule change are problems which were beyond the grievant's control. As an employee who has devoted 23 years towards building the Company, the grievant deserves a measure of respect and tolerance, the Union argues.

Regarding the schedule change, the Union contends that the evidence shows that the pattern of turns worked is in the progression of 3, 2, 1 -- 3:00 p.m. to 11:00 p.m., 7:00 a.m. to 3:00 p.m. and 11:00 p.m. to 7:00 a.m. --; not the 3:00 p.m. to 11:00 p.m. turn progression forward claimed by the Company. This lends credence to the schedule the grievant claims he saw.

FINDINGS

The critical questions in the instant matter concerns the excessiveness of the grievant's absences and the triggering circumstances of June 2, 1989 which gave rise to his suspension on June 9, 1989 preliminary to his discharge. The grievant claims that his absence on the first turn of June 2, 1989 was not his fault but due to a schedule change of which he had no knowledge since he was off for two days preceding the turn. There is evidence of a schedule change affecting the Bag House and perhaps an employee there with a name similar to that of the grievant. There is no evidence of a schedule change affecting the grievant or the progression to which he is a part. The burden is on the grievant to establish the schedule change he alleges was the cause for him being improperly charged with an absence. He has failed to do so and his contention must be rejected. For reasons known only to him he failed to report and to report off for the midnight turn on June 2, 1989 which began at 11:00 p.m. on Thursday, June 1, 1989.

The evidence is clear that the grievant has been progressively disciplined for being absent under the Company's departmental Absence Improvement Program. On November 14, 1988 and March 20, 1989 he received final warnings and his entire absentee record was reviewed with him. The June 2, 1989 failure to report or to report off caused him to exceed the allowable absences under the Attendance Improvement Program. Management decided that a further warning would be superfluous and the grievant was suspended on June 9, 1989 and subsequently discharged on June 22, 1989 for excessive absenteeism.

Contrary to the position of the Company, the Union maintains that the grievant's absences were not excessive and even if found to be so, cause for the grievant's discharge is, nevertheless, lacking. Each case of excessive absenteeism must turn on its own facts. The grievant, as a long-service employee, is entitled to every consideration in the determination of cause for his separation. But his 23 years of Company service cannot be viewed as an excuse for unacceptable attendance. In this regard, the parties have provided substantial evidence in the form of arbitration awards for consideration by the arbitrator.

The Company's right to a reliable and responsible work force need not be revisited here. It is noteworthy, however that a substantiated illness or a series of illnesses are considered reasonable bases for excusing an employee from work. Absences related to such bases even if extended, have the dual effect of diminishing an employee's suitability for work in an industrial environment while at the same time diminishing Management's right to discipline for the absence. The balance is struck by assessing each case of excessive absenteeism on its own facts and circumstances.

The facts and circumstances of the extended absences of the grievant were, in large measure, beyond his control. In 1984 he suffered a heart attack; 1985 a fractured finger of the right hand; and, 1986, surgery to remove a growth from the upper palate of the mouth and cervical strain, lumbar strain and fractured toe resulting from a car accident. The extended absences attributed to these illnesses and injuries amount to 166 days for which discipline is not appropriate. There is no claim that the conditions which caused these extended absences have in any manner diminished the grievant's reliability and usefulness as an industrial employee.

The remaining 43 absences appear to be for varing causes, many attributable to the care and health needs of family members. While these absences are understandable they are not of the same caliber as those which directly affected his ability to work and they have a negative effect on his employment. Unlike the absences for injury and illness of the grievant, these are controllable by him and are the kind to which the AIP is intended to improve and the purpose of the discipline was to correct. While excessive, these absences are not so much so as to deny the grievant a "last chance" opportunity to reestablish himself as a valuable employee.

Accordingly, it is specifically found that (1) the extended absences attributed to the grievant's illnesses and injuries are sufficient mitigating factors; (2) the other absences and elements of the AIP are excessive but they do not place the grievant in a status where the reason for an absence is immaterial; (3) the grievant should be reinstated on a "last chance" basis; and (4) reinstatement should be without back pay. Given these findings it is unnecessary to comment on the Union's argument and contentions concerning the "No Action" letters in the grievant's personnel file and the Company's use of them.

AWARD

The Company is directed to reinstate the grievant to his position on a "last chance" basis with no loss of seniority but without back pay.

The period of separation due to the grievant's discharge may be recorded as a disciplinary suspension.

/s/ John Paul Simpkins

JOHN PAUL SIMPKINS

Arbitrator

December 26, 1989