Award No. 833
IN THE MATTER OF THE ARBITRATION BETWEEN
INLAND STEEL COMPANY
and
UNITED STEELWORKERS OF AMERICA
LOCAL UNION 1010
Grievance No. 21-S-30
Appeal No. 1444
Terry A. Bethel, Arbitrator
August 2, 1990
OPINION AND AWARD
Introduction
The hearing in this case was held in the company offices in East Chicago, Indiana on July 25, 1990. Each party filed a prehearing brief. Grievant was present throughout the hearing and testified in her own behalf.
Appearances
For the Company
B.A. Smith, Project Representative
R.V. Cayia, Section Manager, Union Relations
D. Johnson, Staff Representative, Compensation and Benefits
R. Hughes, Representative, Union Relations
For the Company
J. Robinson, Arbitration Coordinator
M. Mezo, Union President
K. Clark, Grievant
S. Wagner, Griever
Background
This case involves the discharge of grievant Katie Clark pursuant to marginal paragraph 13.68 of the March 1, 1983 collective bargaining agreement, which reads, in relevant part:
In order to avoid a break in service after an absence of two (2) years, the employee must give the Company annual written notice that he intends to return to employment when called, if the company at least thirty (30) days prior thereto has mailed him a notice at the most recent address furnished by him to the company advising that he must file such notice.
There is no dispute about the facts. Grievant was employed by the company in 1978. She was laid off in June 1984 and had not been recalled at the time of the action complained of in this proceeding. In accordance with the procedure outlined in mp 13.68, the company, on April 3, 1986, mailed grievant a certified letter informing her that in order to avoid a break in service she "must file . . . written notice with us on or before 6-3-86." Although the parties stipulated that the letter was sent to the appropriate address, grievant did not receive it. The post office attempted delivery twice, once on April 5 and again on April 10. The letter was returned to the company on April 20, 1990. Because it had not received from grievant the written notice required by mp 13.68, the company terminated grievant's employment effective June 4, 1990, two years and one day following her layoff. It is the propriety of that action that forms the issue in this case.
Discussion
The union's primary contention is that an employee cannot be terminated for failure to send a written notice of intent to return from layoff unless the employee actually receives from the company the written notice advising him or her of that requirement. Although the company mailed that notice to grievant in this case, grievant did not actually receive it. The union also criticizes the company for applying 13.68 in an overly mechanistic fashion, arguing that such contract provisions should be interpreted broadly and humanely in order to avoid an unwarranted termination. Finally, the union notes that the company has little to gain by applying 13.68 in this case, since grievant would not yet have been returned to active employment in any event. There is, then, no back pay liability and no other employee will be displaced to make room for grievant. In short, the union argues that grievant is the only possible loser in this case.
I have some sympathy for the union's position, but I think the company has the better contractual argument. Contrary to the union's assertion, I do not think the use of the term "mail" is ambiguous, especially in context.

Mp 13.68 comes into play only when an employee has incurred an extended absence from the work place. During that absence, employees automatically accumulate seniority for a period of two years. After the initial two year period, the 1983 contract allows them to continue to accumulate seniority (for limited purposes) but that accumulation is not automatic. That is, the company can, by sending a notice, require the employee to take some affirmative action in order to avoid a break in service.

Although not articulated in the contract, the purpose of that procedure seems fairly clear. Two years is a long absence. It is reasonable to expect that at least some employees would arrange alternate employment during that period, would move away, or would otherwise lose interest in returning. The company can avoid the need to maintain records on such employees, and also avoid searching for workers who have no further interest in returning, by requiring them to affirm their continued interest in the job. Mp 13.68 does not require the company to send notices to employees requesting them to declare their intentions, but it certainly permits the company to do so, and the rationale for that right is not unreasonable.

I suspect that the company did not do grievant any favors by sending her a certified letter. Certified letters often do not bring good news, especially to people who are unemployed and struggling to make ends meet. Despite grievant's testimony to the contrary, then, she may well have received, and ignored, notice of the attempted delivery from the post office. Nonetheless, the contract does not prevent the company from using that form of mail, and it was not unreasonable for the company to do so. The purpose, after all, is to determine whether a laid off worker has any continued interest in recall. Clearly, the company has an interest in determining whether laid off employees still reside at their last known address. In this case, the post office twice attempted delivery. Grievant was not present to receive it and did not claim the letter in response to the notice left by the post office. It was reasonable, then, for the company to assume that grievant had moved from that address. Since it had received no notification from her, it was also reasonable for the company to assume that she was no longer interested in employment and to invoke the provisions of mp 13.68.

As it happens, grievant still resides in Gary and has a continued interest in employment with Inland Steel. In my view, however, I have no authority to require the company to maintain her on a recall list. My sole responsibility -- and my only right -- is to interpret the contract. The contract allows the company to send notices to employees in response to which they "must give the company written notice" to avoid a break in service. As the contract requires, the company mailed the appropriate notice.

I cannot interpret the language to mean that employees must receive the letter in order to be subject to the provisions of mp 13.68. The contract does not require actual notice. It says only that the company must mail a notice, an act that serves the legitimate interest of determining whether employees still live at the addresses given to the company. That is, in the ordinary case, an employee who continues to reside at the address furnished to the company will receive the letter and, assuming he has an interest in continued employment, will respond. If the employee doesn't respond, the company is justified in believing either that the employee is no longer interested or that the employee has moved without informing the company of his new address. In either event, the company can reasonably remove the employee from the active roll, which is just what 13.68 allows.

In addition, requiring actual receipt would effectively nullify the provision entirely. Any employee who failed to send timely written notice to the company would simply allege that he never received the company's letter, thus avoiding the need to respond. Because it would be impossible for the company to prove that the employee actually received the letter -- at least absent the procedure the company tried to use in this case -- the result would be obvious: employees could easily circumvent the procedure negotiated by the parties.

I have read the opinion Armco opinion by Arbitrator Alexander, offered by the union. I think it is an excellent example of an arbitrator interpreting the facts quite generously in order to avoid a harsh result. At base, Alexander was able to protect the grievant in that case by finding that he actually had complied with the notification procedure set forth in the contract. But I cannot do that here. The facts are not in dispute. The company mailed the notice and grievant did not respond. Nor, as I have already explained, can I find sufficient ambiguity in the contract to decide that the parties intended that grievant actually receive the notice before 13.68 becomes operative.

I recognize that this decision produces a harsh result, especially in light of the fact that the parties amended the contract soon after the facts that gave rise to this case. I also understand that the company would incur no liability if I sustain the grievance. I cannot, however, second guess the company's decision that it should apply to grievant the contract in force at the time these facts arose. My sole responsibility is to interpret the contract and I can find no violation.

AWARD
The grievance is denied.
/s/ Terry A. Bethel
Terry A. Bethel
Bloomington, IN
August 2, 1990