Award No. 887
IN THE MATTER OF THE ARBITRATION BETWEEN
INLAND STEEL COMPANY
and
UNITED STEELWORKERS OF AMERICA
LOCAL UNION 1010
Arbitrator: Terry A. Bethel
April 24, 1994
OPINION AND AWARD
Introduction
This case concerns the company's decision to discipline grievants Charles Conn and Vance Worix by temporarily demoting them to labor for one week. The case was tried in the company's offices in East Chicago, Indiana on March 11, 1994. Pat Parker represented the company and Alexander Jacque presented the case on behalf of grievants and the union. Both grievants were present throughout the hearing and each testified in his own behalf. Both sides filed pre-hearing briefs and submitted the case on final argument.
Appearances
For the company:
P. Parker -- Senior Rep., Union Relations
W. Sammon -- Section Mgr., No. 2 BOF/CC
L. Peterson -- Caster Coordinator
R. Allen -- Human Resources Generalist
For the union:
A. Jacque -- Chrm., Grievance Committee
J. Robinson -- Staff Rep., USWA Dist. 31
M. Bochenek -- Griever
E. Harvey -- Griever, Steward
C. Conn -- Grievant
V. Worix -- Grievant
Cause for Discipline
This case raises two issues. First, the parties ask me to decide whether the company had cause to discipline the grievants for events which occurred on June 16, 1992. Second, the parties ask whether the company may temporarily demote employees as a disciplinary measure. At the beginning of the hearing, the parties indicated that I was to answer the second question, whether these grievants' actions warranted discipline or not.
The facts are not complicated, though some are in dispute. Both grievants occupy the position of caster operator 1 in the caster sequence at No. 2 BOF/CC. As such, they rotate through several assignments, including the position of ladle deck operator, which is where they were assigned on June 16, 1992. The responsibilities of that position were explained in detail at the hearing and need not be repeated at length here. Grievants' supervisor, Len Peterson, testified that he met with grievants at the beginning of their shift and, among other things, told them that B car needed rebuilt. Despite this instruction, grievants acknowledge that this was not extra work but, instead, was an ordinary part of their assignment.
Both grievants said that they left the meeting, obtained the required tools and equipment, and proceeded directly to rebuild B car. Neither grievant talked to, or for that matter, even saw, his relief. At approximately 3:30, more than an hour after they began work on B car, grievants were required to start a cast. Although there is some disagreement from one of the grievants, the evidence is compelling that grievants were not prepared. They had failed to run through the pre-cast check list and they had insufficient quantities of some materials on the ladle deck. More important, they were not prepared to use the lance pipe holder and lance pipe to deliver a shot of oxygen when a skull began to form in one of the molds. I credited Peterson's testimony that grievants first had to locate the lance pipe holder, which they had not done before beginning the cast, and that they had to insert a lance pipe before delivering the shot.
I believed grievants' testimony that it did not take them long to find the lance pipe holder and that they were able to install the pipe relatively quickly. But the testimony was that time is of extreme importance when a skull forms in the mold and I have no doubt that grievants' failure to prepare adequately cost them valuable seconds. No one could say whether the procedure would have worked had grievants been prepared, but they have little standing to raise that argument at this point. Their best chance was to be prepared to act immediately and the evidence demonstrated that they were not.

During the hearing, there was substantial testimony about whether grievants had a sufficient number of lance pipes on the deck. Their own testimony was that they had either three or four, when a minimum of 10 is ordinarily required. The grievants, however, protested that the standard procedure is to deliver only three shots to a strand, which they were able to do. It is true that the lack of pipe cost them the ability to deliver a shot to strand 2b, but that was irrelevant, they say, because the failure to break the skull on 2a meant that 2b had to be shut down anyway. I believed that testimony. This case, however, does not depend on whether grievants had sufficient lance pipes for the circumstance they faced. They were disciplined for not being prepared for the cast and the failure to secure the correct number of lance pipes is simply more evidence that they were not prepared, whether they could have used the pipes or not.

The grievants' primary defense is not that they were prepared, but that their lack of preparation was the fault of their supervisor. Thus, they claim that he told them to rebuild B car, which is the reason they failed to prepare. Moreover, they claim that he improperly led them to believe that the ladle deck was already prepared. This is not a compelling defense. I have no doubt that Peterson told them to rebuild B car. But it is not plausible to believe that he expected them to ignore their other responsibilities. Perhaps the grievants' story would be credible if rebuilding B car had been an extra assignment that they were not ordinarily expected to perform. There is no doubt, however, that rebuilding B car is an ordinarily part of their job. All Peterson did was tell them that it needed to be done. They could not reasonably believe that he expected them to neglect all of their other duties, especially one as important as preparing for a cast.

In sum, the evidence convinces me that grievants, in fact, failed to prepare adequately for the cast on June 16, 1992 and that their negligence was a contributing factor in a production loss that cost the company about $25,000. The company clearly had cause to discipline grievants. I now turn to the question of whether a temporary demotion is an available form of discipline.

Disciplinary Demotion

The union urges that a disciplinary demotion violates the rights of the grievants by denying them the opportunity to work in the occupation for which their seniority qualified them. The company, however, claims that the right to demote temporarily is included within its Article 3 right to "discipline . . . employees for cause." But the union reads the same language to limit management's rights. Thus, Article 3 provides that management can, among other things, "hire, recall, transfer, promote, demote, suspend for cause, discipline and discharge employees for cause," etc. The rights to suspend, discipline and discharge are all limited by the existence of cause, but the right to promote and demote are not. The union argues that the parties' failure to require cause for demotion indicates their agreement that demotion was not intended as a disciplinary sanction. Instead, the union claims, the power to demote is tied to an employee's ability.

The company also points to Article 13, Section 8a as evidence that the contract allows temporary disciplinary demotions. That section reads as follows:

Employees on leave of absence, employees who are temporarily unable to promote or inactive because of established bona fide illness, employees temporarily demoted for cause, disciplined with time off, or temporarily demoted to a lower job at their own request for good cause, shall, upon return, resume their former position in the sequence in accordance with the provisions of this agreement. (emphasis added)

The employer points to the underscored language not as a source of its right to demote as discipline, but merely as proof that the parties recognized that such action was possible. The right to demote, the company urges, is contained in Article 3. Article 13, section 8 deals with the right of employees to reclaim their sequential standing after having been removed from it for certain reasons, including disciplinary suspension and "demotion for cause." This section, the company urges, demonstrates that included in the company's right to discipline for cause is the right to temporarily demote.

The union attacks this interpretation of Article 13 by arguing that the use of the word "cause" in that section means something different from the way the word is used in Article 3. In support, the union notes that similar language is used in section Article 13, Section 8b:

Employees who, for good and valid reason, have or shall request permanent demotion . . . may later change their minds . . . and employees demoted for cause under Article 3, may later correct the cause for such action.

Subsection b goes on to say such employees may later be eligible for promotion, though not necessarily to their old standing relative to other employees. The union argues that even though section b notes that an employees can be demoted for cause, this word cannot mean the same thing in Article 13 as it means in Article 3. Article 13, section 8b says that the cause of the demotion may be corrected. It must be, then, the union says, that the "cause" contemplated in subsection b has something to do with an employee's ability.

Lack of ability, whether the result of physical problems or lack of effort, can sometimes be "corrected." The cause of a disciplinary problem, however, has already occurred and is, therefore, not subject to correction.
The union's argument is not persuasive. Obviously, Article 13, section 8 is not at issue in this arbitration and no interpretation of it could be authoritative. Nevertheless, it appears to establish a procedure for employees to reclaim sequential standing after having been moved out of the sequence for some reason. Subsection 8a deals with a temporary absence from the sequence and allows the displaced employee an absolute right to return. Subsection 8b lists permanent absences <FN 1> caused by an employee's own action and grants a more limited right to return to the sequence. Certainly, this article does not establish the right to be displaced from a sequence. On its face, however, it deals with absences that occur under other provisions of the agreement.
The plain language used in Article 13 recognizes a temporary demotion for cause. Despite the union's argument, subsection b hurts its case more than it helps it because subsection b expressly ties the use of the word cause to Article 3. Yet Article 3 uses the word "cause" only in one sense -- it recognizes management's right to suspend or discipline for cause. It is simply not reasonable to assume that the word "cause" is used differently in Articles 3 and 13 when the latter specifically references the former. Moreover, I am not persuaded by the union's contention that a demotion could not be for a disciplinary reason because the reason for the discipline cannot be corrected. In the first place, this contention is at odds with the union's typical argument in discipline and discharge cases that discipline is only corrective and never punitive. Equally important, it requires little imagination to envision an employee whose demotion results from an unwillingness -- as opposed to an inability -- to perform his job correctly. In that event, the cause for the demotion could be corrected and the employee once again made eligible for promotion, though Article 13, section 8b assesses a cost for the employee's intransigence.
I also cannot accept the union's argument that Article 3 fails to embrace temporary disciplinary demotions. That Article expressly includes the right to demote. Obviously, that right is not absolute but is limited by other provisions of the agreement. But Article 3 itself also gives the company the right to "suspend for cause" and to "discipline and discharge . . . for cause." Although it is common for employees to refer to suspensions as a "discipline" (in the hearing, for example, Mr. Jacque routinely called a three day suspension a "three days discipline") the words "suspend" and "discipline" are not synonymous. Indeed, the use of both words in Article 3 is itself an indication that the company's right to discipline is not necessarily restricted to suspensions. "Discipline" is a general term that might include more than merely time off without pay.
The question remains whether the word "discipline" encompasses a temporary demotion. I find nothing in the agreement which restricts the company's use of that device.
Although "discipline" is a general term, it does not give the company absolute freedom to choose the form that discipline might take. The company could not flog employees, for example. Its choice of sanction must be reasonable. But the union has not convinced me that a temporary demotion is unreasonable. Contrary to the union's contention, a temporary demotion does not interfere with an employee's seniority rights. The grievants' displacement from their sequence was not permanent. It had no lasting effect on the rights seniority secures for them. Moreover, the union cannot argue that employees cannot be displaced from their sequence temporarily for disciplinary reasons since that is exactly what happens when employees are suspended. Finally, grievants' displacement to labor did not adversely affect the seniority rights of any other employees since no one was laid off to make room for them and neither grievant filled a vacancy. Instead, the company simply carried extra employees in the labor classification that week.
The union points to several steel industry awards as support for its claim that a disciplinary suspension is improper. None of the cases is directly in point. In Republic Steel Corp. Docket No. 4788, Arbitrator Mittenthal dealt with a permanent demotion that, he said, "was not intended as a disciplinary measure." Rather, the employee had been demoted because his poor work performance convinced the employer that he was unable to perform the job. Arbitrator Mittenthal drew a distinction between an employee who could not perform -- and therefore could be demoted -- and an employee whose poor performance was caused by carelessness or negligence. The latter employee should be subjected to corrective discipline, not permanent demotion. But Mittenthal did not consider whether a temporary demotion could be used as corrective discipline.
Similarly, Mittenthal did not consider the issue in his later opinion in Youngstown Sheet and Tube, Decision No. RM-232, where he used some of the same language he had employed in the Republic case. As in the earlier case, the company had demoted an employee permanently because it thought his performance indicated an inability to perform as a hot metal craneman. Mittenthal set aside the demotion,

noting again that the proper response for the employee's action was corrective discipline. He did not consider whether that discipline could include a temporary demotion. Finally, the same issues are raised in Arbitrator McDaniel's decision in Alan Wood Steel Co., Case No. AWS-258. Although not a case of permanent demotion, the company had permanently denied the grievant an opportunity to fill short term vacancies as a hot metal craneman. Thus, the case considered whether a company can ban an employee permanently from certain work because of performance deficiencies that do not necessarily indicate inability.

A brief review of Elkouri and Elkouri, How Arbitration Works, indicates, not surprisingly, that arbitrators who have considered the precise matter at issue here have split. Nevertheless, I am inclined to agree with the views expressed by Arbitrator O'Shea in Libby McNeil and Libby of Canada, 74 LA 991 (1980) (quoted in Elkouri). If an employer has the right to suspend an employee for cause and thereby affect his earnings, it also has the right to temporarily demote him for cause. I think that is particularly true when, as here, another provision of the agreement (Article 13, section 8) recognizes that employees can be temporarily demoted for cause.

If the employer is to use this form of discipline, there are, no doubt, various issues that will arise concerning it. Although the employer may use a temporary demotion, it may not use it to subject the employees to humiliation, just as it cannot use suspension or other disciplinary measures for that purpose. There was no testimony here, however, that that was the effect of the employer's action. For example, there was no testimony that these grievants were required to take direction from and perform services for employees who ordinarily worked under them. Nor was there testimony that they work they were required to perform was otherwise unusual or demeaning.

There are other issues that may come up as well. Each will have to be resolved on a factual record that sharpens the issue. For example, in this case, the union complains that it was unable to determine whether the employer followed progressive discipline when it demoted grievants because it did not know how to assess the penalty. The evidence, however, indicated that grievants lost about the equivalent of a day's pay. I cannot say why the employer thought it was more beneficial to demote grievants and pay them to do work it presumably did not need done than it would have been to simply suspend them for a day. That, however, is not a decision I am entitled to make. Given its result, the extent of the penalty assessed does not seem out of line with what may have been imposed as a suspension.

I conclude that the employer had cause to discipline grievants, that a temporary demotion is an available form of discipline, and that the temporary demotion in this case was reasonable and appropriate.

AWARD

The grievance is denied.

/s/ Terry A. Bethel

Terry A. Bethel

April 24, 1994

<FN 1> Or, at least, absences that do not automatically terminate after a fixed period.