

Award No. 906
IN THE MATTER OF THE ARBITRATION BETWEEN
INLAND STEEL COMPANY

and

UNITED STEEL WORKERS OF AMERICA
LOCAL UNION 1010

Arbitrator: Terry A. Bethel

September 5, 1995

OPINION AND AWARD

Introduction

This case concerns the 30 day suspension of grievant Bob Lillie for violation of company rule 132a:

The following offenses are among those which may be cause for discipline up to and including discharge:

a. Fighting with or attempting bodily injury to another employee ... on company property.

The hearing was held in the company's offices on August 18, 1995. Pat Parker represented the company and Alexander Jacque presented the case for grievant and the union. Grievant was present throughout the hearing and testified in his own behalf. The parties submitted the case on final argument.

Appearances

For the company:

P. Parker -- Sen. Rep., Union Relations

P. Berklich -- Proj. Rep., Union Relations

S. Miles -- Section Mgr., Pickle Tandem

M. Collins -- Roller, 80" Tandem Mill

G. DeArmond -- HR Generalist

For the union:

A. Jacque -- Chrm. Grievance Comm.

L. Aguilar -- Vice Chrm. Grievance Comm.

R. Schneider -- Griever Area 28

L. Young -- Witness

B. Lillie -- Grievant

Background

This case concerns the 30 day suspension of grievant for fighting with a co-worker on Friday, November 18, 1994. The co-worker, Mike Collins, testified that he had come in eight hours early to work a double shift. At about 1:30 p.m., the turn coordinator asked Collins if he would also work a double shift on Sunday. Grievant agreed to do so. About an hour later, the turn supervisor called Collins on the PA and asked if he was willing to give up one of his doubles. Collins told him to wait until after his relief showed up, promising that he would then go to the supervisor's office. Not long after that, someone else picked up the PA and said the words "suck ass." Collins asked who had said it, but got no reply other than a comment from the supervisor that the PA was on the wrong channel.

Collins went to the office around 3:00. Grievant was waiting for him at the door and immediately asked which double Collins planned to give up. Collins said none of them. He then spoke to his supervisor, who also asked which double he wanted to give up. At that point, Collins turned to grievant and accused him of coming in early to suck up to the foreman and line up overtime for himself. Collins and grievant exchanged additional words and then Collins left the office to work his second turn.

Grievant said that he came in early to check the schedule and noticed that someone had taken a turn from him on Sunday and given it to Collins. Grievant said he asked about the turn, but was assured that he would get paid for it. He then saw the turn supervisor call Collins on the PA and ask about giving up a turn. Later, another employee named Charron picked up the PA and said "suck ass." He said when Collins got to the office, he started "carrying on", telling grievant that he sucked up to the "white man" for overtime, and calling him names, including "ass kisser, and Uncle Tom" (both Collins and grievant are black). Grievant said the supervisor, Rick Silva, laughed at the exchange. Grievant said that he was "hurt and shocked." He said he did not understand why Collins was so angry, so he went to Collins' work station in the pulpit to talk to him and to try and resolve any problems.

Collins said that when grievant approached him in the pulpit, they had a heated exchange, with Collins repeating his claim that grievant "sucked up" to try and get more overtime. Collins said that grievant was slightly behind him and to his left and that when he (Collins) turned to start the mill, grievant hit him in the head, knocking him over the control console. Collins said he was stunned but that he managed to get hold

of grievant and they started struggling. After a minute or so, Collins managed to gain control of grievant and began to choke him. He said he stopped when he realized what he was doing. He claimed, however, that he did what was necessary to "neutralize the situation."

Grievant does not deny hitting Collins. In fact, he said he hit Collins more than once. Grievant said he went to the pulpit and told Collins he owed grievant an apology. He said Collins began calling him names again. Grievant told him to stop and when Collins did not, grievant hit him three times. Grievant said the two of them struggled and that Collins wrestled him to the ground, got on top of him and said "I got you now." He said Collins tried to hit him but did not, though he admits that he said nothing about Collins trying to hit him prior to the arbitration hearing. Collins did choke him, however. Grievant said it took all of his strength to "snatch" his head away and that he almost passed out.

Neither employee reported the incident to the supervisor. Collins said his initial reaction was to let it go. However, he said he began to experience double vision two days later and, when he did not improve, he called Sue Miles, the section manager. Miles sent Collins to the clinic which, in turn, sent him to the hospital for a CAT scan and to the optometrist for an eye exam. Collins denied that his decision to report the incident to Miles was influenced by another employee's threat to report it if neither Collins nor grievant did so.

Miles testified that she was not aware of the incident until Collins called her. She then sent Collins to the clinic and had grievant and Collins escorted out of the plant by a security officer. Subsequently, Miles held an investigation, which grievant attended. Initially, grievant denied hitting Collins. Based on her investigation, Miles suspended grievant preliminary to discharge. At a later suspension hearing, grievant changed his story and admitted hitting Collins. Patrick Berklich, a union relations representative, testified that he was involved in the decision to reinstate grievant with 30 days suspension. He said he thought discharge was inappropriate because grievant may have been provoked by Collins. Miles, however, testified that she thought the 30 days suspension was inadequate and that grievant should have been discharged.

Grievant said he changed his story and admitted the fight after speaking with his wife and his pastor. Although he said he was afraid of the consequences, he said his conscience bothered him, so he decided he should tell the truth.

The union also called Leon Young, a co-worker of grievant and Collins, who witnessed the verbal confrontation between them in the office. He said that Collins entered the office and started berating grievant. Young said that at first, he thought Collins was joking but subsequently realized that Collins was angry. Young said grievant did not say much because Collins dominated the conversation.

The union does not condone fighting and it agrees with the company's contention that such actions cannot be tolerated. However, the union questions the seriousness of the sanction and it put on Luis Aquilar, vice chairman of the grievance committee, who testified that he has never before seen a 30 day suspension for fighting. The union also claims that it was unfair to punish only one of the participants who was involved in the fight. This does not necessarily mean that the union thinks the company should punish Collins. Rather, the union points to the lack of action against Collins as evidence that the company's actions against grievant were unreasonable. Finally, the union asserts that supervisor Rick Silva's failure to respond let the situation get out of hand.

The company submitted industry and Inland awards that upheld discharge for fighting. If discharge is an appropriate sanction, the company asserts, then it follows that a 30 day suspension is not unreasonable. Moreover, the company defends taking action only against grievant by pointing out that he was the aggressor in the fight.

Discussion

No one questions the seriousness of fighting in the work place and, though it asserts that the penalty in this case is deficient, even the union acknowledges that the company has the right to take disciplinary action for a violation of its rule. I understand the union's concern about the company's decision to discipline only grievant and to let Collins' actions go without sanction. It is true that Collins' verbal attack on grievant was the principal provocation for grievant's actions, a fact the company recognized in its decision to reinstate grievant. There is, however, no issue before me about whether the company had cause to discipline Collins for his verbal assault on grievant. Moreover, despite the union's earnest argument to the contrary, I cannot find that the two are equally implicated or that the company's failure to take action against Collins undermines its case against grievant.

Whatever Collins may have said, he was content to speak his piece and return to his job. He did not offer to hit grievant or to continue their verbal sparring. Rather, he returned to the pulpit and went to work. It was

grievant who could not leave well enough alone. Perhaps he went to see Collins because, as he claimed, he felt wounded and wanted an apology. If that was the case, he should have realized that Collins was too angry to reason with at that time. It seems just as likely that grievant went to the pulpit because he, too, was angry and that after getting there, he reignited, Collins' anger.

During the hearing, the parties disputed whether grievant had a right to enter the pulpit, with the union pointing out that the company keeps a refrigerator and microwave there for the use of employees, including grievant. But that dispute is inapposite. Grievant did not go to the pulpit to use appliances. Rather, he went there to continue the confrontation between himself and Collins. I do not condone what Collins said to him. But the point is that, had grievant returned to his job and given tempers a chance to cool, there probably would have been no fight. Instead, he reengaged Collins in a confrontation that led to grievant crossing the line and throwing a punch followed, by his own admission, by two other punches.

It is true that Collins responded by grabbing grievant and choking him. Again, there is no issue before me about whether Collins should have been disciplined for that action. I cannot say, however, that the company's failure to discipline Collins for his involvement in the fight prejudices its discipline against grievant. Collins had been blindsided and knocked over the console, only to be hit twice more by grievant. His response was to neutralize the situation by grabbing grievant. I did not believe grievant's claim that Collins tried to hit him, though it is not clear to me that such an instinctive reaction would have made much difference. Importantly, Collins said that he struggled with grievant for control and, when Collins realized he was choking grievant he stopped because it "wasn't right." Grievant cannot defend himself by complaining about the response from someone he struck without warning.

Nor can I accept the union's argument that the discipline should be set aside because of the supervisor's failure to intercede. It is true that supervisor Silva overheard the first part of the verbal confrontation in his office. But even union witness Young testified that he thought Collins was joking at first. This seems to have been the case with Silva as well, since there was testimony that Silva was laughing throughout the confrontation. Obviously, hindsight suggests that, had Silva recognized the seriousness of the situation, he might have intervened and kept the two employees apart. But it is always easier to know what to do after the fact. Silva, after all, saw Collins leave the office, presumably to return to work. How was he to know that grievant would follow him and continue the argument?

The union urges that the typical discipline invoked for a first offense in a case like this one is a three or five day suspension. It asserts that a thirty day suspension is too harsh for grievant, a long service employee with a good work record. I believed Mr. Jacques claim that other employees have received lesser punishment. But, as the company advocate points out, it is equally true that other cases have resulted in discharge for fighting, both at Inland and other industry locations. This is not a case, then, where there is a consistent record of standard discipline.

I agree with Mr. Jacques that each case must be viewed on its own merits. But it is not easy to find mitigating factors in this case. Although Collins used harsh language, he walked away from the initial confrontation. It was grievant who kept the fires burning and it was grievant who struck the only blows. I need not speculate about whether grievant's actions would have been proper cause for discharge. Although grievant is to be commended for his willingness to tell the truth at his suspension hearing, the fact remains that his action was foolish and potentially dangerous. No matter how angry he may have been, grievant was the aggressor and his actions warrant discipline. Given that other employees have been discharged for similar conduct, I cannot say that the company's response was inappropriate.

AWARD

The grievance is denied.

/s/ Terry A. Bethel

Terry A. Bethel

September 5, 1995