Award No. 907
In the Matter of Arbitration Between:
Inland Steel Company
and
United Steelworkers of America
Local Union No. 1010
Gr. No. 13-V-29
Appeal No. 1518
Arbitrator: Jeanne M. Vonhof
October 27, 1995
REGULAR ARBITRATION
INTRODUCTION
The Undersigned Arbitrator was appointed according to the rules of the applicable collective bargaining agreement. This hearing was held on Friday, September 8, 1995 at the Company's offices in East Chicago, Indiana.
APPEARANCES
UNION
Advocate for the Union:
A. Jacque, Chairman, Grievance Committee
Witness:
V. Kelly, Grievant
COMPANY
Advocate for the Company:
B. A. Smith, Arbitration Coordinator, Union Relations
N. George, Section Manager, 100" Plate Mill
BACKGROUND:
The Grievant had been employed by the Company for 28
(twenty-eight) years at the time of his discharge for absenteeism. At the time of his discharge he worked in the 100" plate mill as a First Wrencher.
According to the evidence, the Grievant's disciplinary record over the past five years is as follows:

| DATE | INFRACTION | ACTION |
|---|---|---|
| 03/22/90 | Absenteeism | Reprimand |
| 07/20/90 | Absenteeism | Discipline - 1 day |
| 12/10/90 | Absenteeism | Discipline - 2 days |
| 09/21/92 | Absenteeism | Discipline - 3 days |
| 07/07/93 | Absenteeism | Record Review |
| 11/08/94 | FRO | Discipline - 1 day |
| 11/08/94 | Absenteeism | Discipline - 3 days |
| 12/08/94 | Abseneeism/FRO | Record Review |
| 01/05/95 | FRO | Discipline - 2 days |

The Company presented evidence concerning the nature of the Grievant's absences which led to discipline. They include tardies, early quits, many personal days, many full-day absences attributable to transportation problems, and many failures to report off. The Section Manager testified that many of the Grievant's absences immediately followed or preceded scheduled days off.
The Section Manager testified about the particular problems which occurred when the Grievant was absent, noting that the Grievant works as a member of a crew and when he is absent from work he must be replaced with another employee on his turn. The Section Manager also testified that the 100" plate mill is a marginal operation for the Company, and therefore there is no standing labor pool ready to substitute for employees who are absent. According to the Section Manager the Grievant was a very good employee when he was at work.
After his last record review, on December 8, 1994, the Grievant had the following record:

| | |
|---|---|
| Tardy | 1/23/95 |
| Failure to Report Off | 1/28/95 through 2/4/95 |
| Failure to Work as Scheduled | 2/5/95 through 3/20/95 |

The latter two absences were due to the Grievant's incarceration, which began January 28, 1995. On March 7, 1995 the Grievant was suspended preliminary to discharge for his failure to work as scheduled, his failure to report off and his overall poor work record.

While the Grievant was in jail, the Company assisted him, at the Union's request, by permitting him to receive cash in lieu of time off for some future weeks of vacation, even though this option has been dropped from the collective bargaining agreement. The Grievant used the money in order to post bail and secure his release from jail.

The Grievant was released from jail and a suspension hearing was held on March 14, 1995. By letter dated March 20, 1995, the Grievant was notified of his discharge.

The Grievant continued to work under the provisions of the Agreement's Justice and Dignity clause after his discharge, because the Union grieved the discharge. From the date of his discharge until the third step hearing the Grievant had the following attendance record:

| Infraction | Date |
|---|---|
| Failure to Report Off | 04/24-4/25/95 |
| Sick | 4/26-4/27/95 |
| Failure to Report Off | 5/1/95 |
| Early Quit | 5/2/95 |
| Tardy | 5/4/95 |
| Early Quit | 6/3/95 |

As a result of these absences the Grievant lost the protection of the Justice and Dignity provisions of the Agreement. The Grievant presented testimony about these absences at the third step grievance hearing and at the arbitration hearing.

According to the records the Grievant had been asked often whether he had alcohol or drug problems at the times when he was disciplined. He had denied having any problems until November 8, 1994, when he first admitted he might have a problem, as a three (3) day discipline was being administered for poor attendance.

The Grievant testified that he went to see the Union Committee for substance abuse problems after the November 8th meeting. He also testified that he went to see Mr. John Bean, Director of the Company's substance abuse program, and that Mr. Bean told him he should complete the Union's program first before entering the Company's program. The Grievant testified that he talked to Mr. Bean on two subsequent occasions and was told the same thing, that he should complete the Union's program first.

The Grievant also testified that he has enjoyed being in the Union's program and that he has learned a lot from it. He testified that he knows that he can no longer drink alcohol. After stating that he had a non-alcoholic beer recently, he testified that he last had an alcoholic drink two months prior to the arbitration hearing, and stated that it was a mistake for him to do so at that time.

The Grievant testified that his Section Manager made him aware when he was working that if he continued to miss work he would lose the benefits of his twenty-eight (28) years in the mill. He testified that he now believes that he can return to the mill and maintain a regular attendance record. The Parties were unable to settle the dispute and it proceeded to arbitration.

THE COMPANY'S POSITION

The Company contends that it had sufficient cause to discharge the Grievant. The Company argues that all that is required to come to a decision in this case is to look at the Grievant's record over the last five years. The Company notes the sheer volume of absences, and the variety of kinds of absence.

The Company also argues that the Grievant has moved up the ladder of progressive discipline and there has been no real showing of improvement in his attendance. The last absences are the straw that broke the camel's back, the Company notes, but there was a long history of absences before that time. Although the Grievant has presented some testimony regarding the last absences, the Company argues, there has been no testimony regarding the absences in 1990, 1991, 1992 and 1993, and the long record of absences during those years stands unchallenged.

The Company argues that there comes a time, regardless of the employee's years of service or the reasons for his absences, when the Company can no longer afford to carry him on the payroll. The Company contends that in making this decision it has given consideration to the Grievant's length of service, and his skill and knowledge, as demonstrated by the Company's patience over the past five years.

But when an employee continually violates the acceptable standards of attendance, the Company argues, long service does not serve as continuing immunity from discharge. According to the Company, the Grievant showed a disregard for his long tenure, based upon his unacceptable pattern of absenteeism so close to the end of his thirty-year mark.

The Company argues that the Section Manager did all he could for the Grievant, and considered his length of service by giving him the benefit of the doubt on many occasions. The Company cites several arbitration cases between the Parties in which arbitrators have held that long service does not provide immunity against discharge when there is a flagrant violation or a repeated pattern of violations.

The Company argues that the Grievant was made aware of the consequences of his conduct, and tried to help him repeatedly. The Grievant's record demonstrates a lax, carefree attitude towards his employment responsibilities, the Company asserts, and, as an integral part of the plate mill crew, his absences hamper the department's ability to function.

In addition the Company argues that the pattern of the Grievant's absences show that he was purposely calling off to extend time scheduled off. The Company argues further that many of the Grievant's absences were of a type which were under his control. The pattern continued even after the Grievant was discharged.

As for the Grievant's claim of alcoholism, the Company asserts that strong proof is required if an employee is to obtain mitigation for alcoholism, and the Grievant has not proven that he is more than a recreational user. No medical evidence was introduced to establish his addiction, the Company notes.

The Company also contends that an employee has an affirmative obligation to try to deal with his problem, and the Grievant has not done so in this case. The Company also disputes the Grievant's contentions regarding his entrance into its substance abuse program because Mr. Bean's procedure is to refer employees to his clinic counseling program and the evidence indicates that the Grievant here never made it that far. In addition, the Company argues, he has not demonstrated sufficient rehabilitation in this case.

The Company contends that there was proper cause for the discharge, and no basis for mitigation, and therefore the grievance should be denied.

THE UNION'S POSITION

The Union contends first that the discharge should be overturned because the Grievant's record is not as bad as that of other employees who have been reinstated. The Grievant is only two years away from a thirty-year pension, and, according to the Union, would lose everything for which he has worked over twenty-eight (28) years, and therefore is due more consideration than a shorter-term employee. This is the first and only time the Grievant had been suspended preliminary to discharge, the Union notes.

The Union concedes that the Grievant's record may have provided grounds for some discipline, but not for discharge. This is especially true because of the Grievant's very long-term service, according to the Union.

The Union presented a case decided between the Parties in which the Union asserts that the grievant had a worse record than the Grievant here, but was given another chance on the basis of his rehabilitation. The grievant in that case was given an opportunity to show that his transformation was real, and the Union argues that the Grievant here should be given the same opportunity. Although there is no guarantee that a person with an alcohol problem will not have a relapse, the Union argues that the Grievant should be given a chance.

The Grievant finally has admitted that he has a problem, even though he denied it for years. The Union notes that in other alcoholism cases it has been difficult for employees to admit that they have a problem, and even when they do admit it, there is often a relapse.

The Union notes that the Company called the Union to arrange the Grievant's release from jail by cashing in his vacation. The Union asks why the Company would arrange for the Grievant to be brought back, just to discharge him.

The Union argues that the case relied upon by the Company involved an employee with only thirteen (13) years' service. According to the Union there might have been a different outcome in that case if the grievant there had had twenty-eight (28) years' tenure.

For all of the above reasons the Union requests that the Grievant be reinstated.

OPINION

This case involves the discharge of a long-term employee for absenteeism. The Company has documented many instances of the Grievant's absenteeism over the past five years. As the Company noted, the Grievant's record encompasses a variety of types of absences. Instances of tardiness and early quits, personal days, days off due to transportation problems and many failures to report off (FRO's) are among the most common.

Despite the variety in the types of absences, nearly all of them are absences over which an employee normally has some control. The Grievant had a great many FRO'S, which are particularly difficult for the Company to deal with, as I have commented in other cases between these Parties.

The Company presented testimony that the Grievant's absences often immediately preceded or followed a scheduled day off. This testimony was not refuted, and lends support to the view that the Grievant's absences resulted from his not taking his employment responsibilities seriously.
The evidence also shows that the Grievant was provided the benefits of progressive discipline and counseling. According to the record the Grievant in the past five years received a written reprimand, three one-day disciplines (suspensions), two two-day disciplines, and two three-day disciplines. On two occasions, once in 1993 and once in late 1994, he was brought in for a record review, at which time he was warned that if he continued his conduct he could be terminated.
All of these disciplinary actions were related to absenteeism and FRO's. There was no lasting improvement in the Grievant's record after any of these measures.
The Grievant testified that Mr. George, the Manager, made him realize that he could lose his job, and thus his thirty-year pension, if he did not change his conduct. Mr. George testified convincingly that he also counseled the Grievant "off the record," i.e. outside procedure, that he was risking his job by excessive absenteeism.
There is also evidence that the Company did not administer discipline to the Grievant for absenteeism in a rigid fashion, without any consideration for the reasons for his absences. In particular, the Grievant's Section Manager appeared to take a compassionate and supportive attitude towards the Grievant. However, there comes a time when the Employer has a right to terminate an employee who either cannot or will not come to work regularly and on time.
In defense of the Grievant the Union offers his alcoholism, his long service, the testimony that he was a very good employee when he was at work, and the argument that his work record was not as bad as other employees who have been brought back after a suspension or discharge.
In regards to his alcoholism, the Company suggests that the Grievant may not even be an alcoholic, and that a claim of alcoholism was raised at the eleventh hour in a last-bid attempt to save his job. I do not believe, as the Company suggests, that an employee needs to provide medical documentation of alcoholism for most purposes in the grievance and arbitration procedure.
Certain aspects of the Grievant's attendance record suggest that he may have been suffering from alcoholism, especially the high number of FRO's and unexplained personal days, and the absences which extended scheduled off periods. But some employees with this same pattern of absences are not held in the grip of substance abuse.
There was no direct evidence, other than the Grievant's testimony, that he was ever treated for alcoholism. He brought in no papers indicating that he had been hospitalized for detoxification or that he attended Alcoholics Anonymous or other alcoholics' group meetings, as is often done in these cases. No one testified that he attended meetings regularly.
Even if I were to accept the Grievant's word that he is an alcoholic, the Company would then be entitled to strong assurance that he is sufficiently rehabilitated to resume his job obligations responsibly. The lack of any attendance sheets or testimony from anyone else that he has attended any alcoholism meetings works against the Grievant on this point.
The Grievant testified that Mr. John Bean, director of the Company's substance abuse program, told him on three (3) separate occasions that he should complete the Union's alcoholism program before entering the Company's program. The Grievant acknowledges that the Company repeatedly asked him whether he had a substance abuse problem when he was disciplined. When he stated that he did have a problem, the evidence indicates, he was told to go see Mr. Bean. Although Mr. Bean did not testify in this case, it does not seem likely that he would have turned the Grievant away at this point, when the Company had been offering help for some time. Nor was there any evidence of other employees being turned away from the Company's program, in order to complete the Union's program first.
Other aspects of the Grievant's testimony do not quite ring true either. The Grievant was asked when the last time he had a drink was and he responded that he had drunk a beer the weekend before the arbitration hearing. When asked further about it, he stated that it was a non-alcoholic beer. This sounds like backpedaling: it is not clear why he would have mentioned the beer at all in response to the Company's question about a "drink," if it were only a non-alcoholic beer. In addition, at the arbitration hearing the Grievant gave different reasons for some of his absences than he gave at the third step hearing.
The Grievant's absenteeism record after he admitted being an alcoholic and began getting help, according to his testimony, does not show much evidence of rehabilitation. In the period after the Grievant says that he began treatment he had a record review related to absenteeism, a two-day discipline for an FRO, another tardy and a two-month absence for incarceration.

The Union suggests that the disease of alcoholism makes it more difficult for an employee to exercise control over all absences, and that some backsliding is inevitable. I have considered this argument, and find, however, that there was still no real attendance improvement even six (6) months after he says he began rehabilitation. <FN 1>

The reasons given by the Grievant for his attendance problems suggest that he did not take the situation too seriously. He stated, for example, that his "early quits" resulted from just punching the time clock too early when he was waiting to leave. <FN 2> His failure to contact the Company for a week after his incarceration or for several days after he was hospitalized in April also shows a lack of concern about his job.

In this case there is not convincing evidence that if the Grievant's attendance problems were caused by alcoholism, he has undertaken the rigorous steps necessary to address the problem. In the cases cited by the Union in support of their position the grievants showed a much stronger commitment to improvement and much more success in rehabilitation than the Grievant in this case has demonstrated.

The Company has legitimate concerns regarding efficiency and safety, and the Company has the right to a reasonable assurance that the Grievant is able and willing to meet his responsibilities. The Company can't make steel if the employees are not there, and the Grievant has not been there on too many days.

The Union argues that the Grievant must be given an opportunity to show that he can act responsibly towards his job. But the Grievant has been given opportunities to do so, both before and after he stated he was an alcoholic and was referred for treatment. The Grievant has not lived up to his responsibilities, despite clear, strong warnings that he would lose his job if he continued down the same path, and offers of help. Under these circumstances I cannot say that there is a lack of just cause in this case because the Grievant was not given another chance in the form of a Last Chance Agreement or some other form.

The Union questions why the Company would have helped the Grievant obtain his release from jail, only to immediately discharge him. However, the Company's decision to allow the Grievant to cash in his vacation does not mean that the Company did not have just cause to discharge him based upon his excessive absenteeism.

There also is no evidence that the Grievant was treated in a discriminatory fashion. There was no evidence presented of other employees with records similar to the Grievant's who were treated differently.

The Grievant's long service to the Company is a constant consideration in this case. No one involved in this process can feel good about seeing an employee two years short of retirement lose his job and some of his pension benefits.

However, there is evidence to support the Company's assertion that it took into consideration his long service in the way it treated the Grievant. Unfortunately, it appears that the Grievant did not consider his twenty-eight years seriously enough. At one point he testified that he thought he would not or could not be discharged at this point, given his long tenure. Even very long service to the Company does not act as an absolute shield against discharge, when an employee has a lackadaisical attitude towards job attendance. If there were solid evidence of a change in that attitude here, the Grievant would have a better chance of prevailing.

To reinstate this employee would require me to overlook too much -- a poor record over the past five years, clear warnings given, missed opportunities to improve and no real evidence that the Grievant has rehabilitated himself. On the basis of this evidence, there are not good grounds for overturning the discharge.

AWARD

The grievance is denied.

/s/ Jeanne M. Vonhof

Jeanne M. Vonhof

Acting Under Umpire Terry A. Bethel

Decided this 27th day of October, 1995.

<FN 1> Part of this period encompasses time after his discharge. Both Parties here argued about the effect of the Grievant's post-discharge conduct in this case. I have considered this evidence in terms of the Grievant's rehabilitation claim. There is enough evidence, in regard to the Grievant's conduct before his discharge, to justify the termination.

<FN 2> It is not clear how this behavior would have been related to alcoholism, in any case.