Award No. 938
In the Matter of Arbitration Between
Inland Steel Company
and
United Steelworkers of America,
Local No. 1010.
Grievance No. 23-V-29
Appeal No. 1549
Arbitrator: Jeanne M. Vonhof
April 14, 1998
REGULAR ARBITRATION
INTRODUCTION
The Undersigned Arbitrator was appointed according to the rules of the applicable collective bargaining agreement. This hearing was held on February 27, 1998 at the Company's offices in East Chicago, Indiana.
APPEARANCES
UNION
Advocate for the Union:
A. Jacque, Chairman, Grievance Committee
Witnesses:
D. Reed, Griever
A. Williams, Grievant
J. Cadwalader, Members' Assistance Committee, Local 1010
Also Present:
L. Aguilar, Vice Chairman, Grievance Committee
J. Gutierrez
COMPANY
Advocate for the Company:
P. Parker, Section Manager, Arbitration and Advocacy
Witnesses:
A. Williams, Section Manager, T/M, 5 & 6 Anneals
J. Bean, Coordinator, EAP Program
Also Present:
R. Hughes, Contract Administration Resource, Union Relations
BACKGROUND:
The Grievant was discharged, via letter dated April 4, 1996, for failing to report off on April 3, 1996 and for failing to report to work as scheduled. At the time of his discharge the Grievant was employed as a Laborer at the No. 3 Cold Strip Mill, after having been laid off from the coke plant when it was shut down in 1993. He had over twenty-two (22) years' service at the time of his discharge.
The Grievant's disciplinary record for the five years preceding his discharge is as follows:

Date	Infraction	Action
07/03/91	Absenteeism	Code 8 - Final Warning
07/09/92	Absenteeism	Code 8 - Final Warning
09/11/92	Negligence	Warning 3 Day Discipline
6/27/95	Absenteeism	Code 8 - Final Warning
08/10/95	Failure to Report Off	Reprimand Letter
10/09/95	Failure to Report Off	Discipline- 1 Day
10/26/95	Failure to Report Off	Discipline - 2 Days
12/12/95	Absenteeism	Reprimand Letter
03/05/96	Failure to Report Off	Discipline - 3 Days
03/19/96	Failure to Report Off	Record Review
04/10/96	Leaving Work Place (132-n)	Reprimand Letter<FN 1>

Mr. A. Williams, Section Manager, (no relation to the Grievant) testified that the Grievant was an excellent employee when he did attend work. He testified that because of the Grievant's absences, however, Management had had to move him to a janitorial job, rather than steam cleaning, because of his unreliability. In addition, Mr. Williams testified that Management had to move him off of certain janitorial

jobs as well, such as cleaning bathrooms, because employees would complain if they were not cleaned, and if the Grievant did not show up to work his position would not be filled.
The Section Manager testified about the Grievant's disciplines for absences and FRO's. He testified that he did not know whether the Grievant usually called in on days when he had FRO's, as the Grievant claimed, because the Department does not keep records of an employee calling in after the shift has begun, since that is still an FRO. He testified that at the Record Review on March 19, 1996 he made clear to the Grievant that his job was at risk.
After the Grievant's suspension preliminary to discharge, he continued to work under the Justice and Dignity clause of the Agreement. He missed several more days of work while working under the Justice and Dignity Clause.<FN 2> He testified that one of the absences after he was suspended occurred because he was present at a restaurant where his brother got involved in a fight; the Grievant testified that he was taken to jail along with his brother, and was not permitted to make a telephone call while in jail. On another one of these post-discharge occasions he testified that he believed he got an FRO due to the fact that his wife had stolen his car during this period.
The Grievant testified that his attendance problems during 1995-1996 were due to marital difficulties and an alcohol and drug problem. He testified there was a lot of turmoil in his marriage at that time, due in part to his wife's drug dependence. He testified that he has now been separated from his wife for a year, and has no more marital problems.
The Grievant also testified that he has put his drug and alcohol problems behind him. He stated that he first began having problems in 1996, but then acknowledged that he had received hospital treatment for alcohol or drug problems in 1987 and 1992. He testified that he did participate in the Company's drug abuse program at one time, and although he wasn't exactly dismissed from the program, he did have a difficult time with transportation in order to attend meetings. He also acknowledged that, during disciplinary interviews in 1992 and 1995, he did alternately admit and then deny that he was having problems with alcohol or drugs.
The Grievant testified that after he was discharged he went south to Mississippi to help look after his grandfather. He admitted that he did drink some alcohol there, but stated that he did not use cocaine or other drugs during this period.
He also testified that he returned to the area in December, 1997 and went into rehabilitation. Mr. J. Cadwalader, of the Union Assistance Committee, testified that he began working with the Grievant at this time. He testified that he believed that the Grievant has not had a drink since getting involved with the Union Committee, and has attended 4, 5, or 6 meetings per week of Alcoholics Anonymous or some other substance abuse treatment group. He testified that he believed the Grievant has a high potential for a successful recovery, and is a good candidate for a Last Chance Agreement with the Company. The Grievant testified that he was willing to be tested for drugs or alcohol on the day of the hearing, and would test clean.
THE COMPANY'S POSITION:
The Company argues that the Grievant should not be reinstated. The Company notes that the Grievant had a string of FRO's prior to his suspension, and several FRO's even after his suspension.
As for the Grievant's post-discharge rehabilitation, the Company contends that the Grievant has a history of admitting his problem, then denying it to the Company. The Company contends that the Grievant was dropped from the Company's rehabilitation program. In addition, the Company argues that the Grievant cannot blame his substance abuse problems on his marital difficulties, because he went through treatment for substance abuse years before he had serious marital problems, according to his own testimony.
The Company also contends that the Grievant has been discharged for nearly two years, and only in the last three months has he sought rehabilitation. The Company questions the Grievant's credibility, since he did not admit his earlier treatment, and whether he really has come to grips with his problem. The Company contends that the Grievant has been given many opportunities to improve, and his record of rehabilitation does not suggest that he will finally be successful in staying away from alcohol and drugs.
THE UNION'S POSITION:
The Union argues that the Grievant is a long-term employee, and that his record is not sufficiently severe to merit discharge. This is the Union's primary argument in favor of reinstatement.
The Union concedes that there is no way to guarantee that the Grievant will be able to overcome his former alcohol and drug problems. However, the Union notes that there have been other cases in which grievants, after failing at several attempts at rehabilitation, have been able to successfully recover. Some of these grievants did not get serious about their recovery until after they were discharged, and were reinstated, in

part, on the basis of good rehabilitation efforts. Here the Union relies in part upon Union Witness Cadwalader's testimony that the Grievant is a good candidate for reinstatement and recovery.
The Union also contends that the two-year delay in processing the Grievant's discharge was not the fault of the Grievant. The Union states that it is not requesting backpay in this case, and asks only that the Grievant be reinstated on a last chance basis.
OPINION:
The Grievant here was discharged for attendance problems. The discharge letter states that the Grievant was discharged both for a failure to report off (FRO) and for failure to work as scheduled. It is not clear from the record exactly what the nature of the "failure to work as scheduled" charge is, i.e. whether it involves only FRO's, or FRO's and other types of absences; often the Company uses it to refer to non-FRO absences, which are tracked separately from FRO's under its attendance plan. Under these circumstances I have reviewed the Grievant's attendance, as it relates to non-FRO absences, as well as FRO's. The Grievant had problems with attendance at the Coke Plant in 1991 and 1992, according to the record. However, there is no record of any discipline relating to absenteeism for a three-year period, from July, 1992 through July, 1995. The Company suggested that the Grievant was laid off for part of this period, but there was no evidence to establish how long or even if he had been laid off during this time. In July, 1995 the Grievant was given a final warning for absenteeism, even though there is no record of lesser warnings or discipline relating to absenteeism in the previous three years.
The next disciplinary action for absenteeism noted in the record is a reprimand letter dated December 12, 1995; the fact that a reprimand was issued at this time suggests that either the July, 1995 final warning was not issued correctly, or the Grievant significantly improved his attendance over the next six months. At the arbitration hearing no evidence was presented about the Grievant's absenteeism record at the time of discharge, except for information about the FRO's, discussed below. Most importantly, there was no record of any progressive discipline for non-FRO absenteeism beyond the December, 1995 reprimand letter. Thus, the record as presented at arbitration does not contain sufficient evidence to sustain the charge of failing to work as scheduled, as a basis for discharge, if predicated on non-FRO absenteeism. In addition, it appears from the record that the Grievant improved his attendance record, except for FRO's, over the five-year period raised by the Company in this arbitration.
In August, 1995, however, the Grievant began to commit a string of FRO's, incidents in which he failed to report off prior to the start of the turn. The Union suggested that the Grievant called in late on some of those dates, as opposed to not showing up and not calling at all. However, the only evidence on that point is the Grievant's word, and in any case, there is no question that the Grievant failed to report off before the shift, as required.
The record indicates that the Grievant had five instances of failing to report off over about an eight month period, leading to his discharge. Five regular absences over eight months might not provide sufficient grounds for discharge. As I have discussed in other cases, however, a string of FRO's can lead to discharge based upon far fewer absences than in a regular absenteeism situation. (Inland Award Nos. 904, 936). This policy demonstrates the seriousness with which the Company treats FRO's, and reflects legitimate operational concerns behind that policy. As I stated in Award 904.
[A]n employee who has a string of FRO's is particularly disruptive to an employer's business. When the employee does not appear on any given day and does not call in, the employer never knows whether the employee will be there within the next ten minutes, the next two hours or not at all. Often the Company has to call someone in or get someone to stay over on overtime to fill the position, a supervisor may be unsure about exactly when to call in someone, and delays may hamper production in a way that does not occur when an employee calls in ahead of the turn.
Furthermore, in cases where the employee is not replaced, necessary work may remain undone. In the instant case, for example, the Section Manager testified that the Grievant had to be reassigned tasks other than cleaning bathrooms because if he did not come to work, the cleaning did not get done, and employees (reasonably) complained.
However, the policy regarding FRO's also means that an employee can progress very quickly to discharge on the basis of FRO's. In the case of a very long-term employee, it is important for an arbitrator to look at the all the circumstances surrounding any discharge which is based upon a short, but admittedly severe span of misconduct. Here there is no evidence in the record that the Grievant had FRO's in the four years prior to beginning the string of them in August, 1995.
The Grievant acknowledged that he was experiencing a turbulent period at that time of his life, dealing with considerable marital strife and his wife's drug dependence, as well as his own alcohol and drug abuse

problems. While these problems do not excuse his FRO's, they do help explain them, and why he had so many FRO's in a relatively short period.

The Grievant testified that he now has these problems under control. He testified that he has been separated from his wife for more than a year. The Company argues that the Grievant had substance abuse problems before he reported the marital problems, suggesting that his marital problems were not the real reason for his absences. I have taken into account the Grievant's prior history of treatment for drug and alcohol abuse. However, the Grievant's descriptions of his marital problems indicate that they were of a type which was severe and could be very disrupting in someone's life. Therefore, the fact that he no longer lives with his wife should enhance his ability to control his substance abuse problem and to come to work on time regularly.

The Company notes that the Grievant entered rehabilitation for his substance abuse problems many months after his discharge and just three months before the arbitration hearing. I understand the Company's concern with whether the Grievant's participation in the rehabilitation program is motivated only by a desire to "make a good show" for the arbitration in order to win back his job. While a desire not to lose a good job propels many people into rehabilitation, the efforts may not take real root unless an employee can go beyond the surface and make the internal changes necessary to sustain real recovery. Only the Grievant knows for certain whether he is making these changes. The Union presented evidence concerning the Grievant's attendance at meetings. In addition, I gave weight to Mr. Cadwalader's recommendation that this employee is a good candidate for reinstatement, because he appears to have made the recommendation with thought and care, and does not give them routinely to everyone who comes to the Committee for help. The fact that Mr. Cadwalader's recommendation here is not unqualified (he stated that the Grievant was a good candidate for reinstatement under a last chance agreement) does not detract from its reliability; instead it makes it appear more realistic, and therefore more credible.

Nevertheless, the fact remains that the Grievant, at the time of the arbitration, had a record of only three months' sobriety. In addition, in assessing the Grievant's post-discharge rehabilitation, I also have considered his absences which occurred after he received his suspension letter, while working under the Justice and Dignity clause. Even though they occurred after the events upon which the discharge are based, they are due some consideration, in part because the Union has argued that the Grievant's post-discharge conduct argues in support of reinstatement. It is significant that an employee who had just been suspended pending discharge for attendance problems would miss work more than once during this period immediately following his suspension.

I have not given these absences as much weight as the FRO's occurring prior to the discharge, because they were not the absences upon which the discharge action was based. In addition, they came so close upon the heels of the pre-discharge FRO's that it is reasonable to conclude that in the days immediately following his suspension the Grievant was still grappling with whatever devils caused the FRO's before his suspension. I have, however, considered these absences in determining the remedy in this case.

Based upon all the evidence, I conclude that although the Company had just cause for significant discipline, the discharge should be overturned. Within the five-year period before his discharge the Grievant had demonstrated some problems with regular (non-FRO) absenteeism. Nevertheless, there is not sufficient evidence in the record to conclude that the Grievant was experiencing problems with regular absenteeism so severe that he would have been discharged at this time had he not had the FRO's in August, 1995 through April, 1996. In fact the evidence suggests that he had improved his regular absenteeism rate. The evidence also indicates that the Grievant was a very good employee when he was at work. And the evidence regarding his FRO's indicate that he had a serious problem over a relatively short period of time. There is sufficient evidence that his problems were due to marital problems and substance abuse, and he has taken significant steps to address both problems.

Thus I conclude that there was not just cause for the discharge. Like the grievant in Inland Award 936, where the discharge was overturned, the Grievant here is a very long term employee whose discharge is based upon a string of FRO's over a relatively short period. In each case the discharge could not be based upon other absences, and there was not a record of many, if any, other FRO's outside the immediate period leading up to discharge.

In order for just cause to be met, an employee must be given a really meaningful opportunity for progressive discipline to work before he loses a job in which he has invested many years. I am not convinced that this happened here. I don't mean to suggest that Management failed to counsel the Grievant during this period; progressive discipline was applied "by the book" during the period in question, but it

moved very rapidly from one step to the next. As I noted in Award 936, Management has, in other cases, given grievants a greater opportunity to reform before discharge has been imposed.

Nevertheless, the Grievant also must accept responsibility for not heeding the warnings of the progressive discipline. Furthermore, three months of sobriety is not very long in the battle against years of substance abuse. I conclude therefore that the Grievant should be reinstated, but without backpay, and on a last chance basis.

While I generally do not impose specific terms of a Last Chance Agreement, unless it is a continuation of one already composed by the Parties, the Grievant should understand that this is a last chance at employment with the Company. If he is serious about remaining employed, he must understand that he has to come to work and he must be on time. He also should understand that failing to report off before the start of the turn when he must be absent, is much more serious than a regular absence. In addition, the Grievant should seek whatever help he needs, including, if necessary, the help of substance abuse programs, in order to ensure that substance abuse problems do not prevent him coming to work regularly and on time.

The grievance is sustained in part. The Grievant is to be reinstated, without backpay, on a last chance basis.

/s/ Jeanne M. Vonhof

Jeanne M. Vonhof

Labor Arbitrator

Acting Under Umpire Terry A. Bethel

Dated this 14th day of April, 1998.

<FN 1>Incident occurred prior to the suspension preliminary to discharge, but the discipline was issued afterwards.

<FN 2>The record is not clear about whether there were two or three dates, and exactly what those dates were. A letter dated May 15, 1996 states that the dates were April 11-12. The third step minutes, however, cite the dates as May 5 and May 15, 1996. In addition, the date of May 3, 1996 was also mentioned during the arbitration hearing.