

DAVID A. PETERSEN, ARBITRATOR

In the Matter of Arbitration)	Arbitrator's Opinion
between)	and Award
)	
ARCELORMITTAL USA)	Grievance 10-03
)	
and)	Award Issued:
)	December 29, 2011
)	Case 48
UNITED STEELWORKERS)	
LOCAL UNION 9462)	

Subject: Discharge – Absence Without Just Cause

Appearances of Representatives:

Barry Simon, Esquire
On behalf of the Company

Lew Dopson, Sub-District Director
On behalf of the Union

OPINION

10-03

This grievance from the Conshohocken Plant claims that the Company terminated Grievant's employment without proper cause, in violation of the September 1, 2008 Agreement.

Grievant, a Labor Grade 2 Service Technician with a June 6, 2000 continuous service date, was charged by the Company on February 19, 2010 with being absent from work without just cause. Grievant was initially suspended for five days with intent to terminate. Her suspension was ultimately converted to termination effective February 23, 2010.

According to the evidence offered at the arbitration hearing, Grievant reported off during the week of February 1, 2009 and received short term disability benefits through October 18, 2009. Prudential Insurance, the Administrator of the Short Term Disability Benefit Plan, had extended Grievant's benefits from September 22, 2009 to October 18, 2009 to allow time for the receipt of additional information from Grievant's physicians. Her claim was then suspended on January 11, 2010 due to a lack of current medical information. After a review of additional information received through January 26, 2010, Prudential determined that the medical information on file did not support a continuing impairment. It notified Grievant and the Company on or about January 27, 2010 that Grievant's short term disability benefits were terminated effective October 19, 2009. Grievant did not report back to the plant for work thereafter.

The Company informed the Union of its intention to send Grievant a so-called 5-day letter as a consequence of her failure to have reported for work after the termination of her short term disability benefits. The Company relied on the Plant Rule reading: "Employees who are absent from work for three (3) consecutive days without just cause will be placed on immediate suspension with intent to discharge."

The Manager of Human Resources/Labor Relations sent Grievant a certified letter, dated February 19, 2010, which reads as follows:

RE: Absence without just cause
Termination of Medical Benefits

Dear [Grievant]:

You have been out of work since February 1, 2009 for medical reasons. I am in receipt of two letters from Prudential Insurance both dated November 28, 2009, one indicating that disability benefits are payable through October 18, 2009, unless your attending physician can provide additional medical information supporting your continued disability. The second letter states that you were required to apply for social security benefits.

We were then notified by Prudential via email on January 27, 2010 that your claim was terminated, you had been given two months to provide the necessary paperwork.

You called me on Thursday, February 4, 2010, to let me know that you had a doctor's note stating that you can return to work with restrictions. When I asked for specifics on your restrictions, you told me that you did not know your restrictions. At that time, I explained to you that we were notified by Prudential that you are no longer eligible for short [term] disability and in essence are absent without just cause, unless you are able to get your physician to provide medical documentation to support your absence. Your reaction suggested frustration on your part, apparently you did tell your doctor and they sent information, however it did not support your absence.

I recommend that you manage your disability and call Prudential to find out what you needed to do to get short term disability approved and or to provide us with a return to work note with specific physical restrictions to see if we could accommodate them.

I did not hear from you so I called and left you a message the week of February 8, 2010 to let you know that I had contacted Prudential and they said your doctor did not perform any diagnostic testing or provide any treatment that would permit you to remain out on short term disability. This information was also related to the Union leadership, since you were in contact with them on this matter.

You have not provided documentation for Prudential, you have not provided documentation showing that you applied for social security disability, you have not provided a detail return to work note indicating your restrictions. Under the benefits, an individual that is off work for a period of 5 or more calendar days for reasons other than disability, layoff, leave of absence, suspensions, vacation, jury duty, witness duty, or any other specifically authorized absence terms [terminates] all medical coverage at the end for the 5th day of such absence, which would be October 24, 2009 under these circumstances.

You have been provided more than adequate time from Prudential to provide the necessary paperwork and from the Company to attempt to comply with the above requests. Because you are not on short term disability nor have you certified for family medical

leave, you are considered in violation of the Company's work rules: "Employees who are absent from work for three consecutive days without just cause will be placed on immediate suspension with intent to discharge" and the attendance policy in addition your medical coverage will be terminated following the benefit rules.

This notice is to let you know that you are being placed on immediate five-day suspension with intent to terminate, effective February 19, 2009, until February 23, 2009 for being absent from work without just cause.

The outcome of this suspension will be determined within five days. Please contact me at the below with any questions.

The Manager of Human Resources/Labor Relations subsequently sent Grievant a certified letter, dated February 23, 2010, which reads as follows:

RE: Converting 5-day suspension to termination

Dear [Grievant]:

Your five day suspension ended February 23rd and you did not provide any information to substantiate your absence from Oct 19, 2009 until January 27, 2010.

Your five day suspension with intent is converted to a termination effective February 23, 2010. Your medical benefits which should have been terminated last October will terminate the 28th of February.

Please contact me if you have any personal items in your locker to pick up.

The Manager of Human Resources/Labor Relations testified that, as of the date of the arbitration hearing, neither Prudential Insurance nor the Company had been provided with medical evidence from a physician to support a conclusion that Grievant was disabled and had just cause to be absent from work for 3 consecutive days or more after October 18, 2009. The Manager said that, to her knowledge, Grievant applied for Social Security Disability but has not received such benefits. The witness agreed that, at Step 2 of the Grievance Procedure, she received a doctor's note dated February 24, 2010 which reflects that Grievant was being seen for "muscle aches" and that her doctor believed "she may return to light duty at work". The Manager stressed, though,

that this note made no reference to Grievant's medical condition and ability to return to work during the relevant time period immediately following October 18, 2009. The witness also agreed that, after the Step 3 Meeting on May 11, 2010, she received a letter dated November 6, 2009 which recites that Grievant was seen in the Neurology Department at Temple University Hospital on September 22, 2009, was "restricted from heavy lifting" as of November 6, 2009, and had an appointment to see a neuromuscular specialist on January 8, 2010. The witness also agreed that, after the Step 3 Meeting, she received a document dated February 25, 2010 which recites that Grievant was "entering into treatment at The Light Program" on March 1, 2010. Again, the witness stressed that neither this letter nor this note refer to Grievant's medical condition and ability to work during the relevant time period immediately following October 18, 2009. The Manager acknowledged that Grievant contacted her by telephone in February 2010 to advise she was in the hospital for a condition unrelated to her prior disability. The witness continued to maintain that, before Grievant's suspension was converted to discharge, Grievant never provided medical justification for her absence from work after October 18, 2009.

At Step 3 of the Grievance Procedure, on May 11, 2010, it was represented by Grievant that she would be visiting her treating physician the same day or week and could secure paperwork from this physician which would substantiate that she had medical justification for her absence from work after October 18, 2009. The Union asked the Company if it would be willing to consider this paperwork and determine if Grievant could be reinstated in light of this paperwork. The Company agreed to this request. However, as of May 27, 2010, Grievant had provided no such paperwork. The Company therefore denied this grievance at Step 3.

Grievant did not appear and testify on her own behalf at the arbitration hearing.

The Company contends that proper cause existed to discharge Grievant. The Company asserts that Grievant was absent from work without just cause for far more than three consecutive days after October 18, 2009, and that Grievant failed to offer medical documentation to establish that she was disabled or evidence that she otherwise had just cause to be off work. The Company insists that Grievant was provided with opportunities as recently as the Step 3 Meeting to furnish proof excusing her failure to report for work after October 18, 2009, but she did not take advantage of such opportunities. The Company requests that this grievance be denied.

The Union maintains that Grievant was terminated without proper cause. The Union stresses that, in accordance with Article Five, Section J of the Agreement, the Company has the burden of establishing it possessed proper cause for discharge. The Union disputes that proper cause existed for Grievant's discharge on the facts of this case. The Union insists Grievant suffered a non-occupational disability, and that since February 2009 she has been receiving treatment by medical professionals and has followed the directives given to her by Prudential Insurance, including making application for Social Security Disability benefits and arranging to have her doctors' records provided for review. The Union notes that Grievant was seen in the Neurology Department at Temple University Hospital on September 22, 2009, was restricted from heavy lifting as of November 6, 2009, and had another appointment scheduled with a

neuromuscular specialist for January 8, 2010. It asserts that Grievant was in the hospital from February 9 to 23, 2010, and that Grievant contacted the Manager of Human Resources/Labor Relations on February 22, 2010, during the period of her initial 5-day suspension, and informed the Manager of her hospitalization. It notes, too, that another physician released Grievant for light duty on February 24, 2010. The Union thus disputes that Grievant had no medical documentation for her absence from work after October 18, 2009. It suggests that if there was a breakdown in communication between Prudential and the Company, Grievant should not be prejudiced. The Union urges that, under all the circumstances, Grievant's discharge should be rescinded and this grievance should be sustained. The Union does not seek an award of back pay, though, because it acknowledges there has been no determination that Grievant is medically capable of returning to work.

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Grievant was discharged for being absent without just cause.

Grievant was absent from work, and received short term disability benefits, from early February 2009 through October 18, 2009. Grievant's short term disability benefits were terminated effective October 19, 2009 by the Administrator of the Short Term Disability Benefit Plan because of the Administrator's determination that Grievant's medical information on file did not support a continuing impairment.

The evidence offered on this record established that Grievant was notified of the October 19, 2009 termination of her short term disability benefits and that she did not report back to the plant for work thereafter and prior to her termination effective February 23, 2010. Grievant made representations that she had a physician's release to return to light duty, but this release was not provided to the Company prior to her discharge and this release made no reference to Grievant's medical condition or ability to have worked after October 18, 2009. Grievant also made representations at Step 3 of the Grievance Procedure that she could promptly secure and provide medical documentation to support her continuing absence from work on and after October 19, 2009, but as of May 27, 2010 she failed to provide any such medical documentation. And Grievant did not offer any testimony on her own behalf in arbitration.

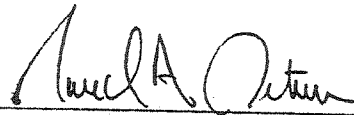
It is undisputed that one of the Plant Rules applicable to all employees reads: "Employees who are absent from work for three (3) consecutive days without just cause will be placed on immediate suspension with intent to discharge." Grievant is deemed to have been on notice of this Plant Rule, and the application of this Plant Rule to Grievant in this case is not found to have been unreasonable in these circumstances. Grievant was not denied opportunities to provide justification for her continuing absence from work on and after October 19, 2009. No medical documentation justifying her entire period of absence was provided to the Company or the Administrator of the Short Term Disability Benefit Plan prior to her discharge or through Step 3 of

the Grievance Procedure. Based on the evidence presented, the Company is concluded to have had proper cause to discharge Grievant.

Accordingly, this grievance must be denied.

AWARD

The grievance is denied.



David A. Petersen, Arbitrator