

In the Matter of Arbitration

-----  
Between )

Inland Steel Company )

and )

United Steelworkers of America )

Local 1010 )  
-----

Grievance No. 13-L-19

Appeal No. 1208

Award No. 609

Appearances:

For the Company

T. J. Peters, Arbitration Coordinator, Labor Relations  
W. P. Boehler, Senior Labor Relations Representative  
R. H. Ayres, Assistant Director, Labor Relations  
S. W. Wirpel, Assistant Manager, Labor Relations  
R. J. Stanton, Assistant Superintendent, Labor Relations  
R. T. Larson, Labor Relations Representative  
R. J. Wilson, Supervisor, Insurance and Benefits, Personnel  
M. R. Zarowny, Senior Claims Administrator, Personnel  
E. M. Hamilton, Claims Administrator, Personnel  
L. R. Barkley, Administrative Assistant, Labor Relations  
W. W. Gillespie, Labor Relations Representative

For the Union

Theodore J. Rogus, Staff Representative  
Gene Cieslak, Grievance Committeeman, 76" Hot Strip Mill

-----  
The question to be determined is whether the Company discharged the grievant, D. T. Medina, for cause on January 19, 1973, under the provisions of the parties' 1971 collective bargaining agreement, particularly Article 3, Section 1, and Article 8, Sections 1 and 2. He had previously been suspended on January 12, 1973 preliminary to discharge for violation of Rule 102-k of the Company's General Rules for Safety and Personal Conduct. The pertinent feature of this rule is that it may be cause for discharge of an employee for "[F]alsifying or assisting in falsification of personnel records or any other records... ."

The underlying facts are not in dispute. Grievant was hired to work in the 76" Hot Strip Mill Department January 13, 1948. He has an arthritic condition. He has received Sickness and Accident Benefits (S & A) under the Program of Insurance Benefits (PIB). He was given such benefits for 46 weeks from December 8, 1969 to October 25, 1970 and again for 52 weeks, the maximum period, from December 12, 1970 to December 10, 1971. He returned to work on June 24, 1972, and after three weeks, on July 15, 1972, he applied again but his claim was rejected because he was ineligible.

Grievant submitted three claim forms to the Company's Insurance and Benefits Section of the Personnel Department, on October 20, 1971, November 23, 1971, and August 16, 1972 in which he indicated that he had neither filed for Social Security disability benefits nor had he received any. In fact, he had filed such a claim on April 13, 1970. This claim was originally disapproved, and the disapproval sustained upon review, but finally approved on appeal as a result of which he became entitled to monthly primary disability benefits. The first payment was made to him by the Social Security Administration in August, 1971, being a lump sum retroactive to June, 1970 and amounting to some \$2080.

The Company learned of it by inquiring about it at the Social Security Administration. Social Security told the Company about the disability claim allowance and payments by letter of October 6, 1972.

Paragraph 2.6 of PIB provides that weekly S & A benefits will be reduced each week by the amount of any primary disability benefits under the Social Security Act which the employee is entitled to or could become entitled to by making proper application. It is stated that the Company will withhold the estimated amount of such Social Security benefit on the assumption that the employee is receiving it, but it will pay the full S & A weekly benefit if the employee informs the Company that his application for Social Security disability benefits has been denied.

Prior to August 1, 1971, however, the reduction in S & A benefits because of primary disability benefits under Social Security did not start until after the first 26 weeks of S & A benefits during any one continuous period of disability. This waiting period of 26 weeks still applies to unreduced primary old-age benefits under the Social Security Act but no longer to disability benefits. The change was made in the August 1, 1971 revisions of the 1967 PIB.

Grievant was discharged for allegedly falsifying records, and thereby perpetrating a fraud on the Company.

Analyzing grievant's activities with respect to claims for

S & A benefits we find that there was no misrepresentation by him when he made his claim for the first period of disability involved in this case, referring to the period running December 8, 1969 through October 25, 1970. The claim forms cited by the Company were filed on October 20, 1971, November 23, 1971 and August 16, 1972. The earliest, in October 1971, was after the 1969-1970 disability period had ended.

We may also disregard the claim of August 16, 1972. There were no S & A benefits given to grievant thereafter, so that the Company cannot be said to have been defrauded thereby.

The Company's criticism of the October and November, 1971 claims is that allegedly they falsely indicated that grievant had not filed for or received Social Security benefits. The S & A disability period to which these claims could have reference was that which had started December 12, 1970, and ended December 10, 1971. One of these claims was submitted nine months after this disability period had started and the other a month later still. It can hardly be maintained that the Company relied on grievant's representations in these two forms in deciding to give him S & A benefits from the preceding December 12th on.

In connection with the earlier disability period which started in 1969, the Company was informed by grievant that he had applied for Social Security disability benefits. The Company was also told on September 23, 1970 that grievant's claim was disallowed and on May 26, 1971 that his request for reconsideration was also denied.

It was not until August 1971 that the Company's claim form for S & A benefits or the continuation of such benefits was revised to include information as to whether the employee has applied for or is receiving Social Security benefits. This was also when the PIB was modified to give the Company immediately a credit against S & A benefits of any amounts given to an employee for primary disability benefits, without having to wait until 26 weeks have elapsed.

The Company maintains that grievant knew in August, 1971 that he was receiving Social Security disability benefits, in fact retroactive to June, 1970, and that his failure to notify the Company of this or to reimburse it for the amount of such Social Security benefits constituted a fraud on the Company. This is based on two forms signed by him on June 6, 1970 and May 26, 1971 called "Reimbursement - Social Security." This form summarized Paragraph 2.6 of PIB as then in effect (with its 26 week waiting period), and concluded by saying:

"I also understand that I must repay any overpayment resulting from the above clause and that I am required to give necessary authori-

zation to permit deduction of any such overpayment from any amounts payable to me, including wages."

Grievant was under obligation to notify the Company, certainly in August, 1971, when Social Security began to give him disability benefits, so that arrangements might be made for grievant to reimburse the Company for overpayments it had made prior thereto or to permit the Company to make deductions from any amounts payable to grievant. At that time he was receiving S & A benefits which continued until December 10, 1971. ~~Since he never returned to work~~ thereafter, there were no <sup>in which</sup> wages from which the Company could be reimbursed; but Paragraph 2.6 of PIB stipulates that the Company is authorized to deduct the "overpayment from any amounts payable to you by or on behalf of the Company, including wages and pension payments." BLC

The question before us is whether this constitutes fraud or misrepresentation justifying discharge. Obviously, it was neither representation nor misrepresentation. It was a breach of an obligation to inform the Company so that it might be reimbursed or take steps to be reimbursed. In other respects the Company did not change its position or make any decisions based upon grievant's failure to inform it.

This is not the usual case of misrepresentation or of the falsifying of records. In Paragraph 2.6 of PIB, in both the 1967 and 1971 versions, there is specific reference to "one continuous period of disability" indicating that each period and presumably the claim as to each are separate and apart from those relating to other such periods of disability. In the Company's presentation at the hearing, it was contended that the question added to the S & A claim form in August, 1971 is intended to inquire whether grievant ever received Social Security benefits. Prior to that time apparently the question was not even included. The manner of its phraseology does not clearly and unequivocally support this view of the Company. One could readily take it from the context in which it is used that the question has reference to that period of disability, and not to some other separate period perhaps years removed. If there is ambiguity as to this, and there is, it should reasonably be construed against the party which unilaterally drafted it.

Moreover, in the Reimbursement-Social Security form prepared by the Company for the employee's signature, as indicated above, the obligation to repay the Company is spelled out together with authorization to the Company to make deductions for that purpose. But, although the Company charges grievant with what is essentially fraud for not advising the Company immediately of receipt of Social Security disability benefits, the Company's form is completely silent as to any

such duty. The Company relies instead upon an oral statement which the Company's Claim Administrator says he made.

Our question is not whether the Company is not entitled to reimbursement because of disability benefits grievant received from Social Security. Of course, the Company is entitled to be reimbursed in accordance with the applicable provision of the PIB in effect at the time such benefits were received by grievant.

We are concerned with whether grievant was guilty of such falsification of records as to merit discharge.

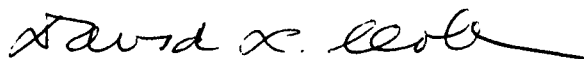
Grievant was not working in January, 1973 when this disciplinary action was instituted, and it is doubtful that he will ever work again. Consequently, there are no wages out of which the Company may make deductions. If grievant had not been discharged, it is likely, as I understand the testimony at the hearing, that he would shortly qualify for a pension under the 70/80 Retirement provision in the Pension Agreement effective August 1, 1972. He is 55 years of age, has been an employee for 26 years and is suffering from a physical disability. This would entitle him to the equivalent of 13 weeks vacation pay, which could be retained by the Company by virtue of the authorization given the Company to make deductions from any amounts payable to him. Since the lump sum payment made by Social Security to grievant in August, 1971 related to a period running back to June, 1970, it would seem to be subject to the provisions of the 1967 PIB, and hence that the deduction suggested could make the Company substantially whole.

In essence, while grievant's conduct was not candid or exemplary, the evidence does not support a finding that it was of such a character as to constitute deliberate misrepresentation and fraud on the Company justifying the ultimate penalty of discharge, particularly with reference to a longtime employee on the eve of his retirement.

AWARD

For the reasons indicated, and subject to the condition that grievant reaffirm his obligation to reimburse the Company for overpayments made and his authorization to the Company to make deductions from his pension or any other amounts payable to him for this purpose, the grievance herein is granted.

Dated: February 6, 1974



David L. Cole, Permanent Arbitrator

The chronology of this grievance is as follows:

Grievance filed (step 3)	January 22, 1973
Step 3 hearing	January 31, 1973 and February 7, 1973
Step 4 appeal	March 5, 1973
Step 4 hearing	August 24, 1973
Appeal to arbitration.	October 16, 1973
Arbitration hearing	January 9, 1974
Award	February 6, 1974