

In the Matter of Arbitration

Between)
Inland Steel Company) Grievance No. 4-M-10
and) Appeal No. 1222
United Steelworkers of) Award No. 626
America, Local 1010)

Appearances:

For the Company

W. P. Boehler, Senior Labor Relations Representative
T. J. Peters, Arbitration Coordinator, Labor Relations
J. E. McConnell, Superintendent, No. 4 Basic Oxygen Furnace
N. Andre, Foreman, Mechanical, No. 4 Basic Oxygen Furnace
B. Mills, Caster Foreman, No. 4 Basic Oxygen Furnace
G. H. Applegate, Jr., Senior Labor Relations Representative
Allan Oseling, General Mechanical Foreman

For the Union

Theodore J. Rogus, Staff Representative
John Hurley, Vice Chairman, Grievance Committee
Cavino Galvan, Secretary, Grievance Committee
Joe Carrillo, Griever
Bill S. Wilson, Grievant

Grievant, Bill S. Wilson, a Vocational Mechanic VII employed in the No. 4 Basic Oxygen Furnace Department, was discharged for allegedly sleeping while on duty on January 11, 1975 in violation of Rule 102g of the Company's General Rules for Safety and Personal Conduct.

It is not denied that Grievant was given a copy of these General Rules when hired and that he knew that sleeping in the plant may be cause for severe discipline including discharge.

The issue is one of fact. Grievant denies that he was asleep, contending that he had completed some duties and entered a truck in the area in which he was working for the purpose of starting the heater to warm up for a few minutes, and while seated there he observed his foreman, Nicholas Andre, approaching and slouched down to avoid being seen. He asserts that

the foreman did not see him, although he walked by the truck twice. This was at approximately 5:30 p.m. Shortly after, the foreman returned with another, Caster Foreman Mills, and they both walked by the truck, but Grievant insists again that they could not see him because he crouched down, and that they gave no sign that they had. Grievant asserts they neither looked at him nor spoke to him, but went directly to a telephone nearby. They explained later that they telephoned Plant Security. Foreman Mills left immediately and Foreman Andre shortly thereafter.

Grievant states that he went upstairs to assist in a roll change which was about to be made, but Mr. Andre called him on the public address Femco and told him to go to the Pump Room where the truck was located. There he was told by the foreman that he was being sent home for sleeping, and that a Plant Protection man was due to escort him out of the plant.

The differences between Grievant's version and that of Foreman Andre are several. The most important is that the foreman alone and later he and Foreman Mills say they saw Grievant asleep on the seat of the truck, Foreman Andre saying Grievant had his ear muffs down to muffle any noise. The foreman also testified that he had called Grievant over the Femco System repeatedly between 5:30 and 6 p.m. without getting any response. This the grievant denied hearing although during that time he was close to some of the speakers. They agree, however, that the Pump Room is a noisy area. The foreman maintained Grievant did not assist in the roll change shortly after 6 p.m. as he claimed because there was no roll change under way between 6 p.m. and 6:30 p.m., and none would be started until approximately 6:30 p.m.

Neither foreman contradicted Grievant's statement that they did not speak to him while he was in the truck or contact him in any way, not even to wake him up if indeed he was asleep.

Obviously, if Grievant was sleeping as alleged there was good cause for discipline, the only possible question being whether under the circumstances the penalty of discharge was justified.

We have here, however, flat contradictions, as between two foreman on one hand and the grievant on the other. Such contradictions cannot be resolved simply by saying the two accusers outnumbered the one employee who denied their allegations. Nor can their version be accepted merely on the ground that they had less motivation for making this charge than Grievant had in denying it, because to him it probably meant his job. If such a test were accepted, one shudders to think what effect this could have in any case in which there is an accusation.

In determining which version is the more credible one cannot use any simple formula approach. One must consider the circumstances and the known, admitted or plausible facts, and to a large extent the demeanor

of the witnesses and the relative quality of their testimony as it appears to him as the judge of the facts.

It has often been observed that the burden of proof in discipline cases is on Management, and so it is and must be. This has been declared in several Inland awards.

The conduct of one of the foreman was almost too much like that of a prosecutor. If Grievant was in fact asleep in the truck, why did the foreman not wake him up and either caution him or send him home if he thought that necessary? Instead, he proceeded to line up a witness and try to build an irrefutable case against Grievant, who incidentally up to this point had had no blemish on his record. Having gone to these pains to build his case it is reasonable to believe the foreman was anxious to prevail and to demonstrate that his version of the facts was correct. He thus acquired a motivation for maintaining his position. In evaluating the contradictory evidence it must be recognized that there is the possibility that his testimony was influenced thereby.

On the other hand, we have emphatic denial of the charge by Grievant, which is given credence by his acknowledgment that he went into the truck while he was supposed to be on duty, knowing, it must be presumed, that this violated his obligations as an employee.

The foreman's flat contradiction of Grievant's statement that he had gone up to help in the roll change was based on the assertion that there would not be such a change until 6:30 p.m. is not completely convincing. Grievant testified he was there at least 15 minutes or so before the actual roll change, stressing the fact that there is a good deal of preparatory work to be done, which was not disputed by Management.

In describing accurately the actions of both foremen while he was allegedly asleep, Grievant demonstrated that, as he asserts, he was not asleep, thus lending credence to his testimony. Management's conjecture that someone must have informed him is without evidentiary proof or support.

There are sufficient doubts as to what happened to hold that the Company has not sustained the burden of proving Grievant was asleep, and that consequently the discharge was not warranted.

When Grievant concealed himself in the truck for the purpose of warning himself he was not at his assigned work location, although it was close by, and he thereby subjected himself to the possibility of discipline by Management. So far as our record indicates, this was his first offence and the penalty of discharge was not justified. A suspension of five turns would seem to have been fair and adequate for this offense.

AWARD

This grievance is granted, except that a disciplinary penalty of a five turn suspension shall be imposed on the grievant effective as of January 11, 1975.

Dated: December 11, 1975

/s/ David L. Cole

David L. Cole, Permanent Arbitrator

The chronology of this grievance is as follows:

Grievance filed (Step 3)	January 24, 1975
Step 3 hearing	January 30, 1975
Step 3 minutes	March 3, 1975
Step 4 appeal	March 10, 1975
Step 4 hearings (remanded to Step 3)	March 14, 1975 April 3, 1975 April 17, 1975
Step 3 hearing	July 3, 1975
Step 3 minutes	July 25, 1975
Step 4 appeal	August 5, 1975
Step 4 hearing	August 8, 1975
Step 4 minutes	September 10, 1975
Appeal to arbitration	September 23, 1975
Arbitration hearing	November 26, 1975
Date of Award	December 11, 1975