

In the Matter of Arbitration

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Between )  
Inland Steel Company ) Grievance No. 27-M-18  
and ) Appeal No. 1225  
United Steelworkers of ) Award No. 627  
America, Local 1010 ) Opinion and Award  
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Appearances:

For the Company

T. J. Peters, Arbitration Coordinator, Labor Relations  
W. P. Boehler, Senior Labor Relations Representative  
T. L. Kinach, Senior Labor Relations Representative  
H. C. Easter, Superintendent, 12" Mill  
John Misoria, Mechanical Foreman, 12" Mill  
Joseph Taylor, Labor Foreman, 12" Mill

For the Union

Theodore J. Rogus, Staff Representative  
William E. Bennett, Chairman, Grievance Committee  
Gavino Galvan, Secretary, Grievance Committee  
Buddy Hill, Griever  
Jerry Swindle, Grievant  
Augie Igartua, Witness  
Ed Oslawski, Witness  
Joe Jarosz, Witness

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Grievant, Jerry Swindle, disagrees with the Company's position that his discharge on April 24, 1975 was for good cause. In the suspension notice of April 14 the Company cited Rule 102j of the Company's Personal Conduct Rules and Regulations, stating also that: "Your overall unsatisfactory work record is being taken into consideration in this decision..."

The portion of Rule 102j which is involved in this dispute declares that among the offenses which may be cause for discipline, up to and including suspension preliminary to discharge, are "[S]tealing or malicious conduct, including destroying, damaging, or hiding any property of other employees or of the Company...."

Grievant was hired on August 15, 1973 as a laborer in the 12" Bar Mill Department. On Saturday, April 12, 1975 he was assigned to work on the hot run table and given permission to go to his locker to get his respirator. On his way there he saw a ratchet wrench on the floor. The Company's contention is that he picked it up and hid it in his locker with the intention of stealing it, instead of turning it in to his Labor Foreman or to this foreman's office. This wrench belonged to a mechanic who had been working in the area. The Company asserted that when he was looking for it he was told by some employee that a laborer answering Grievant's description had been seen picking up such a tool. Grievant was questioned by the Labor Foreman and admitted he had the tool and led him to his locker and handed it over to him.

The issue is clearly one of fact. The Company's description of what happened, while accurate as far as it goes, was by no means complete. It tended to emphasize what was made to appear as the surreptitious nature of Grievant's conduct. In truth, promptly after picking up the tool, Grievant asked some inspection employees if they knew to whom the wrench belonged. He also asked the same question of a grinder in the area. The mechanic who owns the tool asked the inspectors if they had seen his misplaced wrench and they told him about Grievant's inquiry. This led to the Labor Foreman's question to Grievant, to which he immediately responded by saying that he had found the wrench and put it in his locker for later delivery to the foreman or to his office, Grievant freely leading the foreman to his locker and handing him the wrench. The foreman said: "Fine", and Grievant returned to his job at the hot run table. It was not until he was at work the next day that he was told he was in serious trouble.

Rule 102j plainly refers to intentional or malicious misconduct, involving as it does the stealing, destruction, damaging or hiding of property of other employees or the Company.

If Grievant intended to steal this wrench, which incidentally would seem to be of the value of less than \$5, or even to be secretive about it, his conduct belies any such intent. He openly told three or four other employees, some of whom he had never met before, that he had picked up this tool, asking if they knew whose it was. When asked about it by his foreman he immediately responded truthfully, and promptly turned it over.

The Company's view is that he was trying to misappropriate it and that he should have done this without waiting to be asked about it. It happens, however, that the Labor Foreman's office was not on the route between the hot run table at which Grievant was working and his locker, but some distance beyond this work location in another direction. It was also testified that it is not uncommon to use other employees' tools on some jobs, and of course Company tools, and temporarily to leave them in the tool cart or even in one's locker for return the following day.

In its suspension notice the Company also spoke of Grievant's over-

all unsatisfactory work record. It would seem to be sufficient to observe that none of the adverse items in his personnel record had anything relating even remotely to suggestions of dishonesty or malicious conduct. They were mainly concerned with safety. One involved a denial by Grievant that he was not moving fast enough which resulted in a suspension for the balance of the turn for insubordination. The very next day the same foreman suspended him for three days for allegedly wearing torn gloves. Grievant testified that he did not file a grievance for fear of losing his job.

At the arbitration hearing there was discussion about the benefits to be derived from having Union representatives participate with Management in the orientation sessions with new employees when safety rules and other important subjects are explained to these employees. There seemed to be general accord that this would be worth considering.

In any event, on the subject of an employee's past record, it is appropriate to quote from Inland Award No. 313, in which Assistant Permanent Arbitrator Seitz said:

"The straw that breaks the camel's back (to use the expression commonly employed in this type of case) must itself be related to the kind of straw which already overburdens the camel. The event which furnishes cause for discharge must be capable of standing on its own bottom; that is to say it must be of such a character, itself, which, when considered with the personnel record, justifies discharge."

On the evidence as presented the Company has not sustained the burden of proving that Grievant was engaged in an attempt to steal this wrench or that he did not intend to turn it in to the Labor Foreman's office at the end of the turn, as he maintained. One must conclude that the severe disciplinary action in this instance was not shown to have been for the kind of cause contemplated in Article 8, Section 1, or Article 3, Section 1.

AWARD

This grievance is granted.

Dated: January 26, 1976

David L. Cole  
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David L. Cole, Permanent Arbitrator

The chronology of this grievance is as follows:

Grievance filed (Step 3)	April 28, 1975
Step 3 hearing	May 15, 1975
Step 3 minutes	June 6, 1975
Step 4 appeal	June 17, 1975
Step 4 hearing	June 19, 1975
Remanded to Step 3	June 20, 1975
Step 3 hearing	July 9, 1975
Step 3 minutes	July 25, 1975
Step 4 appeal	August 5, 1975
Step 4 hearings	August 8, 1975 September 30, 1975 October 2, 1975 October 9, 1975 October 22, 1975
Step 4 minutes	November 11, 1975
Appealed to arbitration	December 2, 1975
Arbitration hearing	January 7, 1976
Award	January 26, 1976