

In the Matter of Arbitration

Between )

Inland Steel Company )

and )

United Steelworkers of )  
America, Local 1010 )

Grievance No. 22-M-39

Appeal No. 1225

Award No. 629

Opinion and Award

Appearances:

For the Company

W. P. Boehler, Arbitration Coordinator, Labor Relations  
Robert H. Ayres, Manager, Labor Relations  
L. R. Barkley, Administrative Assistant, Labor Relations  
J. F. Mayberry, Assistant Superintendent, No. 3 Open Hearth  
A. Fabrizio, Auxiliary General Foreman, No. 3 Open Hearth  
M. E. Goetz, Test Engineer, No. 3 Open Hearth  
J. Ramirez, Foreman, No. 3 Open Hearth  
D. Lucis, Check No. 3790  
C. H. Applegate, Senior Labor Relations Representative  
D. F. Kilburg, Labor Relations Representative  
L. Shoaf, Turn Lieutenant, Plant Protection

For the Union

Theodore J. Rogus, Staff Representative  
John Hurley, Acting Chairman, Grievance Committee  
Gavino Galvan, Secretary, Grievance Committee  
Joseph Gyurko, Griever  
Frank Perez, Grievant

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This grievance charges a lack of cause for the discharge of Frank Perez on October 31, 1975 and requests reinstatement and the payment of moneys lost. He had been suspended for alleged physical assault and threat on a co-worker on October 20, 1975, and for his "over-all work record."

Grievant was hired in the No. 3 Open Hearth Department on May 1, 1970. He left for service in the Navy on June 17, 1971, and returned to work July 12, 1975. He was working as Precipitator Operator Helper on the 7 - 3 turn on October 20. David Lucas was the Precipitator Operator. A few minutes after the start of the turn, he left his

work location and went to the foreman's office to complain to their immediate supervisor, Test Engineer M. E. Goetz, that the grievant had abused him verbally, threatened him, grabbed him, kicked him and struck him. Mr. Goetz instructed him to return to his job of monitoring the precipitator, but Mr. Lucas asserted he was afraid to do so. Observing that Mr. Lucas' friend and former Helper, Mr. Watts, was just outside his office, Mr. Goetz suggested that he accompany Mr. Lucas back to the work place. Shortly thereafter Mr. Goetz spoke separately to Grievant who flatly denied practically every statement made by Mr. Lucas. He insisted he had not struck or even touched Mr. Lucas. Mr. Goetz then sent Mr. Lucas to the clinic where after examination it was reported that he had an "abrasion of anterior chest wall, minor." No sign of any blow to his face was observed.

Once before Mr. Lucas had complained to his supervisors about being abused and pushed around by Grievant for several days in a row, but Mr. Lucas had declined to make a written complaint after Grievant contradicted his statement. The supervisors were uncertain as to the facts at that time, as they were as to the incident of October 20, 1975, there being, as Mr. Goetz put it, a one on one situation with no other witness. Grievant suggested on both occasions that it would be better to put them on separate turns, because of the obvious ill will, and Mr. Goetz agreed that this would be done. The Assistant Superintendent, however, after discussing the October 20 incident with a Labor Relations Representative, decided that disciplinary action should be taken against Grievant, and this grievance followed. The Assistant Superintendent said he saw a red mark on Mr. Lucas' face, but no one else saw it, and no mention of it was made by the clinic nor in the 3rd Step grievance hearing.

The bad feeling between the two seemed to stem from two causes. One was the Operator's annoyance over the fact that Grievant as a returning veteran bumped and downgraded the Operator's former helper and friend, W. Watts. The other was the information given Grievant that Mr. Lucas had informed Plant Protection on September 26, 1975 that Grievant was misconducting himself on the job, which led to a three day suspension of Grievant. Grievant testified that he was so informed by his foreman. While Mr. Lucas alleged that Grievant threatened and pushed him around physically several days in a row, Grievant asserted that the truth was that the Operator had repeatedly threatened he was going to see that Grievant was dismissed saying that he was practically out already.

There must be credible evidence of misconduct to support the discharge of an employee. Here the evidence is by no means convincing. Indeed, there are serious doubts as to whether the acts of Grievant complained of by the Operator actually occurred in the form or manner alleged. When the Operator complained about Grievant the first time, he would not sign a complaint, and when it was suggested by supervision that they make an effort to get along on the job, Grievant was concil-

iatory and expressed the willingness to do so. On October 20, Test Engineer Goetz again felt that there was a lack of proof of the Operator's complaint and agreed that the best course would be to separate the two. He did not consider it necessary or desirable to invoke disciplinary action against the Grievant. That decision was made later by others in management.

It is also of significance in evaluating the quality of Mr. Lucas' testimony to note that the foreman who told Grievant about Mr. Lucas' earlier effort to make trouble for the Grievant was present at our hearing and did not dispute Mr. Perez' statement, thus lending credence to Grievant's assertion that Mr. Lucas was motivated by malice. It is also observed that Mr. Watts who was relieved by Grievant on the morning in question, and whose turn had ended, remained in the premises, and apparently saw or heard none of the things alleged by the Operator, for he was not called as a witness.

On the subjects of credibility and burden of proof in discipline cases, it may be helpful to repeat what was said recently in Award No. 626, to wit:

" 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."

While undoubtedly a feud has developed between Grievant and Mr. Lucas, on the facts revealed by the evidence it would be manifestly unfair and unsupportable to place the total blame on Grievant, and to accept Mr. Lucas' description of what happened on the morning in question as accurate and that of Grievant as false.

In consideration of the circumstances, it follows that cause for this extreme disciplinary penalty imposed on Grievant has not been demonstrated.

AWARD

This grievance is granted in accordance with sub-paragraph 8.3.1 of Article 8, Section 1.

Dated: May 26, 1976

/s/ David L. Cole

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David L. Cole, Permanent Arbitrator

The chronology of this grievance is as follows:

Grievance filed	November 3, 1975
Step 3 hearing	November 13, 1975
Step 3 minutes	December 2, 1975
Step 4 appeal	December 18, 1975
Step 4 hearing	December 23, 1975 February 3, 1976 February 10, 1976
Step 4 minutes	March 17, 1976
Arbitration appeal	March 19, 1976
Arbitration hearing	May 20, 1976
Date of award	May 26, 1976