

In the Matter of Arbitration

Between)
Inland Steel Company) Grievance No. 6-M-5
and) Appeal No. 1226
United Steelworkers of) Award No. 630
America, Local 1010)

Opinion and Award

Appearances:

For the Company

T. J. Peters, Assistant Superintendent, Labor Relations
W. P. Boehler, Arbitration Coordinator, Labor Relations
R. H. Ayres, Manager, Labor Relations
P. M. Dunning, M.D., Director, Inland Medical Department
T. J. Mulligan, Superintendent, Power and Fuels
D. D. Turner, Mechanical Foreman, Power and Fuels
F. Luna, Safety Engineer, Safety and Plant Protection
John L. Ferry, M.D.
D. F. Kilburg, Representative, Labor Relations

For the Union

Theodore J. Rogus, Staff Representative
Jim D. Jordin, Esq., Attorney for Grievant
John Hurley, Acting Chairman, Grievance Committee
Richard A. Walker, Griever
Lester J. Daros, D. O.
James C. Sponaugle, Grievant

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The grievant, James Sponaugle, a Powerhouse Utilityman, filed a grievance on November 3, 1975 complaining that the Company would not place him on the job to which his seniority entitles him and that there is no reason since October 20, 1975 for restricting his activities and keeping him on medical layoff.

He had lost consciousness while working on December 17, 1974, and in his fall fractured his eye socket. In addition to surgical repair of this injury, extensive diagnostic procedures were undertaken by a series of doctors but the cause of his fainting spell remains unknown. In 1969 he had had a similar experience while in the Navy, and tests at that time were also fruitless.

After receiving a recommendation from Grievant's doctor, the Company's Medical Department issued a medical restriction, limiting him to work in areas where a sudden loss of consciousness would not be likely to cause additional injury to him or to other workers. His departmental superintendent determined that there was no such work available in the Power Department and Grievant was consequently laid off on February 17, 1975.

This grievance was filed after Grievant was examined in October 1975 by a physician, Dr. L. J. Daros, whom he selected to replace his original physician, Dr. J. L. Ferry. On October 20, 1975 Grievant maintains that his doctor released him for work with no restrictions.

On the day of his spell and injury at the plant Grievant was removed by ambulance to St. Catherine's Hospital and his wife, a registered nurse, called in Dr. Ferry, an internist, who had attended Grievant for an unrelated ailment six weeks earlier. The plastic surgeon in charge had requested that an internist be brought in. Dr. Ferry arranged to have an electroencephalogram done by Dr. Evelyn Anderson on December 20, 1974, and Dr. David Neer, a neurologist, recommended that in addition to a brain scan a Holter Monitor Electrocardiographic report be obtained, and this examination was conducted on December 20 and 21. The cause of his trouble remaining unknown, Dr. Ferry referred Grievant to the Neurology Section of the University of Chicago Department of Medicine where Grievant was examined by Dr. Sidney Schulman on March 3, 1975. Dr. Schulman found no abnormalities or definite cause of Grievant's syncope episodes.

While none of the examinations or tests showed any cause for Grievant's blackout spells, it is enlightening to refer to some of the comments or conclusions of the physicians who conducted these examinations.

On December 20, 1974 Dr. Evelyn Anderson reported that Grievant had a normal electroencephalogram, no evidence of active epileptic process, and added "for the patient's sake I am glad that the present findings are so reassuring."

Dr. Ferry on December 22, 1974 prepared a hospital discharge summary which reviewed Grievant's relevant medical history and summarized the results of the various tests that had been made. The final diagnosis in this report was:

"Laceration of the left lower eyelid
Syncopal episode - cause unknown
Blow out fracture left orbit"

Grievant returned to the hospital shortly thereafter for repair of his fracture. He remained there a few days. He saw Dr. Ferry after he was discharged the second time. Dr. Ferry filled in the Company's form of report on Grievant's physical condition on January 23, 1975

stating in answer to one question that Grievant was able to work in all areas of a steel mill doing all types of heavy, physical steel-mill type work, and that the recommended date of return to work was January 27, 1975.

Dr. Ferry discussed Grievant's condition with Dr. Preston Dunning, Director of the Company's Medical Department, over the telephone, and on February 9 filled out another copy of the Company's physical condition report which differed from his earlier report in respect to Grievant's ability to work. This time Dr. Ferry left blank the answer to "Recommended date of return to work," and responded in the negative to the question about his ability to work in all areas of a steel mill, doing all types of heavy, physical steel-mill type of work. He added: "Should be restricted from hazardous work until cause of syncope is determined." In both his responses to the Company he had written "unknown" as to etiology.

Dr. Neer, the neurologist, wrote to Dr. Dunning on February 21, 1975. He mentioned Grievant's similar episode some four years earlier while in the Navy, stating that the neurological work-up at that time was said to be negative and that Dr. Neer's "examination in the hospital in December 1974 was also entirely normal." He wrote that brain scan, skull X-rays, EEG and a five hour glucose tolerance test revealed no abnormalities. His conclusion was:

"With a normal examination and normal studies, it is unlikely that these are actual seizure episodes although that cannot be ruled out 100%. I would, therefore, feel he should be employable on his usual job description, and be followed along for any difficulties which may never recur."

As stated above, Dr. Ferry then sent Grievant for examination on March 3, 1975 to the University of Chicago Department of Medicine, Section of Neurology, where Dr. Sidney Schulman conducted the examination. Dr. Schulman wrote to Dr. Ferry that the neurological examination was quite normal, and his report included the following:

"It seems quite clear that your studies have excluded any progressive disease that might be responsible for postural hypotension. This, together with the fact that he has had one or two episodes of fainting in the past prior to his most recent attack, suggests that the most likely interpretation is that of constitutional autonomic instability. While the results of the recent episode of syncope were nearly catastrophic, I would nevertheless characterize his autonomic imbalance as relatively minor, in view of the infrequency of syncopal attacks.

"On the other hand, it is reasonable, and, indeed, a physician's obligation, to advise against exposure to risks that would be involved in certain employment situations such as large moving machinery and unprotected high places.

"Perhaps a trial of Ephedrine in a dose of 25 mg. twice daily as a prophylactic measure would be worthwhile. However, I don't think that this could be depended upon with complete confidence."

In October, 1975 Grievant left Dr. Ferry and visited Dr. Lester Daros. Dr. Ferry furnished Dr. Daros copies of medical records on October 1, 1975. On October 16, 1975 Dr. Daros filled in the Company's form stating that Grievant was ready to return to work without restrictions on October 20. He also wrote that Grievant had suffered syncope of unknown origin.

On the advice of the Medical Department, Grievant was placed on the so-called M-Code, which means restricted employment and the need to have protective attention. Because of his seniority status, no suitable work was found for him and he has been on medical layoff since. His medical record at Inland has been an obstacle in his attempts to find other employment, although he is now employed elsewhere.

Dr. Daros wrote a letter on January 27, 1976 strongly supporting Grievant's contention that he is able to work at his usual occupation. In this letter he referred to the grievant's episode in the Navy, stressing that he had not slept for 48 hours at that time. The Navy's physician found no abnormality causing this syncope, and he served out the remaining months of his hitch without incident.

Dr. Daros also introduced a factor not mentioned in any of the documents or records previously prepared. This is that on December 17, 1974 Grievant was "cleaning a piece of equipment with a solvent which is noxious and possibly toxic to the nervous system and could definitely have contributed to this episode."

No mention of such a solvent was made either in the hospital, to any of the physicians searching for a cause of Grievant's experience, nor by Grievant or the Union in any of the grievance steps until the Step 4 hearing in January or February, 1976. At our hearing, however, Grievant insisted he had spoken of this to some Union representative, but no support was offered.

The parties were thereupon requested to question Verne Lundquist, the Senior Mechanic whom Grievant was assisting on the day in question. This was done and they have jointly submitted a statement saying that Mr. Lundquist declared that no solvent had been used by either of them on December 17, 1974 as it was not needed on the work being performed.

Dr. Daros apparently relied on the reports of the other doctors, which is basically what the Company did in imposing the medical restriction on Grievant. The Company maintains it did so in keeping with its obligation under Article 14, Section 1 of the parties' collective bargaining agreement to make reasonable provision for the safety and health of its employees at the plant. The facts and circumstances, however, seem to support Grievant's position.

In most of the cited cases involving disputes over employees' physical conditions, the worker has a known condition and the question is whether it is progressive and at what pace it will progress and possibly endanger the employee or others. Typical of such cases is Award No. 625. In other instances the employee has a known cardiac condition, a brain tumor, a disc or back ailment, or is subject to epilepsy or hypoglycemia, to name a few.

Here, however, despite an extensive and earnest search by qualified physicians and specialists, no cause for Grievant's syncope has been found. Not only can it not be said that Grievant has a condition which is likely to become worse; it has not been proven that he has any abnormality which requires medical attention.

About this there is no dispute. If it were a question of credibility one would have to favor the evidence of the witness relied on by the Company. Grievant testified he had not slept for 96 hours before his 1969 Navy fainting episode; his current doctor in writing said it was 48 hours. Grievant and Dr. Daros spoke of Grievant's exposure to a toxic solvent on the job on December 17, 1974. The Senior Mechanic on the job has informed us no solvent of any kind was used.

But the controlling facts have been developed by Dr. Ferry and the others named above whom he called in to examine or test Grievant, and not by Grievant or the doctor to whom he turned for help in October, 1975.

In considering whether it was reasonable for the Company to subject Grievant to its restrictive M Code, we must bear in mind that Dr. Ferry, and Dr. Neer recommended after studying Grievant's condition that he was fit to be returned to his usual occupation and that Dr. Anderson found his condition "reassuring." Only Dr. Schulman suggested that he be employed where he would not be exposed to large moving machinery or where he would be working in unprotected high places, although he also corroborated the finding of the other physicians that Grievant was suffering from no known abnormality. Dr. Ferry's second report, which came about two weeks after his first, must be taken with a good deal of question. Why he changed his opinion in the interim about Grievant's ability to work on his usual job has not been made clear. No adverse findings were developed between these two reports.

In summary, the Navy episode was five years before that in the Company's Power Department, and there were none in between. The Navy

conducted diagnostic procedures in the hospital, found nothing, and Grievant returned to his responsibilities on board a missile-carrying vessel for 18 months. We do not know that his fainting spell at the plant had any relationship to that in the Navy, or resulted from the same cause. None of the qualified physicians who participated in the diagnostic procedures since December 17, 1974 have stated that he will have a recurrence; in fact, only one expressed doubt about letting him return to his normal occupation. In this, Dr. Ferry's revised suggestion is being discounted.

Upon these facts it is exceedingly harsh to disqualify this relatively young man practically forever from working in the type of occupation he has chosen. Moreover, it reflects caution to such an extreme point as to lead to the conclusion that it is not a reasonable or fair exercise of the discretion which Management has under the provisions of Articles 13 and 14 of the parties' collective bargaining agreement.

AWARD

This grievance is granted. Grievant shall be reinstated as of October 20, 1975. Earnings he has had from other employment shall be deducted from any pay retroactively due him under this award.

Dated: June 2, 1976

/s/ David L. Cole
David L. Cole, Permanent Arbitrator

The chronology of this grievance is as follows:

Grievance Filed	November 3, 1975
Step 3 Appeal	November 6, 1975
Step 3 Meeting	November 19, 1975
Step 3 Minutes	December 16, 1975
Step 4 Appeal	December 30, 1975
Step 4 Meeting	January 9, 1976 January 16, 1976 January 22, 1976 February 3, 1976 February 19, 1976
Step 4 Minutes	March 9, 1976
Arbitration Appeal	May 6, 1976
Arbitration Hearing	May 21, 1976
Date of Award	June 2, 1976