

In the Matter of the Arbitration Between

INLAND STEEL COMPANY

AND

UNITED STEELWORKERS OF AMERICA
AND ITS LOCAL UNION 1010

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) Grievance No. 28-M-45
) Appeal No. 1236
) Award No. 634
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INTRODUCTION

An arbitration hearing between the parties was held in Harvey, Illinois, on January 17, 1978.

APPEARANCES

For the Company:

- Mr. W. P. Boehler, Arbitration Coordinator, Labor Relations
- Mr. R. H. Ayres, Labor Relations, Industrial Relations
- Mr. H. F. Kaiser, Assistant Superintendent, No. 3 Cold Strip Mill
- Mr. W. C. Wingenroth, Assistant Superintendent, Labor Relations
- Mr. R. H. Marinconz, General Foreman, Temper Mill Finishing and Shipping, No. 3 Cold Strip Mill East
- Mr. J. E. Blair, Senior Labor Relations Representative
- Mr. T. L. Kinach, Senior Labor Relations Representative
- Mr. E. Richards, Shipper, No. 3 Cold Strip Mill East
- Mr. J. T. Surowiec, Labor Relations Representative

For the Union:

- Mr. Theodore J. Rogus, Staff Representative
- Mr. Joseph Gyurko, Chairman, Grievance Committee
- Mr. Rudy Schneider, Grievance Committeeman

Mr. Ron Mattock, Steward

Mr. Perry Midkiff, Steward

Mr. Pleas R. Thornton, Grievant

Arbitrator:

Mr. Bert L. Luskin

BACKGROUND

Pleas R. Thornton was employed by the Company on August 17, 1964. He continued in employment thereafter until an incident occurred on April 29, 1977. He was sent home from the plant on that date and he was thereafter suspended from employment. The suspension was converted to a discharge on May 13, 1977, and a grievance was filed in Step 3 on May 16, 1977.

Thornton was specifically charged with violating Plant Rule 102 o, when he allegedly used profane, abusive and threatening language towards a member of supervision.

Thornton had attended the funeral of a brother in Cleveland, Ohio. On his return to work he submitted a letter from the funeral director in order to confirm his attendance at the funeral. He was informed that the contractual amount of funeral leave time would be paid, and on April 29, 1977, he was asked to come to the office of the shipper (Ed Richards). The Company had prepared its Standard Funeral Leave Pay form for Thornton's signature. When Thornton entered the shipper's office, the shipper handed him the form, informed him that the form would have to be signed in order

that Thornton could receive the contractual amount of funeral leave pay. Thornton allegedly picked up the form, looked at it and stated that he had never had to sign a similar form before. It should be noted that within a period of 2 1/2 years Thornton had lost three other members of his immediate family, had attended their funerals, had requested funeral leave allowances, and that the contractual amount due him was paid in each instance. When Thornton allegedly stated that he had never had to sign a similar form in the past, Richards allegedly stated that he would have to sign the form in order to receive the funeral leave pay. Richards allegedly stated that Thornton's General Foreman (Marinconz), who was out of the plant at that time, had left instructions to have Thornton sign the form. Thornton refused to sign the form, threw it on the desk and he was charged with stating: "You and Marinconz are fucking with me; you are trying to railroad me; I am not taking any more of you guys' shit." Thornton allegedly waved his hands in anger and in a menacing manner and then stated to Richards: "If you guys keep fucking with me, there is going to be smoke all over this office; something bad is going to happen to you guys, mark my word." Richards allegedly thereupon informed Thornton that he could "forget the whole thing," and Thornton thereupon left the office.

Richards thereafter called the Assistant Superintendent (Kaiser), informed him of the incident, stated that he had been threatened by Thornton, and Kaiser directed Richards to remain in

his office. Kaiser called Plant Protection, and a meeting was held shortly thereafter. Richards allegedly recounted the statements made by Thornton. Thornton (who was present with a steward) refused to discuss the fact situation, stating only that the Company was attempting to hold a kangaroo court and that the Company was attempting to get rid of him and that he could not understand why the Company was trying to fire him.

In a subsequent suspension hearing, Thornton denied having made the threats attributed to him by Richards, denied using profane and abusive language directed towards Richards, and denied making a threat upon Richards' life. Thornton conceded that he had believed that Richards was responsible in part for his divorce from his wife because of the manner in which Richards had scheduled Thornton for a substantial period of time. Thornton conceded that he believed that he had been harassed and that an attempt had been made by members of supervision to railroad him. Thornton conceded that while in Richards' office he had used the word "railroad." He conceded that he had charged Richards and Marinconz with "harassing" him. His version of the reference to "smoke" was completely different than that attributed to him by Richards. He stated only that he had informed Richards that if the Company persisted in harassing him, he (Thornton) was going to "bring smoke to the office." It was Thornton's contention that he had intended the words "bring smoke to the office" to mean that he intended to file a grievance charging

harassment and he intended thereby to bring the matter to the attention of the Union in order that pressure could be applied as a result of the intervention by appropriate officials of the Union.

In the original investigation conducted by Kaiser, Richards conceded that he had charged Thornton with using words somewhat different than those which he later contended had been used by Thornton. Richards contended that he had used the word "screwing" instead of the word "fucking" because a female secretary was present and taking notes and he did not want to use that word in her presence.

The Union contended that Richards had embellished his statements as time went on and that from time to time he had added words which he contended had been used by Thornton but which he had not charged to Thornton in earlier meetings preliminary to suspension and discharge.

The Company contended that the words "bring smoke to the office" or "there will be smoke all over this office" are a common slang reference to the use of a gun, and that Richards was well aware of the meaning of those terms, was frightened, and expressed concern for his safety. The Company contended that when the reference to "smoke all over this office," is coupled with the words "something bad is going to happen to you guys..." the only reasonable meaning that can be attributed to those words is that they were

intended as a threat of bodily harm, constituted a violation of published plant rules, and did constitute just and proper cause for the Company's decision to terminate Thornton from employment.

The Union contended that Thornton had never exhibited a violent attitude and had never threatened anyone in the plant on any prior occasion. The Union contended that Thornton had been nervous because of the loss of four members of his immediate family in the space of a little more than two years and his divorce which had occurred several months prior to the incident in question. The Union contended that Thornton was not aware of the fact that he would have to sign a form in order to obtain the funeral leave pay and he assumed that he was being asked to do things which did not have to be done solely for the purpose of irritating and harassing him.

The issue arising out of the grievance became the subject matter of this arbitration proceeding.

DISCUSSION

The determination in this case turns on the question of credibility. If Thornton had used words directed toward Richards that could reasonably have been construed as a threat upon Richard's life, then and in that event just and proper cause would have existed for Thornton's termination from employment.

The Company carries the burden of proof. Where the action taken by the Company resulted in the discharge of Thornton, the evidence would have had to be clear and convincing in nature with respect to Thornton's intention to threaten Richards' life and to be coupled with a reasonable belief on Richards' part that the words used by Thornton were intended as a threat.

The circumstances are unusual. Thornton was called to the office to perform a simple ministerial act. He was not being reprimanded. There was no implication that Thornton had attempted to defraud the Company. Thornton had provided the Company with verification of his attendance at the funeral of a brother. The only thing that remained (in order that payment could be made to Thornton) was for Thornton to sign the appropriate form generally used by the Company when contractual funeral leave pay claims are made. The fact that the form may not have been signed by employees in every similar instance would not mean that the form was created for the sole purpose of "harassing" Thornton, or embarrassing him, or impugning his integrity. The fact remains that Thornton had received contractual funeral leave pay because of the death of members of his family on three other occasions, and in at least two of those instances he had signed the identical form that Richards had asked him to sign.

It is difficult to understand Thornton's behavior. His conduct bordered on the irrational. He justified his belligerent attitude on the grounds of nervousness and pressure. He stated that he had been upset for some period of time because of the loss of four members of his immediate family within a relatively short period of time (approximately 2 1/2 years). He contended that he had been nervous and emotionally upset because he had recently been divorced from his wife under circumstances where he believed that a part of his domestic problems arose when he had been unfairly scheduled by Richards (and Marinconz) to work an unusual number of midnight shifts. Thornton conceded that he had discussed the scheduling problem with Marinconz, who had shown him records and documentation and had partially convinced Thornton that the scheduling circumstances were unusual and that neither Marinconz nor Richards had discriminated against Thornton or had singled him out for unfair treatment.

The fact remains, however, that something did happen in the office. Thornton concedes that he accused Richards (and Marinconz) of trying to "railroad" him. He accused Richards of "harassing" him. He conceded that he had used the word "smoke," but he contended that he had used it in a totally different context from the form testified to by Richards. He contended that the word "smoke" was intended to refer to a threat on his part to induce the

Union to intercede on his behalf because of what he believed to be a developing bad relationship between him and Richards. Richards, on the other hand, testified that the manner in which Thornton used the word "smoke" left no doubt in his (Richards) mind that the word was meant as a threat to bring a gun into the plant and to use that gun to shoot Richards.

The evidence is seriously conflicting in nature. There can be no question concerning the fact that Thornton did lose control of himself and he did use profane language while he was in Richards' office. The arbitrator is convinced from all of the evidence in the record that Thornton did make a statement similar to the following words: "You and Marinconz are fucking with me; you are trying to railroad me; I'm not taking any more of you guys' shit." It should be noted that the profane words used were not directed toward Richards personally. The profane expressions were designed to punctuate remarks, constituted figures of speech, and were used as a form of emphasis. They were inappropriate, uncalled for and unjustified. Richards did not deserve to be castigated in that manner. He did nothing to provoke the situation and he did nothing that should have caused Thornton to become angered.

The evidence would indicate that Richards' version of the use of the word "smoke" differed somewhat between the period when the first investigation was held and the hearing was held and the version repeated in other steps of the grievance procedure. The

arbitrator is convinced that, although there were no witnesses to the conversation between Richards and Thornton, Richards believed that he was being threatened. Richards sincerely believed that Thornton used the word "smoke" (together with words that preceded and followed the use of that word) in a form which Richards believed constituted a threat to his life.

Thornton conceded that he had used the word "smoke," but he contended that he had stated to Richards in effect that if the Company persisted in harassing him (Thornton), he (Thornton) "was going to bring smoke to the office." It is conceivable, although not completely logical, that Thornton used the word "smoke" as a reference to a form of intervention and pressure from the Union. The fact remains, however, that there is serious doubt with respect to whether Thornton's use of the word "smoke" was coupled with the words "something bad is going to happen to you guys; mark my words," under circumstances where those words were intended to constitute a threat to the life and safety of Richards.

Nothing that Richards said to Thornton should have constituted a provocation of such a nature as to result in so violent a reaction from Thornton. Richards was not denying a funeral leave claim for pay. Thornton was not being suspended. Thornton was not being interrogated. It is evident that Thornton was extremely nervous, extremely touchy, and was overly sensitive to a point where he reacted in a completely irrational manner to a simple request

that he sign a form, after which he would have received payment for the contractual number of days to which he was entitled by virtue of his attendance at the funeral of a brother.

Where a terminated employee is charged with the commission of an act which would constitute a threat to the life of a member of supervision, the proof must be of such a nature as to leave no doubt in the mind of the arbitrator that the threat was made and was intended as a threat. The arbitrator is not convinced from all of the evidence in this record that Thornton did in fact use all of the words which would have constituted a threat to Richards' life. Thornton did react violently to a reasonable request from Richards. He did direct a stream of abusive and profane language in Richards' presence which was completely uncalled for. His behavior and his reference to alleged attempts on the part of Richards to "railroad" him or "harass" him constituted conduct which would have justified the imposition of disciplinary measures consistent with the degree of the committed offense. The arbitrator cannot find, however, that the evidence would support a conclusion that Thornton threatened Richards' life. Under those circumstances, the discipline imposed should be predicated upon the findings of fact which the arbitrator believes were clearly established by the evidence in this case.

Thornton's violent and irrational reaction to a reasonable request made by Richards and the use of profane and abusive

language would justify the imposition of a disciplinary suspension from employment. In determining the degree of the penalty, it should be noted that (with one exception) all discipline imposed against Thornton in the preceding five-year period was based upon absenteeism, tardiness and failure to report off. On April 14, 1977, Thornton lost a portion of a turn when he was disciplined for insubordination.

In the opinion of the arbitrator, Thornton should have been suspended from employment for a period of thirty days. The arbitrator must find that just cause did not exist for Thornton's termination from employment. Thornton should be restored to employment with the Company, with seniority rights, and with back pay for all time lost from work for the period between the end of a thirty-day suspension from employment and the effective date of his restoration thereto.

For the reasons hereinabove set forth, the award will be as follows:

AWARD NO. 634

Grievance No. 28-M-45

1. Just cause did not exist for the termination from employment of Pleas R. Thornton.
2. Pleas R. Thornton should have been suspended from employment for a thirty-day period after April 29, 1977.

3. Pleas R. Thornton should be restored to employment with the Company, with seniority rights, and with full back pay for time lost from work for the period between the end of the thirty-day period of suspension from employment and the effective date of his restoration thereto.

Burt L. Luskin
ARBITRATOR

January 27, 1978

CHRONOLOGY

Grievance No. 28-M-45

Grievance filed (Step 3)	May 16, 1977
Step 3 hearing	May 26, 1977
	May 27, 1977
Step 3 minutes	June 27, 1977
Step 4 appeal	July 12, 1977
Step 4 hearing	July 14, 1977
	July 28, 1977
Step 4 minutes	October 4, 1977
Appeal to arbitration	October 5, 1977
Arbitration hearing	January 17, 1978
Award issued	January 27, 1978