

ARBITRATION AWARD

Award No. 635
December 12, 1977

INLAND STEEL COMPANY

-and-

Appeal No. 1232
Grievance No. 14-M-41

UNITED STEELWORKERS OF AMERICA
Local Union No. 1010

Subject: Discharge - Possession of Drugs

Statement of the Grievance: "The aggrieved, Robert A. Smith, Ch. #22848, contends the action taken by the Company, when on January 27, 1977, his suspension culminated in discharge, is unjust and unwarranted in light of the circumstances. The aggrieved requests that he be reinstated and paid all monies lost."

Contract Provisions Involved: Articles 3 and 8 of the August 1, 1974 Agreement.

Grievance Data:

Date

Grievance Filed:	January 31, 1977
Step 3 Hearing:	February 10 & 11, 1977
Step 3 Minutes:	March 16, 1977
Appeal to Step 4:	March 29, 1977
Step 4 Hearing:	April 14, 1977
Step 4 Minutes:	May 17, 1977
Appeal to Arbitration:	May 18, 1977
Case Heard:	October 19, 1977
Transcript Received:	November 1977

Statement of the Award: The grievance is denied.

BACKGROUND

R. A. Smith was discharged on January 27, 1977, for "possession of... drugs while in the plant." The Union insists that he committed no such offense and that his discharge was hence unjustified. It seeks his prompt reinstatement with back pay.

Smith worked as a Millwright 3rd Class in #3 Blooming Mill on January 11, 1977. He was on day turn. He gave the following account of his actions that morning. He arrived at the plant at 5:00 a. m. and went to the Blooming Mill locker room. His locker, #127, had double doors which were secured through a hasp and lock arrangement. He opened the lock with a key, swung open the doors, and dressed for work. His work clothes and safety shoes were in the locker along with a small satchel, the kind of bag used to carry athletic equipment. He removed them from the locker, took off his boots and street clothes, and put on his work clothes and safety shoes. He then hung up his street clothes. He placed his boots on the floor of the right hand locker, the front of the boots pointing at the rear panel of the locker. He put the satchel on top of the boots so that it was resting at an angle on both the boots and the rear panel. He finally closed the doors and locked the locker.

Smith finished dressing in the locker room at 5:25 a. m. He went to the shanty to have some coffee with his fellow employees. The foreman arrived at about 6:00 a. m. and gave the men their assignments. Smith was assigned to a job at the "north end" which is a relatively short distance from the locker room. After he collected his tools, he went to the "north end" and started work at 6:45 a. m. He remained in that area until 7:50 a. m. when supervision appeared and took him back to the locker room.

Plant Protection officers, Captain Seel and Sergeant Parr, gave the following description of their role in this controversy. The Plant Protection office received an anonymous telephone call at 7:30 a. m. that Smith was "selling dope" at locker #127 in the Blooming Mill locker room. Seel and Parr responded to the call. They drove to the locker room and went to locker #127. No one was there. Seel checked the locker and found it to be "secure" with its doors "flush and completely closed." He directed Foreman James to bring Smith to the locker room. Smith arrived at the locker a short time later.

Captain Seel told Smith about the anonymous call. He asked who shared locker #127 with him. Smith said "no one" and added that he "was the only one who had the keys to the locker." Seel then asked whether the officers could examine his locker and his person. Smith had no objection. He opened the locker. Seel searched Smith and found nothing. Parr searched the locker and found a clear rectangular plastic bag sitting on the floor of the right hand locker. The bag was leaning against the rear panel, in front of the boots and beneath the satchel. When Seel saw the bag and its contents, he stated to the foreman, "This looks like marijuana." Smith said, "It's not mine", and intimated that he was being "set up."

The officers took Smith to Plant Protection headquarters. They gave the plastic bag to Captain Pratt who is responsible for investigations. Pratt noted that the bag held three smaller plastic bags, each of which contained a "green, leafy vegetable material." He thought it looked like marijuana. He questioned Smith at some length, a transcript being made of the questions and answers. Smith explained that locker #127 was his alone, that he had two keys to the locker, that both of them were in his possession, that the plastic bag "could have been planted" in his locker when he "was taking a shower", and that he'd last taken a shower on January 9 at 9:00 p.m. This interview took place on January 11 sometime after 8:00 a.m.

Captain Pratt took the plastic bag to the Inland Clinic the same day, January 11. He watched while clinic personnel ran a "marijuana chemical test" on the bag's contents. The test was "positive" on all of the material in the three smaller bags, indicating the material was in fact marijuana. The Clinic's findings were later confirmed by the East Chicago Police Narcotics Section on February 9, 1977, and by the Northwest Indiana Criminal and Toxicology Laboratory on April 20, 1977. Both of these agencies analyzed the contents of each bag. They found that each contained marijuana. Altogether there were two to three ounces of marijuana in the large bag. The East Chicago Police estimated the "street value" of this "quality" marijuana as anywhere from "\$30 to \$45" an ounce.

Management was convinced, from the circumstances of this case, that Smith was guilty of "possession of . . . drugs while in the plant." It suspended him and later converted the suspension to discharge.

Smith insists he is innocent of any wrongdoing. He flatly denies placing the marijuana in his locker or even knowing it was there. His position is that someone else must have placed it in the locker in an attempt to frame him. He emphasizes that he has been an outspoken person, that he therefore has been the object of some employee hostility, that the whole episode was prompted by an anonymous phone call to Plant Protection, and that he has a perfectly clean disciplinary record. The Union contends that Smith was the victim of another's plot. It urges his discharge was unjustified.

DISCUSSION AND FINDINGS

Several ounces of marijuana were found in Smith's locker. That locker is his alone. It would appear therefore that he was in "possession of... drugs while in the plant." The real issue, however, is whether this marijuana was placed in the locker by some unknown person who wished to harm Smith. The Union believes this kind of foul play was involved here. It offers three possible explanations as to how the marijuana could have gotten into Smith's locker. First, it says someone could have put the plastic bag in the locker while Smith was taking a shower and the locker doors were open. Second, it says someone could have used a key to the same brand lock to open Smith's locker and insert the plastic bag. Third, it says someone could have forced one of the doors out far enough to enable him to slip his arm and a plastic bag into the locker, all of this without opening the lock.

As for the first theory, it is not supported by the evidence. Smith worked January 9, 10 and 11. He showered January 9 at 9:00 p.m. He did not shower on either January 10 or 11. If the plastic bag had been placed in the locker on January 9 while Smith was in the shower room, Smith would surely have seen it. He put on his street clothes and boots on January 9 after showering. He changed clothes the morning of January 10, again the afternoon of January 10, and still again the morning of January 11. Each time he had to change shoes, taking one pair out of the locker and putting another pair into the locker. The shoes (i. e., boots or safety shoes) were on the bottom of the right hand locker where the marijuana was found. It is inconceivable that he would not have seen the marijuana had it been placed in the locker on January 9 while he was showering.

As for the second theory, it is not persuasive. The Union alleged that keys for the kind of "Master" lock found on locker #127 were interchangeable. Its position, in other words, was that someone else with a "Master" lock could have used his key to open Smith's lock. This idea was tested by the parties. Two keys from a newly purchased "Master" lock were used on Smith's lock. They did not open his lock. One key from an old "Master" lock was used on Smith's lock. It did not open his lock. Finally, two keys were made by a locksmith from the serial number on Smith's lock. They were used on that lock but did not open it. The Union was thus unable to produce any key, apart from the ones in Smith's possession, which would open Smith's lock.

As for the third theory, it is simply not credible. The Union alleged that locker #127 had double doors and that one of the doors could have been pulled out far enough to enable someone to insert his arm through the crack and place the marijuana in the locker. This idea was tested by the parties in February 1977. Someone from the Union successfully demonstrated that he could, through the use of a pry bar, gain access to locker #127 in the manner just described. That man got most of his arm into the right hand locker. But his body then was flush against the left locker and his arm in the right locker seemed to be largely parallel to the locker door. He would have only a limited opportunity to manipulate his arm within the locker.*

The crucial consideration, however, is the location of the plastic bag in the locker. When Sergeant Parr found this bag, it was sitting on the floor of the right hand locker, leaning against the rear panel, in front of Smith's boots and beneath his satchel. Had someone inserted his arm into the locker and dropped the plastic bag there, the bag could not possibly have been in the position in which it was found. It could not have been in

* It should be emphasized that the doors to locker #127 were "flush and completely closed" on January 11, 1977, when Plant Protection officers examined the locker. But when Captain Pratt went back to view the locker on January 24, he found one door of the locker "bowed in." This door obviously had been tampered with between January 12 and 24. It may be that this tampering made possible the demonstration of entering the closed locker in February.

front of the boots or beneath the satchel. Rather, it would have been to the side of or behind the boots or on top of the satchel. For someone to have placed the plastic bag where Parr found it would have involved an elaborate series of moves. That person would have had to get his arm in the locker, move the satchel to one side, take his arm out, pick up the plastic bag, reenter the locker with the bag, place it against the rear panel in front of the boots, and finally move the satchel back to its original position on top of the boots. And he would have had to do all of this by feel, without being able to see the contents of the locker and without being able to manipulate his arm to any great degree inside the locker. For these reasons, it is almost inconceivable that the bag of marijuana could have been placed in the locker through the method suggested by the Union. The inherent probabilities of the situation undermine the Union's claim.

The Union contends further that Smith must have been the victim of a conspiracy. Plant Protection did receive an anonymous phone call on January 11, 1977, about Smith "selling dope" at locker #127. That call could possibly have been part of an arrangement to frame Smith. But it could just as well have come from someone who knew Smith was handling marijuana and wanted him apprehended without having to become personally involved. I take notice of the fact that a good many crimes are solved through leads provided by anonymous informants. Smith did receive an anonymous letter on January 17 or 18, 1977, containing "help wanted" ads for himself and his wife. This letter certainly indicates that someone disliked him. But it was sent after Smith's suspension from work and after it had become known in the plant that Smith was in trouble. The fact that someone was pleased by Smith's difficulties and expressed that pleasure through an anonymous letter does not prove the existence of a conspiracy. There are sick people who find enjoyment in others' misfortunes. The evidence in this case does not establish that some unknown persons conspired against Smith by placing marijuana in his locker to cause his discharge.*

* Indeed, had that been the conspiracy and had the anonymous phone call been part of the conspiracy, the caller would undoubtedly have referred to the marijuana in Smith's locker. That would have insured Management action against Smith. However, the caller referred instead to Smith's activity (i. e., "selling dope") in the locker aisle.

There is no satisfactory explanation for the presence of the marijuana in Smith's locker other than that he put it there himself. He must have been responsible for its presence in the locker. I find, accordingly, that he was guilty of "possession of . . . drugs while in the plant." Drugs have no place in an industrial plant. They are, like alcohol and guns, incendiary devices which represent a clear and present danger to employees and Management alike. In view of the seriousness of Smith's misconduct, I believe his discharge was "for cause." There is no sound basis in the record for modifying the discharge penalty.

AWARD

The grievance is denied.


Richard Mittenthal, Arbitrator