

Mr. Michael Mezo, Griever

Mr. Giovanni Sessa, Assistant Griever

Mr. Nobel E. Hansen, Grievant

Arbitrator:

Mr. Bert L. Luskin

BACKGROUND

Nobel E. Hansen was employed by the Company on January 22, 1964. In April, 1977, he was working as a boilermaker (Plant 2). On April 5, 1977, Hansen was suspended from employment because of his overall record of absenteeism and tardiness. A hearing was held on April 11, 1977, and on April 18, 1977, Hansen was terminated from employment because of his record of reprimands and imposed discipline for excessive absenteeism and tardiness and because of his failure to improve his attendance record subsequent to the most recent period of suspension that had been imposed against Hansen in April, 1976. It was the Company's contention that following the most recent period of suspension imposed against Hansen in April, 1976, he had maintained a perfect attendance record during the months of May, June and July, 1976, and in the next eight months Hansen had accumulated fifteen absences and was tardy on twenty-one turns. The Company contended that an examination of his days of absence indicated that approximately thirteen of the fifteen absences in the most recent eight-month period were days that were contiguous to Hansen's scheduled days off from work.

A grievance was filed and processed through the preliminary steps of the grievance procedure. The issue arising therefrom became the subject matter of this arbitration proceeding.

DISCUSSION

The Company follows the principle of corrective and progressive discipline imposed for excessive tardiness and absenteeism. In the most recent five-year period Hansen was reprimanded for excessive absenteeism in September, 1972. He was next reprimanded in July, 1973, and again in May, 1975, for absenteeism and tardiness. On September 2, 1975, he was suspended for one turn for absenteeism. On November 11, 1975, he was suspended for three turns for absenteeism and tardiness, and on April 20, 1976, he was suspended for four turns for absenteeism and tardiness. On April 29, 1976, Hansen was interviewed by the Departmental Assistant Superintendent (in the presence of a committeeman and Hansen's general foreman). Hansen's attendance record was reviewed, his record of discipline was called to his attention, and he was informed that further instances of absenteeism would result in suspension preliminary to discharge. Thereafter Hansen had a perfect attendance record in the months of May, June and July, 1976, although he was tardy on several occasions. In the next eight months, however, Hansen was absent on fifteen occasions and tardy on twenty-one turns. Hansen reported that he had been sick on eight of the fifteen turns, and he reported off on five turns for personal reasons. There were no report-offs on two absences.

The Company contended that it had been patient with Hansen and that it had exercised restraint in an effort to induce Hansen to correct his attendance problems. The Company pointed to the fact that it had issued a reprimand, a one-day suspension and a three-day suspension to Hansen in 1975, and, despite those efforts, there was no noticeable improvement in Hansen's attendance record. In 1976 he was absent on twenty-three turns and tardy on thirty-one occasions. Hansen knew and fully understood after the record-review of April 29, 1976, that he would have to present medical confirmation for absences related to illnesses and he would have to receive permission in advance for absences for personal reasons. The Company contended that the last three absences preceding his suspension and termination occurred under circumstances where Hansen complained of an injury to his eye. After examination he was informed that he could return to work. The Company contended that Hansen remained away from work for three days despite the fact that the condition of his eye was not disabling in nature.

The Company pointed to the fact that Hansen was a craft employee (boilermaker) and that, unlike other types of classifications, employees could not be readily moved up to fill vacancies when Hansen was absent from work.

The Union contended that Hansen had been absent on numerous occasions because of bona fide medical reasons and that in many instances he had made special efforts to notify his foreman of his impending absences.

The Union pointed to the fact that on March 30, 1977, Hansen reported for work, showed his supervisor his bloodshot eye, and was taken to the clinic. His eye was treated and he was informed that he could see his own doctor and he could return to work "if able." Hansen informed his foreman that he would prefer to see his own doctor. No objection was raised to Hansen's leaving work for the balance of that shift. Hansen's doctor did not have office hours on that day, and Hansen saw his own doctor on the following day. Hansen was informed that the condition was as described by the Company's clinic and that the condition had been caused by strain, smoke and irritation. Hansen was given a prescription for new glasses, and on the following morning he went to a restaurant at 6:00 A.M. where he expected that his foreman would be eating breakfast and informed his foreman that he would not be in to work on that day. The Union contended that the foreman did not raise an objection and did not insist that Hansen report for work. The Union contended that Hansen reported on the following day, worked three turns, and was then informed that he was suspended pending discharge.

On March 30, 1977, Hansen's eye condition was diagnosed as a "subconjunctival hemorrhage." The condition results from a rupture of a blood vessel lying beneath the outer protective layer of the eye. It is normally not a painful condition and, under ordinary circumstances, the hemorrhage becomes absorbed and the redness in the eye would disappear after approximately ten days.

Hansen was not required to work after the condition was diagnosed at the Company's medical department. He was told to work "if able" and to see his family doctor "if necessary." Hansen did see an ophthalmologist whose services are also used by the Company as a consulting ophthalmologist. That doctor confirmed the original diagnosis, but he did not at that time inform Hansen that he could immediately return to work. What is most significant, however, is that on the morning of April 1, 1977, Hansen appeared at a restaurant at approximately 6:00 A.M. (one hour before the start of his shift) where he met his foreman and informed the foreman that he would not be in to work that shift. The foreman did not caution Hansen or warn him that an absence on that day might precipitate suspension and discharge action.

Hansen has demonstrated that he can report for work regularly. The Company is under no obligation to provide Hansen with work whenever Hansen finds it convenient to report for work. The Company is not required to retain Hansen in employment if he persists in maintaining a record of attendance that exceeds acceptable limits. Hansen is a craft employee. He is not easily replaced on a daily basis. His thirteen years of service with the Company entitle him to consideration, but it does not provide him with immunity from the Company's right to discipline an employee for an irregularity in attendance.

While the arbitrator does not believe that Hansen made a real effort to correct his attendance problems during the last eight months of his employment, the fact remains that the circumstances which led to Hansen's termination leave some doubt with respect to whether he could or could not have worked on the three days which preceded the suspension. In the opinion of the arbitrator, Hansen should be provided with one further opportunity to demonstrate that he can report for work as scheduled and to maintain an attendance record consistent with that expected and required of any other employee. Hansen must accept a major share of the responsibility for the events which led to his suspension and termination from employment. There are mitigating circumstances present which would justify Hansen's restoration to employment. He is not, however, entitled to any back pay for the period between the date of his suspension and termination from employment and the effective date of his restoration thereto. The intervening period should be considered to constitute a period of disciplinary suspension from employment.

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

AWARD NO. 638

Grievance No. 20-M-62

Nobel E. Hansen should be immediately restored to employment with the Company, with seniority rights, but without any back

pay for the period between the date of his suspension and termination from employment and the effective date of his restoration thereto. The intervening period should be considered to constitute a period of disciplinary suspension from employment.

Bert R. Luskin
ARBITRATOR

December 21, 1977

CHRONOLOGY

Grievance No. 20-M-62

Grievance filed (Step 3)	April 21, 1977
Step 3 hearing	April 28, 1977
Step 3 minutes	May 13, 1977
Step 4 appeal	May 20, 1977
Step 4 hearing	June 9 and July 1, 1977
Step 4 minutes	August 4, 1977
Appeal to arbitration	September 12, 1977
Arbitration hearing	November 17, 1977
Award issued	December 21, 1977