

In the Matter of the Arbitration Between

INLAND STEEL COMPANY

AND

UNITED STEELWORKERS OF AMERICA
AND ITS LOCAL UNION NO. 1010

Grievance No. 22-M-74
Appeal No. 1237
Award No. 639

INTRODUCTION

An arbitration hearing between the parties was held in Harvey, Illinois, on January 24, 1978.

APPEARANCES

For the Company:

- Mr. William P. Boehler, Arbitration Coordinator,
Labor Relations
- Mr. Robert H. Ayres, Manager, Labor Relations,
Industrial Relations
- Mr. T. L. Kinach, Senior Labor Relations Representative
- Mr. J. L. Rodimel, Labor Relations Representative
- Mr. J. S. Semens, Superintendent, Mold Foundry
- Mr. J. T. Polihronis, General Foreman, Mold Foundry
- Mr. W. Jakubin, Foreman, Mold Foundry
- Mr. D. F. Kilburg, Senior Staff Coordinator, Training

For the Union:

- Mr. Theodore J. Rogus, Staff Representative
- Mr. Joseph Gyurko, Chairman, Grievance Committee
- Mr. Walter Hartman, Committeeman
- Mr. Theodore Moore, Jr., Grievant

Arbitrator:

Mr. Bert L. Luskin

BACKGROUND

Theodore Moore, Jr., was employed by the Company on January 27, 1971. He worked in the Mold Foundry Department. On or about April 21, 1977, Moore was assigned to work as a tractor operator on the midnight to 8:00 A. M. turn. During the course of that shift he operated a F-11 payloader. That piece of equipment is used to transport sand from the shake-out area to the shake-out hopper. The purpose in transporting the sand is to make certain that a sufficient supply of sand is available for the continuation of operations on all shifts. In addition thereto, the payloader is used to push the arbor car into a cooling spray booth after molds are loaded onto the car by means of an overhead crane. Although the arbor car was originally designed to be self-propelled, the cables have malfunctioned and the car has been pushed in and out of the spray booth by means of the payloader for approximately one year.

At approximately 5:00 A. M. on April 21, 1977, the grievant was sitting in the payloader with the cab doors open. The payloader was parked on the ram side of the foundry. Turn Foreman Jakubin approached the payloader and spoke with Moore who was sitting in the cab. It was the contention of the foreman that he had

noted the conveyor belt running but there was no sand on the belt. It was his contention that after a few minutes he noted the parked payloader, approached Moore, and asked him why there was no sand on the C-3 conveyor. Jakubin allegedly informed Moore that the level of sand in the sand storage bin (being fed by the C-3 conveyor) was "down 14 steps" from the required level. Jakubin informed Moore that the arbor car was loaded and had not been fully pushed into the spray booth. Moore allegedly responded by asking Jakubin why the ventilation fan in the cab of the payloader had not been repaired. Moore complained of heat and Jakubin allegedly responded that the motor inspectors had checked the fan, found it to be operating properly, and that nothing more could be done since the fan was designed to circulate and clean air within the cab. It did not provide cool air.

There was some discussion concerning the brakes on the payloader and Moore closed the door of the payloader and drove off. He allegedly drove off at a high rate of speed in the direction of the arbor car. He was allegedly observed driving through a narrow passageway (at an excessive rate of speed) where the clearances were only a few inches. He allegedly thereafter began to maneuver the parloader back and forth in order to position the payloader to push the arbor car into the spray booth. He was allegedly observed shifting gears without stopping the payloader, thereby subjecting

the payloader's transmission to possible damage (an alleged violation of Safety Rule No. 819). He was observed striking the arbor car with the payloader's bucket (in violation of Safety Rule No. 853).

Foreman Jakubin thereafter directed Moore to get off the payloader and report to his office. Another employee (Plance) was assigned to operate the payloader for the balance of the turn.

Moore came to the office where he was informed by Foreman Jakubin that he was being disciplined and sent home for negligent operation of the payloader in "violation of Department Safety Rules." Jakubin then called Plant Protection and asked to have Moore escorted from the plant. Moore allegedly then stated to Jakubin "Do you know what you are doing?" Jakubin responded in the affirmative and Moore allegedly stated "I'll be waiting for you outside the gate and I'll blow your head off." Jakubin asked Moore if Moore was threatening him, and Moore allegedly responded in the affirmative and repeated the threat. Jakubin informed a foreman (Johnson) of the threat. Other members of supervision were informed of the threat to Jakubin from Moore. Arrangements were made to provide Jakubin with a Plant Protection escort to where his car was parked. Jakubin left the plant sometime after 8:30 A.M. and his car was followed for several miles by a Plant Protection vehicle. Arrangements had also been made to report the matter to the Chicago

Police Department in order that Jakubin's car could be observed while it was on Chicago streets between the plant and Jakubin's home.

Shortly after the alleged incident occurred, Moore was approached by Foreman Johnson and was asked why he had threatened Jakubin. Moore allegedly did not deny making a threat and responded to Johnson by stating "Did you hear me threaten him?"

By direction of supervision, the brakes on the payloader were checked by a mechanic several hours after the incident in question and were found to be in good working order. There had been no reports of alleged defective brake operation at the start of the turn when the operator makes a normal check of his equipment.

An investigation was conducted on April 22, 1977. At the conclusion thereof Moore was informed that he was being suspended preliminary to discharge. He was specifically charged with "violation of departmental safety rules -- threatening your supervisor -- overall unsatisfactory work record."

Moore requested a hearing before the Superintendent of Labor Relations, in accordance with the contractual procedures. A hearing was held on April 29, 1977. On May 3, 1977, the suspension was converted to discharge. A grievance was filed on May 6, 1977 (into Step 3). Step 3 and 4 meetings were held and when the issue could not be resolved, the grievance was submitted to arbitration.

DISCUSSION

The Union contended that the Company is charged with the burden of proof and must establish "beyond a reasonable doubt" that Moore had in fact threatened Foreman Jakubin with bodily harm and had in fact threatened to shoot Foreman Jakubin. The Union contended that the Company admitted that the original conversation between Foreman Jakubin and Moore took place in an office where no one else was present and no one else heard the conversation or heard any alleged threat made by Moore. The Union contended that Moore vigorously denied threatening Foreman Jakubin and he denied that he had operated the payloader in an unsafe manner that would have subjected him to disciplinary measures for violation of the operational Safety Rules. The Union contended that there is nothing in Moore's record that would indicate that he is an untruthful person or that he is prone to commit threats of bodily harm to others or had committed violent acts. The Union contended that the statement attributed to Moore is totally out of character, and the Union contended that Moore is entitled to be viewed as a credible person.

The Union conceded that if the evidence would have established beyond a reasonable doubt that Moore did in fact threaten Jakubin's life, then and in that event the penalty of termination might have been justified.

The Company contended that the issue with respect to the threat made by Moore on the life of Foreman Jakubin turns on the matter of credibility. The arbitrator must determine which of the two (Moore or Jakubin) told the entire truth concerning the incident which occurred in Foreman Jakubin's office on April 21, 1977. The Company pointed to the fact that in a little more than six years of employment with the Company, Moore had developed a record whereby he had received ten forms of discipline for absenteeism, poor workmanship, insubordination and a final warning. The Company pointed to the fact that Moore had been suspended for periods of from one day to three days on six different occasions and he had been suspended for a period of five days for insubordination (July 29, 1974).

The Company pointed to the fact that in 1972 Moore had been involved in an incident where he had operated a piece of equipment in a negligent manner causing substantial damage to Company property and resulting in his disqualification as a tractor operator. The Company contended that the disqualification had lasted approximately two years and that Moore had been permitted to return to tractor operating in 1974. The Company contended that Moore had, on a number of occasions, been involved in careless and negligent operation of Company equipment for which he had been reprimanded and warned and which led to the two-year disqualification from performing work in that classification.

From an analysis of all of the evidence in the record, the arbitrator must conclude that when Moore was told to fill the hopper and to push the arbor car into the spray booth, he became angry. His immediate reactive response indicates anger. Instead of proceeding to carry out the assignment or protesting if he believed that there was anything wrong with the assignment, he exhibited his anger when he immediately complained about the operation of the fan in the cab of the payloader. When the Foreman informed him that the cab ventilation had been checked and that it was functioning as well as it could function, the Foreman again repeated his direction to Moore to load the sand and move the arbor car. Moore responded to that direction by starting the payloader and moving off in the general direction of the arbor car. He may not have been driving at an excessive rate of speed, but he was obviously driving in a manner which attracted the attention of Foreman Jakubin and which caused Jakubin to become concerned with respect to the operation of that piece of equipment.

The arbitrator is convinced that instead of proceeding through an extremely narrow passageway (with only inches of clearance) at an extremely low rate of speed, Moore drove through that area at a rate of speed which was unsafe under the circumstances and conditions which prevailed at that time. Moore was angry. His anger was demonstrated by the fact that in maneuvering the payloader

he drove it in a manner which made it immediately obvious to Foreman Jakubin that he was not stopping the payloader before shifting gears. He did strike the arbor car and that is conceded. It would not be abnormal in operating the payloader in tight quarters for the operator to strike the arbor car with the bucket. In fact, if the arbor car is to be moved, it would have to be struck. The difference, however, would rest in the degree of the blow and the circumstances involved in the speed of the payloader at the time that it made contact with the arbor car.

The evidence would indicate that the payloader was not malfunctioning at that point in time. There had been no real complaint generated from Moore at any time during the shift concerning the operation of the brakes. He made no request for mechanical assistance, and the arbitrator can only conclude that there was nothing mechanically wrong with the payloader on April 21, 1977. There may very well have been some brake problems on the following day when the payloader was being driven on the same shift by another employee. That would not, however, indicate that on April 21, 1977, Moore was having problems with the operation of the payloader. It should be noted that if Moore believed that there were brake problems with the payloader and if he desired to continue to operate that piece of equipment, common sense would have dictated that he

would have driven the payloader at slow rates of speed and with the utmost care and caution.

The fact that Moore violated a number of safety rules would have constituted just cause for the imposition of some form of disciplinary measures consistent with the degree of the offense. It is reasonable to believe that the foreman would have had just cause to send Moore home for the balance of the shift. It is conceivable that a further penalty of a reprimand or a short period of suspension might have been justified. Under no circumstances, however, would just cause have existed for Moore's termination from employment for having driven the payloader in a careless manner or striking the arbor car with the bucket while he was maneuvering the payloader into position to push the arbor car into the spray booth.

The most serious aspect of the incident concerns itself with the threat made by Moore upon the life of Foreman Jakubin. The Company does have the burden of proof and it must establish by clear and convincing evidence that Moore did, in fact, use the words attributed to him by Foreman Jakubin when Moore threatened Jakubin's life. The issue turns squarely on the matter of credibility. The fact that there were no witnesses to the conversation in Foreman Jakubin's office does not necessarily mean that the Company could not prove its case. It is true that it becomes difficult in the absence of corroborating testimony to develop the degree of proof required to sustain the termination of an employee

who has allegedly threatened the life of a foreman. If there was doubt in the mind of the arbitrator concerning Jakubin's credibility, or the circumstances surrounding the event, or the Company's ability to meet its burden of proof in this case, then and in that event the grievance would have had to be sustained and the discharge could not be considered to have been invoked for just or proper cause.

There were a number of factors which led the arbitrator to conclude that Jakubin told the truth and that Moore, by contrast, was not as candid and forthright as he should have been. The evidence indicated that for a substantial period of time there had been a completely normal work relationship between Moore and Jakubin. There was no prior history of the existence of conflict between the two and there is no evidence of the existence of any animus between them. There was absolutely no reason (based upon any prior relationship between the two) for Jakubin to have concocted a fictionalized version of what occurred in his office during the morning hours of April 21, 1977. What emerges from all of the evidence in the record is the fact that Moore was angry when he was told to perform certain duties. He demonstrated that by the manner in which he proceeded to operate the payloader. He was almost immediately thereafter removed from the payloader and brought to the office. He was immediately informed that he was being sent home for the balance

of the shift. He continued to demonstrate his anger when he threatened the life of the foreman by stating that he (Moore) would be waiting for Jakubin outside the gate and then stated: "I'll blow your head off." That threat was repeated when Jakubin, almost in shock, asked Moore if Moore was threatening him. What occurred almost immediately thereafter is a clear demonstration of Jakubin's credibility and Moore's lack of credibility. Jakubin informed Foreman Johnson of the threat. Foreman Johnson went to the locker room where he met Moore. Johnson immediately asked Moore why Moore had threatened Jakubin. At that point in time, if Jakubin had "dreamed up" the threat, the natural, normal, reasonable reaction of Moore would have been to angrily deny having made a threat. Moore did not ask Johnson what the "threat" consisted of. He did not deny having made a threat. He only stated: "Did you hear me threaten him?"

It is evident that Moore believed that he was safe, based upon a mistaken impression that the Company could not prove that Moore had threatened Jakubin in the absence of an actual eye witness or ear witness to the threat. There is nothing in arbitral authority or in the rules of evidence which would require absolute corroborative proof by an ear witness or an eye witness before the guilt of an individual can be established.

Every case must be evaluated on its own merits. The circumstances must be examined closely. The history of the relationships between the two individuals must be examined. Motivation must be considered. The demeanor of the two persons must be considered and the entire set of circumstances must be viewed in a manner consistent with the normal, reasonable reaction of individuals to a given set of circumstances.

Jakubin reacted in a manner completely consistent with what would be expected of anyone whose life had been threatened. He immediately called another foreman. He acted on that foreman's advice and made certain that the services of Plant Protection officers would be made immediately available. He reported the matter to higher members of supervision. He evidenced concern for his safety and his life, and he asked for escort protection out of the plant and for a distance that would have taken him several miles from the plant on his route home. Jakubin's actions and reactions were completely understandable and consistent with what would be expected of anyone who had suspended an employee and whose life had been threatened under circumstances where he reasonably believed that his life was in danger.

The arbitrator has examined every award cited by the respective parties in support of their contentions in this case. His

conclusions and findings in this case are completely consistent with the views and opinions expressed by Umpire Cole and by the other arbitration awards cited by the Company and Union advocates. A reading of those awards makes it evident that the decisions in each case are predicated upon the peculiar set of circumstances that existed. The witnesses were evaluated; their demeanor was examined; motivation was analyzed; their credibility was determined. The arbitrators in those cases reached their conclusions after viewing all of the evidence in the record, considering the surrounding circumstances and having had an opportunity to view and listen to the testimony offered by the respective witnesses.

In substance, this arbitrator is completely convinced by all of the evidence in this record that Moore did, in fact, threaten the life of Foreman Jakubin and that that act alone would have constituted just and proper cause for his termination from employment.

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

AWARD NO. 639

Grievance No. 22-M-74

The Company had just and proper cause for terminating Theodore Moore, Jr. from employment on or about May 3, 1977. The grievance of Theodore Moore, Jr. is hereby denied.

Bert L. Luckin
ARBITRATOR

February 1, 1978

CHRONOLOGY

Grievance No. 22-M-74

Grievance filed (Step 3)	May 6, 1977
Step 3 Hearing	May 13, 1977
Step 3 Minutes	June 17, 1977
Step 4 Appeal	June 28, 1977
Step Hearing	July 1, 1977
	August 11, 1977
	October 7, 1977
Step 4 Minutes	December 30, 1977
Appeal to Arbitration	January 3, 1978
Arbitration Hearing	January 24, 1978
Date of Award	February 1, 1978