

In the Matter of the Arbitration Between

INLAND STEEL COMPANY

AND

UNITED STEELWORKERS OF AMERICA
AND ITS LOCAL UNION 1010

Grievance No. 2-N-2
Appeal No. 1238
Award No. 640
Grievance of
Leo Gross

INTRODUCTION

An arbitration hearing between the parties was held in Harvey, Illinois, on March 1, 1978.

APPEARANCES

For the Company:

- Mr. W. P. Boehler, Arbitration Coordinator
Labor Relations
- Mr. R. H. Ayres, Manager, Labor Relations,
Industrial Relations
- Mr. T. J. Peters, Assistant Superintendent,
Labor Relations
- Mr. T. L. Kinach, Senior Labor Relations
Representative
- Mr. M. S. Riffle, Senior Labor Relations
Representative
- Mr. M. M. Roglich, Representative, Labor Relations

For the Union:

- Mr. Theodore J. Rogus, Staff Representative

Mr. Joseph Gyurko, Chairman, Grievance Committee
Mr. Walter M. Green, Secretary, Grievance Committee
Mr. J. C. Porter, Griever
Mr. Leo Gross, Grievant

Arbitrator:

Mr. Bert L. Luskin

BACKGROUND

Leo Gross was employed by the Company on June 16, 1972, at the No. 2 Coke Plant.

On August 27, 1977, Gross was scheduled to work during the hours of 7:30 A.M. to 3:30 P.M. as an Oven Patcher. He was initially assigned to the No. 6 Battery. After the turn had started he was asked to work as the soupman and he accepted that assignment. Shortly thereafter Gross was approached by a Head Patcher named J. Beverly. Beverly asked Gross to work at the No. 9 Battery because that Battery was short an Oven Patcher. Gross objected to leaving the No. 6 Battery contending that he had started as an Oven Patcher, had been assigned as a soupman and that he preferred to remain a soupman for the balance of the turn. Beverly insisted that Gross had to move over to the No. 9 Battery as an Oven Patcher, and Gross indicated that he would protest the assignment to Turn Foreman Johnson. Gross did talk with Turn Foreman Johnson, who informed Gross that he would have to accept the assignment and that he would have

to report to the No. 9 Battery as directed by the Head Patcher (Beverly). Gross objected to Turn Foreman Johnson's directive and he requested permission to talk with Assistant General Foreman Szendrey. Permission was granted and Gross did talk with Assistant General Foreman Szendrey, who informed Gross that he would have to work as directed and go to the No. 9 Battery. Gross thereupon informed the Assistant General Foreman that he was not feeling well, was upset and he requested permission to punch out and go home. Assistant General Foreman Szendrey conferred privately with Johnson, and they agreed that they would not insist that Gross remain at work in view of his contention that he was physically and emotionally upset. Gross was permitted to leave the plant. His time-card was punched out and he left the plant with the permission and consent of supervision. Neither supervisor had any intention of reprimanding or disciplining Gross as a result of the events which had preceded his departure from the plant some five hours before the end of his turn.

Beverly completed his shift at approximately 3:30 P.M. He left the plant through the South Clock House at approximately 3:45 P.M. Shortly thereafter Beverly reported to the Assistant General Foreman (Szendrey) that he had been assaulted and attacked by Gross as he (Beverly) was walking off the overpass walkway. Beverly received first aid treatment at the Inland clinic and was

later taken to St. Catherine's Hospital for further medical examination and treatment. His arm was X-rayed and he received treatment for bruises and contusions to the arm. Beverly reported the alleged assault by Gross to the Assistant General Foreman, to the plant nurse, to Inland Plant Protection, and to a member or members of the East Chicago Police Department who were called to the plant. In each instance Beverly charged Gross with having struck him several times with a piece of steel pipe after Gross had exhibited and pointed a revolver toward Beverly and made statements which Beverly considered to be threats to his life. Beverly later filed assault and battery charges against Gross. At the time of the arbitration hearing those charges were still pending.

Gross was interviewed by the No. 2 Coke Plant Superintendent who conducted an initial investigation. Gross was thereafter suspended for five days preliminary to discharge. Gross requested a hearing. That hearing was held on September 6, 1977. Gross denied assaulting Beverly on August 27, 1977, or on any other date. When all of the evidence available to the Company at that time was reviewed, the Company discharged Gross from employment effective September 13, 1977. On September 16, 1977, Gross filed a grievance protesting the Company's action and requesting reinstatement to employment with full back pay. The grievance was thereafter processed through the remaining steps of the grievance

procedure and the issue arising therefrom became the subject matter of this arbitration proceeding.

DISCUSSION

The Union contended that Gross had firmly denied any participation in the alleged assault. The Union contended that there was nothing in Gross' prior work record or in his established record of discipline which would in any way indicate that Gross was a violent person or was in the habit of threatening fellow employees, leadmen or members of supervision with bodily harm. The Union pointed to the fact that Beverly's version of the alleged assault was not in any way corroborated or confirmed by any person and that, under those circumstances, the Company failed to carry its burden of proof and the grievance should be sustained.

The Company contended that Gross had changed his version of what occurred when he originally stated that he had returned to the plant to look for a fellow employee to drive him home and later conceded that the circumstances were somewhat different than he had originally stated. The Company contended that Beverly had no reason to lie and had no reason to unjustly accuse Gross and identify Gross as the person who had assaulted him.

The Company must carry the burden of proof and it must establish by competent evidence that Gross did, in fact, commit an

assault upon Beverly by striking him with a piece of iron pipe and threatening him with a gun. It is conceded that there was no eye witness to the alleged assault. The fact remains, however, that proof can be established by a number of means. If Beverly's version of the incident was illogical and based upon admitted or conceded animosity, his testimony would have to be given little credence and the grievance would have to be sustained. The fact remains, however, that Beverly's version of what occurred is the far more credible version than that testified to by Gross.

There was no record of any prior animosity between Gross and Beverly. Beverly made an appropriate work assignment to Gross. Gross objected to moving from his position as soupman on the No. 6 Battery to the position of Oven Patcher on the No. 9 Battery. He protested the assignment to the Turn Foreman, who informed him that Beverly's decision was appropriate and the order would have to be followed. Gross then protested the assignment to the Assistant General Foreman (Szendrey). That supervisor agreed with Beverly's decision and the decision of the Turn Foreman. Gross was informed that he would have to move over to the No. 9 Battery. Gross was unhappy, displeased and emotionally upset. He asked permission to go home. That permission was granted. He was not in any way disciplined for his unwillingness to move to the No. 9 Battery. At that point in time Beverly's participation in the entire incident had ended. He had performed his function as a Leadman in a fair

and objective manner. There is nothing in this record that would indicate that Beverly said or did anything that would be considered as an unfair or unreasonable exercise of authority. He did not demonstrate any animosity toward Gross.

Beverly completed his shift of work and left the plant. Gross, who had left the plant hours earlier and who had called another foreman to assist him in obtaining the keys to his car from a fellow employee, returned to the plant. The evidence would clearly indicate that a message had been delivered to Gross from the fellow employee who rode with Gross that the fellow employee would not need a ride home and Gross would not have to come back to provide him with transportation. Gross did return to the plant. He was seen in the plant area and he admitted he was standing near the clockhouse when Beverly walked by. There is evidence in the record that Gross almost immediately left the position where he had been standing and was gone for a period of time after which he returned and was again seen at the clockhouse. It was in that intervening period of time when (according to Beverly's testimony) Gross had obtained his car, driven over the overpass and met Beverly who had walked across the overpass. Gross allegedly left his car and proceeded to threaten Beverly, point a gun in Beverly's direction and strike Beverly across the arm.

In the opinion of the arbitrator, the evidence would overwhelmingly support Beverly's testimony that it was Gross who assaulted him and it was Gross who threatened him. Beverly made a positive identification. He exhibited considerable courage when he called the matter to the attention of Inland Plant Protection, identified Gross as his assailant and signed a complaint against Gross after he was interviewed by police officers who were called to the scene after Beverly had reported the assault. Beverly was treated at Inland for his injuries and he was thereafter sent to a hospital for further examination and treatment. The bruises and contusions appearing on his arm were evident. They could not be deemed to have been "self-inflicted."

There is not one bit of evidence in this record that would in any way indicate a reason or motive for Beverly to have lied or to have mistakenly identified Gross as the person who committed the assault. While the Union pressed the point that traffic on the overpass would have made it difficult, if not impossible, for Gross to have reached the site where he allegedly assaulted Beverly within a period of five minutes, all of the evidence offered by the Union in that regard was based upon an assumption that traffic was normally heavy and the congestion on the overpass would have precluded Gross from getting to the point where he allegedly

assaulted Beverly within a matter of some five or ten minutes. The fact remains, however, that Beverly had worked with Gross; Beverly knew Gross; Beverly positively identified Gross as his assailant; Gross conceded that he had his car and was in the general area; and, since the incident occurred in broad daylight, the only reasonable and logical conclusion that can be drawn is that Beverly's identification of Gross as the assailant must be credited.

Beverly had no reason to falsely accuse Gross of the assault. Gross had reason to be angry with Beverly and to blame Beverly for having cost him almost a full shift of work. Gross obviously resented the fact that Beverly, as a Leadman, asked Gross to leave a desired working assignment and move to another area. Gross refused to accept that direction and protested the assignment to two different members of supervision. When those members of supervision sided with Beverly, Gross concededly became so nervous, angry and emotionally upset that he asked and received permission to leave the plant. There was no reason for Gross to be in the area of the plant at the end of the shift. The evidence is positive and certain that the person who normally would have ridden home with Gross had left a message that he did not need a ride. That message was delivered to Gross by a member of supervision.

Gross concededly had parked his car in an area where it would have been readily available to follow Beverly when Gross observed Beverly leaving the plant and walking by the clockhouse.

There is substantial evidence in the record that after Gross saw Beverly leave the plant he left the position where he had been standing at the clockhouse, was gone for a period of time, and then returned to the clockhouse. Although Gross testified that in that period of time he had driven over to an area where he searched for the employee that he thought would ride home with him, the far more credible version of what occurred is that Gross used that period of time to get into his car, drive to a position off the ramp where he could confront Beverly, threaten Beverly with a gun and commit an assault upon Beverly with a piece of iron pipe.

There can be no question but that the commission of the physical assault upon Beverly by Gross would constitute just and proper cause for the imposition of the penalty of termination from employment. In the opinion of the arbitrator, since all of the competent evidence in this case would clearly support the testimony offered by Beverly that it was Gross who assaulted him and it was Gross who injured him, the Company would be deemed to have had proper cause for terminating the grievant from employment.

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

AWARD NO. 640

Grievance No. 2-N-2

The Company had proper cause for terminating Leo Gross from employment on or about September 13, 1977. The grievance of Leo Gross is hereby denied.

Bert L. Lunin
ARBITRATOR

March 21, 1978

CHRONOLOGY

Grievance No. 2-N-2

Grievance filed (Step 3)	September 16, 1977
Step 3 Hearing	September 23, 1977
Step 3 Minutes	November 28, 1977
Step 4 Appeal	December 12, 1977
Step 4 Hearing	December 22 and 29, 1977
Step 4 Minutes	February 10, 1978
Appeal to Arbitration	February 13, 1978
Arbitration Hearing	March 1, 1978
Award	March 21, 1978