

In the Matter of the Arbitration Between

INLAND STEEL COMPANY

AND

UNITED STEELWORKERS OF AMERICA
AND ITS LOCAL UNION 1010

Grievance No. 1-N-15
Appeal No. 1242
Award No. 642

Grievance of
Rodolfo Carr

INTRODUCTION

An arbitration hearing between the parties was held in Harvey, Illinois, on May 16, 1978.

APPEARANCES

For the Company:

- Mr. William P. Boehler, Arbitration Coordinator,
Labor Relations
- Mr. T. L. Kinach, Senior Labor Relations Representative
- Mr. J. A. Hussey, Superintendent, Plant No. 2 Blast
Furnaces
- Mr. T. J. Peters, Assistant Superintendent, Labor
Relations
- Mr. H. C. Boehme, General Dock Foreman, Plant No. 2
Blast Furnaces
- Mr. M. S. Riffle, Senior Labor Relations Representative
- Mr. A. Lackovitch, Foreman, Plant No. 2 Blast Furnaces
- Sgt. J. Mendoza, Plant Protection Department

For the Union:

Mr. Theodore J. Rogus, Staff Representative
Mr. Joseph Gyurko, Chairman, Grievance Committee
Mr. Phil King, Acting Secretary, Grievance Committee
Mr. Richard Zuniga, Secretary, Base Rate and Incentive
Committee
Mr. George Dawkins, Griever, Blast Furnace
Mr. Rodolfo Carr, Grievant

Arbitrator:

Mr. Bert L. Luskin

BACKGROUND

Rodolfo Carr was employed by the Company on August 9, 1976. He was assigned to work as a laborer in the Plant No. 2 Blast Furnace Department. On January 5, 1978, Carr was assigned to work at the ore docks assisting in the unloading of a motor vessel (Scott Misener) which had delivered a load of iron ore pellets to the plant. In the afternoon Carr was directed to shovel loose pellets from hatch covers and surrounding areas.

Dock Foreman Lackovitch boarded the vessel and, while observing the operations being performed, he noted that Carr was wearing a hand-lettered sign on his chest that was held in place by a string around his neck. The sign measured approximately 4 by 14 inches. The sign bore the following message written in various colors:

"Help Help Help Injustece
Self Determination
Fear, Justuce, Freddom, Fear
Malice, Malignant, Behavior
Why Me"

Foreman Lackovitch approached Carr and asked Carr to remove the sign from around his neck. Carr made a motion indicating that he could not hear what Lackovitch was saying to him because he was wearing ear covers. The foreman lifted a cover from one of Carr's ears and told Carr to remove the sign. Carr indicated that he would not remove the sign. Foreman Lackovitch ordered him to remove the sign and Carr again refused. Foreman Lackovitch informed Carr that if he continued to refuse to remove the sign, he would be escorted off the vessel. Carr allegedly responded by stating "They will have to come and get me."

Foreman Lackovitch testified that it was a very cold and windy day. It was the foreman's opinion that the sign around Carr's neck constituted a safety hazard since, with the wind conditions, the sign could catch in an obstacle causing Carr to trip and fall. The foreman testified that the hatch covers were open and, with pellets spilled on the deck, a slip might have caused Carr to fall into an open hatch with a consequent 35-foot drop that could be fatal to Carr. Lackovitch testified that he left the vessel, proceeded to obtain the services of Sgt. Mendoza of the Plant Protection Department. When Foreman Lackovitch returned to the vessel,

Carr was no longer wearing the sign. Foreman Lackovitch testified that he was approached by a ship's officer who informed him that Carr had attempted to set fire to the sign and when the ship's officer remonstrated with him Carr allegedly threw the sign overboard.

Carr was charged with insubordination. He was preliminarily suspended. A hearing was held on January 10, 1978. On January 16, 1978, Carr was informed that he had been terminated from employment. The basis for the Company's action was Carr's alleged act of insubordination, the deliberate commission of an unsafe act and his prior disciplinary record.

A grievance was filed on January 17, 1978, protesting the termination from employment and requesting that Carr be reinstated to employment with full back pay and with seniority rights. The grievance was denied and was thereafter processed through the remaining steps of the grievance procedure. The issue arising therefrom became the subject matter of this arbitration proceeding.

DISCUSSION

On January 5, 1978, Carr was directed to shovel loose pellets that had spilled during the unloading of an ore vessel. Carr admittedly had a sign hanging around his neck that was resting on his chest. When the foreman saw the sign he immediately approached Carr, informed Carr that the sign was a safety hazard and he ordered Carr to remove the sign. Carr refused to remove the sign. The order was repeated on several occasions and Carr failed

to make any move to remove the sign from around his neck. When Carr was informed that he would be escorted off the vessel, he responded by stating "They will have to come and get me."

Carr challenged the foreman's authority and he disobeyed a legitimate direction of supervision. The supervisor had every right to issue that direction since, in his opinion, the sign created a safety hazard. It was cold and windy. Carr had to work on the deck of the vessel and he had to walk on spilled pellets. The hatch covers were open and, if Carr slipped and lost his balance, a fall could have had serious and possibly fatal consequences. It would make no difference for the purpose of this decision whether the foreman's order was justified or unjustified. The foreman's instruction was intended to safeguard the life and limb of the employee and Carr was required to comply with that order.

The foreman left the vessel and returned with a member of the Plant Protection Department. Carr was no longer wearing the sign. The foreman believed from a statement made by an officer of the vessel that Carr had attempted to burn the sign and, when the officer had remonstrated with him, Carr had thrown the sign overboard. Carr conceded that he had lit a napkin in order to use the lit napkin to light a cigarette. He conceded that he had been informed by a ship's officer to put out the fire and he contended that he extinguished the lit napkin. He denied setting fire to the sign.

The evidence in this record will not support a conclusion or finding that Carr had set fire to the sign which he had been wearing around his neck while on board the vessel. While lighting the napkin may have been an unsafe act, it was not so serious an offense as to justify the imposition of severe disciplinary measures.

The fact that Carr decided to obey the foreman's order and remove the sign from around his neck after the foreman left the vessel would not serve to excuse or justify the initial act of insubordination. His refusal to comply with the direction of supervision within a reasonable period of time caused the supervisor to leave the vessel and obtain the assistance of a member of the Plant Protection Department for the purpose of removing Carr from the vessel and from plant premises. Carr's action in complying with the foreman's direction minutes after he had refused to comply with the foreman's order, might have some impact upon the degree of the penalty to be imposed against Carr for his initial act of insubordination, but it would not alter the fact that he had refused to obey the foreman's instruction and had challenged the foreman's authority.

The word "insubordination" is a broad term and would generally cover various types of infractions and refusals to carry out instructions of supervision. There are varying degrees of insubordination. Some acts are minor and might call for the imposition of minor penalties. Others are serious and would justify

termination from employment for the commission of a first offense. The Company recognized that distinction when it provided in the preamble of 127 of the General Safety Rules that the offenses listed thereunder "may be cause for discipline, up to and including suspension preliminary to discharge." Listed under "o" of those rules is the offense of "insubordination," described as a "refusal or failure to perform work assigned or to comply with instructions of supervisory forces...."

From an analysis of all of the facts and circumstances concerning the events which occurred on board the ore vessel on January 5, 1978, the Company would have had just cause for the imposition of disciplinary measures for the commission of an act of insubordination by Rodolfo Carr. The arbitrator does not believe, however, that the incident standing alone would justify termination from employment. In considering the degree of the penalty to be imposed against Carr, the Company had the right to apply the principles of corrective and progressive discipline and to take into consideration (within the permitted period of time) Carr's prior record which may have occasioned the imposition of other disciplinary measures.

During his period of less than 1 1/2 years of employment with the Company, Carr had built up a surprisingly long list of disciplinary measures ranging from reprimands to safety warnings

to suspensions. He had committed acts which had evoked threats from fellow employees. He had made demands upon members of supervision that could not be tolerated. He had, on occasion, demanded that certain instructions relating to work assignments be placed into writing, and his behavior could only be characterized as an obstinate manifestation of a distorted concept of his rights and obligations as an employee of the Company. He has barged into the private offices of supervisors and demanded that they discuss Carr's problems with him at Carr's convenience. He has walked into supervisor's offices to keep an appointment when other persons were present and demanded that those other persons leave and that the supervisor keep his appointment with him promptly. He has approached management officials and demanded that they identify themselves to him and to provide him with their names and "clock numbers."

Carr is a Spanish speaking native of Honduras and has been in this country since 1970. He is currently attending a university and he has no difficulty in making himself understood and understanding directions and orders issued to him in English. He is fully aware of his rights under the Collective Bargaining Agreement, and he has on a number of occasions availed himself of his right to file grievances protesting various actions taken by the Company.

Within less than two months after his initial date of hire (and prior to the expiration of the probationary period) Carr was reprimanded for excessive absenteeism. In January, 1977, he received a safety warning for the commission of an unsafe act. He was reprimanded in February, 1977, for absenteeism, and on March 28, 1977, he left his job without permission and was suspended for a period of one turn. In May, 1977, he was suspended for one turn for "poor work performance." On July 15, August 22 and October 6, 1977, he was reprimanded for tardiness. On October 24, 1977, he left his job without permission and was reprimanded. On November 12, 1977, he failed to report for work and allegedly committed an act of insubordination which resulted in suspension for a period of five turns. A grievance filed by Carr concerning that suspension is in the grievance procedure. On November 21, 1977, he was reprimanded for absenteeism. On December 9, 1977, he had reported off for work. He then reported for work and worked for one hour, after which he left the plant. He was suspended for one turn for the commission of that offense.

The Company is not required to retain in its services a short-term employee who has demonstrated that he is unwilling or unable to accommodate himself to the standards of conduct expected from all employees. Carr has no right to demand favored treatment. His contention that he was singled out for attention because he is a native of Honduras is totally without merit and is not supported

by any evidence in this record. It would appear that if there was any discrimination present it was predicated on the fact that Carr may have received favored treatment by the Company. The Company had exercised unusual patience and restraint and had gone along with Carr to a far greater degree than it might have with another employee.

The arbitrator must conclude that Carr committed an act of insubordination on January 5, 1978, which justified the imposition of disciplinary measures. The arbitrator has found that the offense was not so serious in nature as to justify termination from employment. The Company, however, had every right to consider Carr's discipline record (within the permitted period of time) and to determine whether the offense which he committed on January 5, 1978, when viewed with the series of reprimands and suspensions, would have constituted just cause for termination from employment.

In the opinion of the arbitrator, Carr should be provided with one more opportunity to demonstrate that he is willing and able to accept reasonable direction of supervision, to work as directed, to report for work as scheduled, and to carry out directions of supervision in exactly the same manner as would be expected of any other employee. Carr's right to continued employment with the Company will depend entirely upon his willingness to live by the rules and to carry out his obligations as an employee of this Company.

Rodolfo Carr should be restored to employment with the Company, with seniority rights, but without any back pay for the period between his initial suspension on January 5, 1978, and the effective date of his restoration to employment.

AWARD NO. 642

Grievance No. 1-N-15

Rodolfo Carr shall be restored to employment with the Company, with seniority rights, but without any back pay for the period between the date of his initial suspension from employment and his subsequent discharge and the effective date of his restoration to employment. The intervening period shall be considered to constitute a period of disciplinary suspension from employment.

Bert L. Luskin
ARBITRATOR

May 25, 1978

CHRONOLOGY

Grievance No. 1-N-15

Grievance filed in Step 3	January 17, 1978
Step 3 hearing	January 25, 1978
Step 3 minutes	February 22, 1978
Step 4 appeal	March 8, 1978
Step 4 hearing	March 16, 1978
Step 4 minutes	April 7, 1978
Appealed to arbitration	April 10, 1978
Heard in arbitration	May 16, 1978
Award issued	May 25, 1978