

In the Matter of the Arbitration Between

INLAND STEEL COMPANY)

AND)

UNITED STEELWORKERS OF AMERICA)
AND ITS LOCAL UNION 1010)
_____)

) Grievance No. 28-N-31

) Appeal No. 1252

) Award No. 653

INTRODUCTION

An arbitration hearing between the parties was held in Harvey, Illinois, on December 20, 1978.

APPEARANCES

For the Company:

Mr. T. L. Kinach, Arbitration Coordinator, Labor Relations
Mr. Robert H. Ayres, Manager, Labor Relations, Industrial Relations
Mr. G. J. Radich, Superintendent, No. 3 Cold Strip Mill
Mr. W. P. Boehler, Assistant Superintendent, Labor Relations
Mr. B. Tharp, Pickle Line Foreman, No. 3 Cold Strip Mill East
Mr. S. Amatulli, General Services Foreman, No. 3 Cold Strip Mill East
Mr. M. J. Burke, Labor Relations Representative
Ms. K. Mussie, Labor Relations Representative
Mr. A. Sparks, Turn Foreman, No. 3 Cold Strip Mill East
Mr. S. Haynes, Turn Foreman, No. 3 Cold Strip Mill East

For the Union:

Mr. Theodore J. Rogus, Staff Representative
Mr. Joseph Gyurko, Chairman, Grievance Committee
Mr. John C. Porter, Acting Secretary - Grievance Committee

Mr. Rudy Schneider, Griever

Mr. Don Gunter, Griever

Mr. Frank Gonzalez, Griever

Mr. Ilija Prole, Grievant

Arbitrator:

Mr. Bert L. Luskin

BACKGROUND

Ilija Prole was employed by the Company on February 9, 1976. He was initially assigned to the No. 3 Open Hearth Department and was transferred to the No. 3 Cold Strip Mill East Department on March 8, 1977, at his request. On June 30, 1978, Prole worked the 11:30 P.M. to 7:30 A.M. shift as the crane-man on crane No. 25 in the No. 4 A Roll Shop. Prole completed his shift at approximately 7:30 A.M. and came down from his crane, after which he proceeded along a walkway adjacent to the No. 5 Pickle Line on his way to the men's wash-room. Prole was met by a pickle-line feeder foreman named Bill Tharp who noted that Prole was not wearing his safety glasses. Tharp asked Prole to put on his glasses. Prole failed to respond. Tharp again asked Prole to put on his glasses. Prole did not comply with that direction and continued into the No. 4 A Roll Shop where he entered the men's washroom. When Prole emerged from the washroom, he was met by Foreman Tharp. A discussion took place at that time concerning Prole's alleged failure to put on his safety glasses after he was directed to do so by Foreman Tharp. Prole then entered the No. 4 A Roll Shop office. There is some conflict in the testimony concerning the events which

transpired thereafter. Tharp testified that he attempted to call a services turn foreman in order to obtain Prole's timecard to prevent him from leaving the plant before he could discuss the safety-glass matter with him. Prole entered the office where he allegedly complained of the foreman's instructions and complained about the working conditions in his crane. He allegedly informed Foreman Tharp that the "air-conditioning unit" in his crane was not working and that, in effect, Tharp should have been more concerned about the working conditions in the crane than Prole's failure to wear his safety glasses in the period of time when Prole walked from the crane into the washroom adjacent to the No. 4 A Roll Shop.

Prole and Foreman Tharp then left the office. Tharp contended that while they were outside of the office Prole became violently incensed. Tharp contended that Prole became enraged and stated several times: "Fuck you, son of a bitch; I'll kill you." Tharp contended that Prole moved in Tharp's direction, so that Tharp believed that Prole was about to carry out his threat to "kill" Tharp. Tharp then backed away while Prole continued to move in his direction. Tharp then proceeded through a door and left the area on an electric buggy. Tharp testified that he thereafter met with the general services foreman (Amatulli) where he informed Amatulli of the events which had occurred shortly prior thereto. Amatulli telephoned Plant Protection and Prole was stopped at the gate and escorted back to Amatulli's office. Prole's gate pass was taken from him and he was informed that he would remain off schedule pending an investigation. An investigation was conducted by the superintendent of

the No. 3 Cold Strip Mill on July 3, 1978. At the conclusion of the investigation Prole left the plant. He was subsequently suspended preliminary to discharge effective July 3, 1978, for the violation of Plant Rules No. 127 o and No. 127 p of the General Rules for Safety and Personal Conduct.

A suspension hearing was held on July 7, 1978, pursuant to the procedures set forth in Article 8, Section 1, of the Agreement. The grievant was later informed that effective July 17, 1978, he had been discharged from employment. A grievance was filed on July 19, 1978, 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

The testimony offered by the principal witnesses (grievant Prole and Foreman Tharp) was in serious conflict.

Tharp contended that he was performing a supervisory function when he asked (and ordered) Prole on two separate occasions to put on his safety glasses. Tharp contended that Prole ignored him, made no initial response, kept on walking and, when Prole was confronted by Tharp a short time thereafter, Prole became violently angry, used profane expressions directed toward Tharp, made an obscene gesture to Tharp using the middle finger of his right hand, and threatened to kill Tharp. Tharp denied that he had insulted Prole. He denied that he had used profanity when he ordered Prole to put on his safety glasses, and he denied that he had talked to Prole in an insulting tone of voice or in a manner which could be considered demeaning.

Prole contended that he had completed a shift of work in a crane on a hot night without relief and that when he came down to the floor he was hot, tired and perspiring and he removed his glasses because they were wet and greasy. He contended that he did not wear his safety glasses while walking to the washroom and, although he heard Foreman Tharp tell him to put his glasses on, he disregarded that direction and he proceeded into the washroom. Prole contended that Tharp was waiting for him when he came out of the washroom and that Tharp insulted him, threatened him by the tone of voice that he used and shouted at Prole. Prole testified that he then walked into the office to pick up his timecard and he was again confronted by Tharp who persisted in talking about the glasses and that Prole responded by asking Tharp why he was pressing the point since the shift was over and Prole had had a hard time because the fan in the cab of the crane had been turning at so slow a speed as to provide Prole with no cooling benefits at all. Prole contended that Tharp kept shouting at him and spoke so rapidly that he was unable to understand more than twenty percent of what Tharp was saying to him. Prole denied cursing Tharp. Prole denied making an obscene gesture with his finger. Prole denied that he had threatened Tharp and he denied using the words "I'll kill you."

The Company offered the testimony of a member of its Labor Relations Department who testified that in the suspension hearing when Prole was asked about the threats he allegedly made to Tharp, Prole responded by saying "Sorry, I didn't mean it." That witness testified that Prole's statement was made in response to a question that was asked of him concerning his understanding of the seriousness of threatening a foreman.

The Union offered the testimony of an employee (Kilpatrick) who testified that he was in the Roll Shop office for a relatively short period of time during which Tharp was on the telephone. He testified that Prole entered the office. He testified that nothing unusual occurred while he was there. He testified that Tharp seemed to have difficulty communicating with someone on the phone. He testified that he heard no threats exchanged between Prole and Tharp and there was no undue raising of voices. He testified that he did hear Tharp ask Prole "something" about safety glasses and that Prole did not respond.

Prole worked for the Company for almost 2 1/2 years. He came to this country from Yugoslavia approximately four years ago. His record with the Company is uneventful and there is nothing that would indicate that Prole had any personal problems with members of supervision. There is nothing that would indicate that Prole habitually broke Company rules or regularly failed to observe basic rules and regulations relating to employee conduct. While Prole speaks and understands English, he is not fluent in the use of the English language and it is evident that he might have some difficulty, at times, in fully understanding certain figures of speech. Prole, however, knew that he was supposed to wear his safety glasses and he conceded that he was not wearing his glasses when ordered and directed to do so by Tharp. He conceded that he failed to carry out a direction of supervision. Although Tharp is not Prole's immediate supervisor, Tharp was carrying out directions of other members of supervision to stop anyone that he observed walking through his area who was not wearing safety glasses and to order and direct them to put the safety

glasses on. Tharp had the right to issue the direction, and Prole had no right to ignore him, especially since the direction was repeated.

There are serious discrepancies in the respective versions of the incident testified to by Tharp and by Prole. It is possible to reasonably reconstruct what actually occurred and the events which immediately preceded the alleged threat made by Prole to Tharp. There can be no question but that Prole was hot, tired, dirty and sweaty, and he saw no need for strict compliance with an essential Company rule and regulation. Tharp, on the other hand, was going to make certain that the rule was observed and that his instruction would be carried out.

The arbitrator does not believe that Prole was confronted by Tharp outside the washroom door. The testimony of Kilpatrick makes it evident that there was no serious dispute that occurred in the office. In the opinion of the arbitrator, Tharp entered the office for the purpose of making a call to make certain that Prole was stopped at the gate so that Prole could be officially reprimanded for failing to wear his safety glasses. Tharp at that time was not aware of the fact that Prole intended to enter the office for the sole purpose of picking up his timecard. There was no real dispute in the office. Prole came in for one purpose and one purpose only. He picked up his timecard. He was again confronted by Tharp and when Prole told Tharp that Tharp ought to be concerned with Prole's discomfort, Prole (having picked up his timecard) walked out of the office.

Throughout the entire series of events which began when Prole walked past Tharp up to the point where Prole met Tharp in the office and walked out of the office, Prole used no abusive terms toward Tharp. He did not curse Tharp and he made no obscene gesture. He did not (up to that point in time) make any threats. The confrontation could have been avoided. If Tharp insisted upon formally reprimanding Prole for failing to carry out his direction, there would have been no need for Tharp to follow Prole out of the office and again confront Prole concerning his earlier failure to wear safety glasses or to adhere to Tharp's direction. Tharp continued to insist upon receiving from Prole an explanation for his refusal to carry out the direction of a supervisor. There was no need to argue the point. Tharp could have taken whatever steps were necessary to make certain that an appropriate form of discipline was issued to Prole for failing to wear his safety glasses and for failing to carry out a supervisor's instructions to put his glasses on.

What emerges from all of the evidence in the record is that when Prole left the office Tharp followed him out of the office and again confronted Prole. It was at that point in time that Prole "blew up." The arbitrator believes from all of the evidence in the record that Prole did make an obscene gesture with his finger and he did curse Tharp. He showed his anger and he did take a step in Tharp's direction. He did use the words "I'll kill you." The arbitrator is convinced that Prole did not, at any time, have any serious intention of inflicting bodily harm upon Tharp. No weapons were brandished and it is evident that the words used by Prole were the words of an angry man who spoke from a sense of frustration rather than from any meaning on his part to carry out a threat of bodily harm.

There is no need to further discuss the seriousness of a threat of bodily harm directed toward a member of supervision. Arbitrators are virtually unanimous in viewing threats toward a member of supervision in the most serious vein. This arbitrator's opinions in that respect are clearly and unequivocally set forth in awards numbered 634 and 639 between these same parties. A similar view was expressed by former Umpire Cole.

In substance, the arbitrator must find that, although Prole did use the words "I'll kill you," they were used as a figure of speech and under circumstances where it should have been evident to Tharp that Prole had no intention of striking Tharp, causing Tharp physical harm, or doing anything that would place Tharp's life in jeopardy. While the arbitrator is of the opinion that Prole should be restored to employment with the Company, he must be severely disciplined for his conduct in refusing to carry out a direction of supervision, using profane and vile expressions directed toward a supervisor, and using words which should never be used toward a fellow employee or toward a member of supervision that might be construed as a threat to a person's life or limb. Although Prole will be restored to employment with the Company, with seniority rights, he will not be awarded any back pay. The intervening period between the date of his suspension and termination from employment and the effective date of his restoration thereto 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

Grievance No. 28-N-31
Award No. 653

Pursuant to the provisions of Article 8 of the Collective Bargaining Agreement, Ilija Prole shall be restored to employment with the Company, with seniority rights, but without any back pay for the period between the date of his suspension and his subsequent discharge from employment and the effective date of his restoration thereto. The intervening period shall be considered to constitute a period of disciplinary suspension from employment.

Bert L. Luskin
ARBITRATOR

January 3, 1979

CHRONOLOGY

Grievance No. 28-N-31

Grievance filed (Step 3)	July 19, 1978
Step 3 hearing	August 29, 1978
Step 3 minutes	September 21, 1978
Step 4 appeal	October 2, 1978
Step 4 hearing	October 12, 1978
Step 4 minutes	November 22, 1978
Appeal to arbitration	November 27, 1978
Arbitration hearing	December 20, 1978
Date of Award	January 3, 1979