

In the Matter of the Arbitration Between

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INLAND STEEL COMPANY )	
AND )	Grievance No. 4-N-50
UNITED STEELWORKERS OF AMERICA )	Appeal No. 1253
AND ITS LOCAL UNION 1010 )	Award No. 655
_____ )	Grievance of Gerald B. Evans

INTRODUCTION

An arbitration hearing between the parties was held in Harvey, Illinois, on February 6, 1979.

APPEARANCES

For the Company:

- Mr. T. L. Kinach, Arbitration Coordinator, Labor Relations
- Mr. Robert H. Ayres, Manager, Labor Relations, Industrial Relations
- Mr. L. J. Trilli, Superintendent, No. 4 B.O.F. & Slab Caster
- Mr. G. Lundie, Director, Safety and Plant Protection
- Mr. J. L. Federoff, Assistant Superintendent, Labor Relations
- Mr. J. Federoff, Turn Foreman, No. 4 B.O.F. & Slab Caster
- Mr. C. Devine, Laborer Leader, No. 4 B.O.F. & Slab Caster
- Mr. R. Vela, Senior Labor Relations Representative
- Mr. J. T. Surowiec, Labor Relations Representative
- Mr. W. E. Dixon, General Foreman, No. 4 B.O.F. & Slab Caster

For the Union:

- Mr. Theodore J. Rogus, Staff Representative
- Mr. Joseph Gyurko, Chairman, Grievance Committee

Mr. Phil King, Acting Secretary

Mr. Jim Robinson, Grievance Committeeman

Mr. Gerald B. Evans, Grievant

Arbitrator:

Mr. Bert L. Luskin

BACKGROUND

Gerald B. Evans was employed by the Company on September 15, 1976. Except for a short period of time during which Evans worked in the 76" mill, he was assigned and worked in the No. 4 B.O.F. & Slab Caster Department.

On May 30, 1978, Evans reported for work on the 11 P.M. - 7 A.M. turn where he was assigned to work as a general laborer under the direction of Laborer Leader Charles Devine. Some time after the start of the turn Devine was standing on a platform and noted that Evans was standing on the floor and directing a stream of compressed air toward his body. Devine shouted at Evans, directing him to shut off the air flow. Evans allegedly looked up and made no response. Devine came off the platform, approached Evans and turned off the valve at the nozzle end of the line, shutting off the supply of air. Devine then informed Evans that it was a safety violation to use compressed air to blow off graphite dust from Evans' clothing. Evans then allegedly turned the air back on and again began to blow compressed air against his body. Devine then reached over and again attempted to close the valve. There was a brief struggle between them for possession of the line. When Evans continued to hold on to the line, Devine released it, after which Evans allegedly pointed the

nozzle end of the line in Devine's direction, blew compressed air in Devine's face and stated "Like this?". Evans allegedly then stated "Send me home." The matter was reported to the foreman who called Evans in and informed him that he was being sent home for the balance of the turn for insubordination.

The incident was investigated on June 5, 1978, by the superintendent of the No. 4 B.O.F. & Slab Caster Department. Evans was present, as were members of supervision and Union officials. At the investigation, Evans conceded that he was aware of the safety rules which prohibit the use of compressed air to blow dust off the body of any employee. Evans denied, however, that he had turned on the air a second time after it had been shut off and he denied that he had directed the air flow at Devine's face. The Company then considered this incident together with Evans' prior record which indicated that within a period of less than two years Evans had been reprimanded and suspended on three different occasions for insubordination. He had been suspended on two occasions for absenteeism, and on May 1, 1978, following the imposition of a two-turn suspension, a record review was held by the superintendent and Evans was issued a final warning. A suspension for absenteeism issued on March 6, 1978, and a three-day suspension for insubordination and the use of profane and abusive language imposed on March 9, 1978, had been invoked while Evans had been working for a short period of time at the 76" mill.

At the conclusion of the June 5, 1978, investigation, Evans was suspended preliminary to discharge. Evans requested a hearing pursuant to the procedures set forth in Article 8, Section 1, of the Agreement. That hearing

was held on June 8, 1978, and on June 19, 1978, Evans was discharged from employment. A grievance was filed on June 20, 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

Although there are some variations in the versions of the incident of May 30, 1978, as described by Evans and as described by Devine, the basic facts are not in serious dispute. Evans conceded that he knew that rules existed relating to the use of compressed air and he conceded that he was aware of the following rules published in the Company's General Rules for Safety and Personal Conduct:

"65. You are not allowed to play with compressed air.

"66. Never blow compressed air toward yourself or anyone else. It can enter your body and cause serious injury."

It is conceded that Evans was aware of the following rules that he was charged with violating:

"127. The following offenses are among those which may be cause for discipline, up to and including suspension preliminary to discharge:

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"n. Wanton or willful neglect or carelessness in the performance of duties assigned or in the care or use of Company property.

"o. Insubordination (refusal or failure to perform work assigned or to comply with instructions of supervisory forces)."

The Company's basic contention is that the rule against the use of compressed air by employees for the purpose of removing dust from their clothing has been in effect in one form or another since 1912. The Company has at all times exercised concern with respect to the use of compressed air to blow

dirt and dust from clothing because of the serious safety hazard involved in the use of compressed air in that manner. It was the contention of the Company that it is dangerous to direct a stream of compressed air against a person's body since, under certain circumstances, the entry of compressed air into the body could be fatal. The Company contended that the safety violation committed by Evans in directing a stream of compressed air against his body would have resulted only in the issuance of a verbal warning cautioning Evans of the safety violation. The Company contended that Evans thereafter committed offenses which were far more serious in nature. He was charged with insubordination when he failed to heed the Laborer Leader's direction to turn off the air. He was charged with insubordination when, after the Laborer Leader turned the air off, Evans turned it on; and he was charged with the commission of a serious offense when he directed a stream of compressed air into the face of the Laborer Leader and thereafter challenged the Laborer Leader to send him (Evans) home. It was the contention of the Company that this incident occurred within one month after Evans had been disciplined for two turns for failure to follow instructions of a supervisor followed by a record review with the superintendent when he was informed that he was receiving a "final warning." The Company contended that Evans, within less than two years of employment, had built up a record of imposed discipline which, when viewed with the serious incident that occurred on May 30, 1978, would constitute just and proper cause for Evans' termination from employment.

The Union contended that Evans had denied directing a stream of compressed air toward Devine's face, and the Union contended that Evans denied

using the words "Like this?". The Union contended that Evans denied suggesting to the Laborer Leader that he (Evans) be sent home. The Union contended that the Company had no right to rely upon Evans' prior record since grievances protesting several suspensions that were considered by the Company in determining the degree of penalty to be imposed against Evans were being held in abeyance at lower steps of the grievance procedure and have not been finally disposed of.

The Union contended that the evidence falls far short of supporting the Company's charge of insubordination and the only real offense committed by Evans was that of a minor safety violation when he used compressed air to blow off graphite from his clothes. The Union contended that those types of violations are common and have occurred regularly for many years, and that identical violations were observed in the Department several days prior to the arbitration hearing. The Union contended that the extent of any penalty to be imposed against Evans should have consisted of a verbal warning for the improper use of the compressed air and, since the incident was so minor in nature, it should not have led to the imposition of the penalty of termination based upon Evans' prior employment record.

An issue was raised concerning Devine's authority as a Laborer Leader to issue working directions to Evans and his authority to order Evans to stop the use of an air hose to blow graphite dust off of Evans' clothing. The Laborer Leader job description established in February, 1967, described the primary function of that job as follows:

"Assign duties and direct work of labor groups in performing general labor work in and around B. O. F. shop."

The Laborer Leader is supervised by the foreman and the Laborer Leader, in turn, directs laborers and certain classifications of operators and janitors in the performance of their duties. He will, in addition to his directional activities, perform actual work functions himself. He directs employees to wear necessary protective clothing and he "instructs men on safe working procedures." Under the evaluation factor of "Safety of Others," the following language appears: "Responsible for the safety of workers under his direction."

It is clear that Devine had every right and, in fact, an obligation to call to Evans' attention the fact that Evans was violating a published safety rule when he observed Evans directing a stream of compressed air on Evans' clothes. It is conceivable that because of noise in the area Evans may not have heard Devine call out to him and tell him to turn off the compressed air. Evans, however, knew exactly why Devine approached him and proceeded to close the valve on the air line. Devine explained his actions to Evans. Although Evans denied that he had re-opened the line or directed a stream of compressed air in the direction of Devine's face, the arbitrator is convinced that Devine's version of what had occurred is the far more credible version of the conflicting testimony offered by Devine and Evans. The arbitrator is convinced that Devine was completely truthful when he testified that Evans used the words "Like this?" as he directed the compressed air at Devine's face. Evans defied Devine's authority when he said "Send me home." Devine did not suspend Evans. He called the matter to the attention of the turn foreman who issued the preliminary form of discipline for the act of insubordination committed by Evans.

Since Devine had the right to issue directions to Evans and since Devine had the right to instruct Evans on safe working procedures and since *Devine is responsible for the safety of workers under his direction*, he had every right and authority to ask Evans to stop using the air line to blow dust off his clothes and he had every right to expect that such a direction would be accepted and followed. A refusal by Evans to carry out the reasonable direction of the Laborer Leader is an act of insubordination. The turning on of the valve after it had been initially turned off by Devine and the movement of the line in the direction of Devine's face, are indicative of a contentious attitude and a disregard for supervisory authority which Evans has manifested during his relatively short period of employment with the Company.

Devine conceded that the initial safety violation would not have resulted in the issuance of any disciplinary form of penalty. Devine would have been completely satisfied to let the matter drop with an oral admonition to Evans if Evans had not compounded the problem by the more serious forms of insubordination which took place thereafter and an additional form of a safety violation that occurred when Evans re-opened the valve and directed a stream of compressed air toward Devine. Those incidents assume serious proportions and would have justified the imposition of severe disciplinary measures. At that point in time the Company had a right to view Evans' record in its entirety in order to determine the extent and degree of the penalty to be imposed against Evans under the concept of corrective and progressive discipline.



On June 21, 1977, Evans was verbally reprimanded and sent home for being out of his work area and for insubordination. In September, 1977, he was disciplined for one turn for absenteeism. In November, 1977, he was disciplined for the balance of a turn for insubordination. He received a warning for tardiness and, while working in the 76" mill for a short period of time in March, 1978, he was disciplined for two turns for absenteeism, was warned for tardiness, and was disciplined for three turns for insubordination and the use of profane and abusive language. In May, 1978, he was disciplined for two turns for failure to follow instructions of a supervisor, and he then received a final warning. All of those incidents occurred within one year of his termination. Although grievances on several of the incidents are being held in the lower steps of the grievance procedure, the fact remains that Evans' pattern of conduct would seem to indicate that Evans has failed and refused to accept the fact that members of supervision must issue directions to employees whom they supervise in connection with assignments. He has refused to accept the premise that members of supervision have every right to expect and believe that normal work directions will be accepted and carried out.

Laborer Leader Devine had nothing to do with any of the forms of discipline that had been issued to Evans prior to the incident of May 30, 1978. There is nothing in this record that would in any way indicate that Evans was being "harassed" and there is nothing in this record that would indicate that the incident which occurred on May 30, 1978, was motivated by any consideration on the part of Devine other than to ask that Evans carry out a reasonable direction of the Laborer Leader who had a right to issue that direction.

In the opinion of the arbitrator, Evans should be entitled to a further opportunity to demonstrate that he can and will follow directions of supervision and will reasonably conform with the published plant rules and regulations. The arbitrator is of the opinion that Evans should be restored to employment, 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.

AWARD NO. 655

Grievance No. 4-N-50

Gerald B. Evans should 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 discharge 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 L. Luskin  
ARBITRATOR

February 12, 1979

CHRONOLOGY

Grievance No. 4-N-50

Grievance filed	June 20, 1978
Step 3 hearing	August 15, 1978
Step 3 minutes	September 28, 1978
Step 4 appeal	October 6, 1978
Step 4 hearing	November 9, 1978
Step 4 minutes	January 17, 1979
Appeal to arbitration	January 24, 1979
Arbitration hearing	February 6, 1979
Award issued	February 12, 1979