

In the Matter of the Arbitration Between

INLAND STEEL COMPANY

AND

UNITED STEELWORKERS OF AMERICA  
AND ITS LOCAL UNION 1010

Grievance No. 24-N-72

Appeal No. 1256

Award No. 659

INTRODUCTION

An arbitration hearing between the parties was held in Harvey, Illinois, on March 7, 1979.

APPEARANCES

For the Company:

Mr. T. L. Kinach, Arbitration Coordinator, Labor Relations  
Mr. W. B. Stallard, Assistant Superintendent, Stores & Trucking  
Mr. J. L. Federoff, Assistant Superintendent, Labor Relations  
Mr. D. O. Chism, General Foreman, Stores & Trucking  
Mr. L. C. Stockwell, Turn Foreman, Stores & Trucking  
Mr. D. Quick, Truck Driver, Stores & Trucking  
Mr. W. Ward, Truck Driver, Stores & Trucking  
Mr. J. T. Surowiec, Representative, Labor Relations  
Mr. W. G. Gillespie, Senior Representative, Labor Relations

For the Union:

Mr. Theodore J. Rogus, Staff Representative  
Mr. Joseph Gyurko, Chairman, Grievance Committee  
Mr. Israel Gonzales, Griever

Mr. Jack Hill, Steward

Mr. Jerome Pilachowski, Grievant

Arbitrator:

Mr. Bert L. Luskin

BACKGROUND

Jerome Pilachowski was employed by the Company on March 12, 1970. He continued in employment as a Trucking Department employee until an incident occurred on September 5, 1978, which led to his subsequent suspension from employment. Following a hearing (held pursuant to Pilachowski's request) on September 15, 1978, Pilachowski was informed on September 25, 1978, that he was discharged from employment as a result of his conduct on the afternoon shift on September 5, 1978, and his overall unsatisfactory personnel record.

Pilachowski had been charged with violating Rule No. 127-a of the General Rules for Safety and Personal Conduct when he allegedly engaged in a fight with a fellow employee on Company property following incidents of horseplay. Pilachowski was considered to be the aggressor and, under those circumstances, the penalty of termination was invoked against Pilachowski, whereas a suspension of five working turns was imposed against an employee named Quick who had been the subject of acts of horseplay committed by Pilachowski and who had been assaulted by Pilachowski after Quick had allegedly retaliated by flicking a cigarette lighter on and off ("flicking my Bic") in close proximity to Pilachowski's face. Pilachowski filed a grievance protesting his suspension and termination from employment, contending that the action was unjust and unwarranted "in light of the circumstances." 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.

The issue concerned itself primarily with the question of whether cause existed within the meaning of Article 3, Section 1, and Article 8, Section 1, of the August 1, 1977, Agreement between the parties for the discharge of Jerome Pilachowski from the employ of the Company.

DISCUSSION

Pilachowski, Quick and Ward were truck drivers assigned to work together to remove coke from a foreign vessel anchored at the No. 6 dock (Plant 2) to a coke stockpile site. All three boarded the vessel some time between 7:00 and 8:00 P.M. on September 5, 1978, for the purpose of looking into the holds in order to determine the amount of coke which they would be required to move. All three failed to obtain permission to board the vessel from either the Master of the ship or from a member of supervision. The events which occurred thereafter are in dispute.

Dennis Quick testified that he had been employed by the Company for approximately 28 months. He testified that on September 5, 1978, Pilachowski had engaged in horseplay and had tapped him (Quick) on the head with his hardhat on a number of occasions and had "goosed" Quick several times. Quick testified that after all three had looked at the bins, he lit a cigarette and decided to respond to Pilachowski's prior acts of horseplay by flicking his lighter on and off in Pilachowski's direction from a distance of approximately two or three feet and stating "How do you like that?". He testified that he

had no intention of injuring Pilachowski or causing him bodily harm in any way. Quick testified that Pilachowski retaliated by kicking Quick on the leg as he (Quick) was going down some stairs, after which Pilachowski jumped on Quick and tore his shirt, and that Quick attempted to defend himself by striking Pilachowski in the face. Quick testified that Ward intervened, separated them and warned them of the possible loss of their jobs, after which they agreed that they would drop the matter. Quick testified that he had lost his hardhat, which may have fallen overboard, and that he borrowed Ward's hat. He testified that during the course of an investigation concerning the disappearance and loss of his hardhat, the facts involved in the incident came to light and ultimately led to his suspension from employment for five turns. Pilachowski was terminated from employment. Quick testified that he had accepted the suspension and did not file a grievance since he knew that he was on board the vessel "without permission" and had engaged in an act of horseplay.

Quick denied that he had set fire to paper towels in Pilachowski's pocket and he conceded that he knew the rule against horseplay. He conceded that he had engaged in horseplay and had struck a fellow employee, although he contended that Pilachowski was the aggressor and that he (Quick) had acted merely in self-defense after he had been attacked by Pilachowski.

The Company offered the testimony of an employee named William Ward who was with Quick and Pilachowski when the incident occurred. Ward testified that he had worked with Pilachowski for approximately five years and had no problems with Pilachowski. He testified that he had looked into the hold, heard some "hollering," turned around and saw Pilachowski kick Quick in the back of the leg. He saw Quick fall and saw Pilachowski fall on top of Quick

and grab and tear Quick's shirt. Ward testified that Quick arose and struck Pilachowski. Ward did not see any paper toweling on fire. He testified that he intervened, broke up the scuffle, warned them, and allowed Quick to borrow his hardhat. Ward testified that he did see Quick flick his lighter in Pilachowski's direction. He testified that he saw blows struck by both Pilachowski and Quick, and that he saw Quick fall to the ground twice. Ward testified that he had observed "quite a bit" of horseplay when Pilachowski had on a number of occasions (on that day) tapped Quick on the head with a hardhat and had goosed Quick. He testified that Pilachowski had on a number of occasions tossed pieces of coal in Ward's direction. He testified that prior to the incident both Pilachowski and Quick had engaged in horseplay, although he did not observe any horseplay on board the boat. Ward then testified that, although he had not actually seen Quick "flick his Bic" in Pilachowski's face, he did hear Quick say "How do you like that?".

Pilachowski's version of the incident changed about as often as he was required to relate it. During the course of the preliminary investigation held on September 11, 1978, Pilachowski denied that there had been a fight. He stated that Quick was falling and that he (Pilachowski) grabbed Quick in order to prevent Quick from falling to the ground. He testified that, while he was trying to prevent Quick from suffering an injury, Quick's shirt was accidentally torn and Quick's hand inadvertently hit Pilachowski in the face.

At the suspension hearing Pilachowski denied hitting anyone and denied that there was a fight. He stated that he smelled something burning, reached for his pocket, found some paper towels on fire, threw the towels

overboard and he thereafter panicked and grabbed Quick who was standing near him. He denied accusing Quick of lighting the paper towels, and he had no recollection of the flicking of the cigarette lighter by Quick, and he had no recollection of Quick's loss of his hardhat.

At the Step 3 hearing Pilachowski's version changed once more. He accused Quick of having set fire to paper towels in his (Pilachowski's) pocket since Quick had a cigarette lighter and was the only person close enough who could have set fire to the towels. While he denied that there was a fight, he conceded he was angry with Quick and that he did grab and tear Quick's shirt.

At the arbitration hearing Pilachowski testified that he was talking with Ward on the gangplank, saw Ward smile and back away, and that he (Pilachowski) then smelled something burning. He testified that he turned around, noted that paper towels in his pocket were on fire and he then threw them overboard. He testified that when he saw Quick behind him, he reacted by grabbing Quick, after which Quick slipped and, when Pilachowski tried to hold Quick and prevent Quick from falling, Quick's shirt was torn. He denied that Quick had flicked his lighter in Pilachowski's face. He testified that he had a fear of fire since he had been badly burned in a motorcycle accident and his daughter and his niece had also been burned in accidents. Pilachowski testified that he did not want Quick to get into trouble and he did not want to cause Quick to lose his job. He testified that after the incident had occurred he and Quick discussed the matter and agreed to keep it between themselves. He denied kicking and he denied striking Quick. He testified that he was not certain whether Quick had hit him during the momentary scuffle. He conceded that

his testimony at the arbitration hearing was different from his testimony at the investigation hearing held on September 11, 1978. He testified that at that time he (Pilachowski) was unaware of how the Company got the details of the incident and he learned later that Quick had made a statement to a member of supervision.

On cross-examination Pilachowski testified that he was angry with Quick when he discovered the burning towels in his pocket. He testified that he grabbed Quick, intending to "scold" him. He denied kicking Quick. He conceded that Quick's shirt had been torn when Pilachowski had pulled Quick toward him, after which Quick lost his balance and fell. Pilachowski testified that he had suffered a black eye and that he may have been struck by Quick's fist or by Quick's hardhat. He conceded that during the initial investigation he informed the Company that he had received a black eye as a result of an incident which had occurred at home, since he wanted to conceal the facts surrounding the incident that occurred on board the ship. He denied striking Quick on his hardhat. He denied goosing Quick. He denied that he had thrown coal at a Euclid driven by Ward. He did concede, however, that he might have engaged in horseplay in the plant on some prior occasion.

The Company offered testimony concerning Pilachowski's prior disciplinary record, and the Company contended that in determining the degree of the penalty to be assessed against Pilachowski it had taken into consideration Pilachowski's record. That record indicated that Pilachowski had been suspended for one turn for a safety violation in November, 1977. He had been suspended for three turns for a safety violation in August, 1978, and in that same month

during the course of a record review, his superintendent had informed him that he was being given a final warning for an unsatisfactory work record. On the following day Pilachowski was again suspended for two turns for a safety violation.

The rule against fighting in the plant (Rule 127-a) has been uniformly enforced by the Company. Horseplay is a serious offense and the effects thereof cannot be minimized. Pilachowski and Quick had no business on board a vessel without permission from the Master or a member of supervision. That, however, is not the basis for the penalties imposed against Quick and Pilachowski.

The evidence is conclusive in several respects. For some period of time prior to the incident on board the vessel Pilachowski had been engaging in "fun and games." He had irritated Quick by tapping him on his head with a hardhat and he had invited retaliation when he had "goosed" Quick on several occasions. While Pilachowski's conduct can be characterized as childish and immature, Quick had no business responding by flicking his cigarette lighter in Pilachowski's face. That act could also invite retaliation and it could have triggered the incident in question. It becomes evident that Pilachowski knew how to "dish it out" when he persisted over some period of time in committing acts of horseplay against Quick, but he reacted in an almost violent manner when Quick engaged in an act of horseplay by either "flicking his Bic" in Pilachowski's face or by setting fire to towels in Pilachowski's pocket. The scuffle that followed was momentary. Pilachowski kicked Quick in the leg,



knocked him down, grabbed at him and tore Quick's shirt. Quick responded by striking Pilachowski in the face and caused Pilachowski to suffer a black eye.

There is nothing in this record that would indicate that there was any prior record of animus or hostility between Quick and Pilachowski. They worked together before the incident and they continued to work together after the incident until Pilachowski was terminated and Quick was suspended. The incident on board the vessel (standing alone) would have justified the imposition of severe disciplinary measures against both employees. The incident, however, could not be considered to be a "fight" within the meaning of the term as used in Rule 127-a. What started out as horseplay and byplay turned into a scuffle. It could not, however, be characterized as a fight which would have justified the termination of Quick and Pilachowski, or either of them. The arbitrator does not view Pilachowski's conduct as so aggressive in nature as to excuse Quick's conduct. It becomes necessary to make a reasonable comparison between the penalty imposed by the Company against Quick and the penalty imposed against Pilachowski. While the arbitrator would completely agree that Pilachowski should have suffered a greater penalty in this case than did Quick, the difference in the degree of penalty is so disparate as to require a modification of the penalty imposed against Pilachowski.

Quick was suspended for five days, and he served that penalty. While Pilachowski should have sustained a greater penalty than did Quick, especially in view of his prior disciplinary record, termination from employment with a consequent loss of more than eight years of seniority is too great a

penalty to pay when compared with the penalty that was imposed against Quick. The arbitrator must point out that in certain types of cases, an employee who commits acts of horseplay and who thereafter engages in a scuffle with a fellow employee may very well subject himself to termination from employment. In the instant case, however, the disparity of the penalties would require a modification of the penalty imposed against Pilachowski.

Pilachowski should 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 and ultimate 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

Grievance No. 24-N-72

Award No. 659

Jerome Pilachowski should 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 and ultimate 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.

Paul L. Luskin  
ARBITRATOR

March 21, 1979

CHRONOLOGY

Grievance No. 24-N-72

|                       |                                       |
|-----------------------|---------------------------------------|
| Grievance Filed       | September 26, 1978                    |
| Step 3 Hearing        | October 10, 1978                      |
| Step 3 Minutes        | November 16, 1978                     |
| Step 4 Appeal         | November 30, 1978                     |
| Step 4 Hearings       | December 7, 1978<br>December 15, 1978 |
| Step 4 Minutes        | February 2, 1979                      |
| Appeal to Arbitration | February 9, 1979                      |
| Arbitration Hearing   | March 7, 1979                         |
| Date of Award         | March 21, 1979                        |