

In the Matter of the Arbitration Between

INLAND STEEL COMPANY

AND

UNITED STEELWORKERS OF AMERICA  
AND ITS LOCAL UNION 1010

Grievance No. 4-N-70

Appeal No. 1263

Award No. 660

INTRODUCTION

An arbitration hearing between the parties was held in Harvey, Illinois, on April 16, 1979.

APPEARANCES

For the Company:

Mr. T. L. Kinach, Arbitration Coordinator, Labor Relations  
Mr. Robert H. Ayres, Manager, Labor Relations  
P. M. Dunning, M. D., Director, Medical  
Mr. R. J. Wilson, Supervisor, Insurance, Personnel  
Mr. E. H. Hamilton, Sr. Claims Administrator, Insurance, Personnel  
Mr. C. C. Scott, Investigator, Insurance Personnel  
Mr. R. Vela, Labor Relations Coordinator  
Mr. J. T. Surowiec, Labor Relations Representative

For the Union:

Mr. Theodore J. Rogus, Staff Representative  
Mr. Joseph Gyurko, Chairman, Grievance Committee  
Mr. Jim Robinson, Committeeman  
Mrs. Kimberly S. Williamson (nee Beyer), Grievant

Arbitrator:

Mr. Bert L. Luskin

BACKGROUND

Kimberly Beyer was employed by the Company on December 1, 1977. She was assigned to the No. 4 Basic Oxygen Furnace and Slab Caster Department. Prior to her employment Ms. Beyer completed an employment application form and a Medical Department health questionnaire. In filling out the questionnaire she indicated that she had been hospitalized on two separate occasions. She indicated hospitalization for a condition of mononucleosis and for a tonsilectomy. In answer to Question 2, "Have you ever had an injury or operation?", she responded by marking the box marked "no." In response to Question 8, inquiring of her whether she had ever had any kind of a health problem not covered by previous questions, she responded negatively by marking the box marked "no."

Ms. Beyer thereafter became ill and was medically treated and hospitalized. She filed a claim for S & A benefits. When her illness was diagnosed as "syncope," the Company's Insurance Department made further inquiries concerning possible prior medical problems. The Company thereafter was informed that Ms. Beyer had been hospitalized at St. Catherine's Hospital in East Chicago, Indiana, from May 26, 1973, to May 28, 1973. Her condition was diagnosed as "contusion on the forehead and mild cerebral concussion."

The information concerning Ms. Beyer's hospitalization in 1973 was submitted to the grievant's superintendent and, on November 13, 1978, Ms. Beyer

was suspended preliminary to discharge for a violation of Rule No. 127-k of the Company's General Rules for Safety and Personal Conduct. Ms. Beyer was charged with providing the Company with false information when she failed to inform the Company of her hospitalization in 1973.

A hearing was held on November 20, 1978, pursuant to Article 8, Section 1, and on November 29, 1978, Ms. Beyer was informed that the suspension would culminate in discharge. A grievance was filed on November 30, 1978, protesting Ms. Beyer's termination from employment. That grievance was thereafter processed through the preliminary steps of the grievance procedure and the issue arising therefrom became the subject matter of this arbitration proceeding.

#### DISCUSSION

The basic facts are not in serious dispute. The grievant had completed a Medical Department health questionnaire prior to her employment with the Company. She was fully aware of the certification appearing above her signature on that form, which read as follows:

"I certify that the answers on my examination history are true and correct and that any falsification or withholding of information is cause for termination of my employment. I hereby authorize investigation of all statements contained on my examination history with no liability arising therefrom.

"I understand that any reportable disease I may have is to be reported to the proper health authorities as required by law."

The grievant conceded that she had been involved in a swimming accident while on an outing with a church group in 1973. She testified that while diving in a river, she struck a rock ledge and received an injury to her head.

She testified that she returned to her home and the group supervisor suggested to her parents that she be taken to a hospital. She testified that she was taken to St. Catherine's Hospital late at night and was examined in the emergency room. She testified that her doctor then examined her and suggested that she remain in the hospital for observation. She testified that she was there for two days during which time X-rays of the skull were taken. She testified that she did not receive any medication, suffered no ill effects (other than a headache), and was assured at the time that she was discharged from the hospital that there was nothing wrong. She testified that she considered the matter to be so minor in nature that she did not consider it to be an injury or a "hospitalization" for any type of condition which should have been noted on the medical questionnaire. She testified that the incident had completely slipped her mind and that she had forgotten about it. She testified that she had no intention of being untruthful nor did she have any intention of concealing anything relating to her medical history which had to be reported on the questionnaire.

The evidence would indicate that in May, 1978, the grievant had fainted. After receiving initial care in the emergency room at St. Catherine's Hospital by her doctor, she received follow-up care at his office. The incident of syncope recurred and the grievant was again hospitalized from June 20 to June 24, 1978. The condition was diagnosed as "syncope, probably secondary to benign hypotension anxiety state and pylorospasm secondary to anxiety state." Two other doctors were called in on consultation and the grievant was referred to Tri-City Mental Health for evaluation. The Company's Insurance Department

noted the reference to the Tri-City Mental Health on the report, and the original diagnosis of syncope. The Company asked the grievant's doctor for information concerning any prior medical condition or history that could in any way be related to her illness. It was in connection with that inquiry that the record of her hospitalization in 1973 for the condition of a "contusion and mild cerebral concussion" was reported to the Company.

There can be no question but that for many years the Company has almost uniformly terminated the services of employees who have falsified employment applications or medical record information preliminary to employment with the Company. In a 1962 decision, Arbitrator Kelliher (in Inland Steel Company Award No. 486) stated that "the past practice of this Company is to impose a discharge penalty for falsification of employment records. Sixteen employees were discharged during the period from 1959 to 1962 for this offense and this particular matter is the only case that has been brought to arbitration." In 1975 Arbitrator Cole (in Inland Steel Company Award No. 623) referred to decisions in Award Nos. 614 and 615 where grievants had deliberately made false statements as to previous employment and education. He referred to the Kelliher award in Award No. 486 between the same parties and he referred to the fact that the Company had discharged sixty-six other employees in the preceding 2 1/2 year period for fraud or deceit in connection with representations made in employment applications.

The Union seeks to distinguish cases of deliberate deceit and deliberate fraud from cases involving unintentional errors or minor omissions. The Union contended that the omission of the 1973 hospitalization in this case was a minor matter and would not have caused the grievant to be rejected for employment.

It is conceivable that minor errors in an employment application or minor omissions in connection with inconsequential fact situations might not constitute fraud or concealment of facts to a degree sufficient to justify termination from employment. There is a reference in an Inland award to the fact that the Company had in a few cases elected not to terminate the services of employees who had submitted incorrect or fraudulent information in connection with the preparation of an employment application or a medical questionnaire. The fact remains, however, that the Company is entitled to make an informed judgment with respect to employment based upon the information contained in the employment application or in the medical questionnaire. A "mild cerebral concussion," associated with a contusion, could very well be a matter so insignificant in nature as to cause the Company's doctor to make inquiry of the circumstances surrounding the event and to thereafter medically approve the applicant for employment. He might, however, be sufficiently concerned so as to require complete medical records relating to the incident, the diagnosis, the treatment, any subsequent health matters, and the applicant's subsequent medical history. The Company doctor is expected to make the initial decision to recommend acceptance or rejection of an applicant for employment based upon a medical evaluation. Whether the grievant in this case intentionally concealed the 1973 injury and hospitalization or overlooked it would make no significant difference in this case. Her failure to report a head injury that had resulted in a hospitalization (for observation) and a diagnosis of "mild cerebral concussion," deprived the Company of its right to make an informed evaluation of the application for employment in order that it could decide to hire the grievant or to

reject her for employment. A disciplinary suspension at this time or a current medical evaluation would not serve to correct the problem resulting from the deliberate act of concealment or an unintentional oversight.

The grievant testified that she had a vivid recollection of having been hospitalized for mononucleosis when she was approximately seven years of age. She had a vivid recollection of having spent several days in the hospital when she underwent a tonsilectomy when she was eight or nine years of age. It is difficult to accept her explanation that she had overlooked a hospitalization following an incident when she struck a ledge while swimming. Although she testified that on the day after the accident, while hospitalized, she had a headache, was X-rayed and received no treatment or medication, that incident occurred when she was approximately sixteen years of age and it was much more recent in origin than the early periods of hospitalization.

The grievant testified that after she became ill in May, 1978, and after her hospitalization, she was referred to Tri-City Mental Health Clinic merely because she had "passed out." She testified that when she was examined in consultation by Dr. Shetty, he found a tumorous growth in her ear. She testified that after she again "passed out" she was examined by Dr. Levin (in consultation) because of a kidney infection and that subsequent thereto she underwent surgery for the removal of the growth in her ear and that she has had no further incidents of fainting. She testified that she was advised to wear earplugs for some period of time until the tube placed in her ear by Dr. Shetty following the surgery was removed.

The grievant had been employed with the Company for approximately six months prior to her illness of May 12, 1978. The fact remains that the reported illness (syncope) caused the Company to be concerned with respect to a prior medical history that may not have been fully disclosed to the Company. An investigation disclosed the facts which led to the grievant's termination from employment for breach of the certification appearing on the application for employment and for a violation of Plant Rule No. 127-k.

The arbitrator must, therefore, find that the Company did not violate Article 3, Section 1, or Article 8, Section 1, of the Agreement between the parties when it discharged the grievant from employment.

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

AWARD

Grievance No. 4-N-70

Award No. 660

The grievance is hereby denied.

Bert L. Luskin  
ARBITRATOR

April 30, 1979



CHRONOLOGY

Grievance No. 4-N-70

Grievance filed	November 30, 1978
Step 3 hearing	December 19, 1978
Step 3 minutes	January 11, 1979
Step 4 appeal	January 22, 1979
Step 4 hearing	January 25, 1979
Step 4 minutes	March 12, 1979
Appeal to arbitration	March 16, 1979
Arbitration hearing	April 16, 1979
Award issued	April 30, 1979