

In the Matter of the Arbitration Between

INLAND STEEL COMPANY

AND

UNITED STEELWORKERS OF AMERICA
AND ITS LOCAL UNION 1010

Grievance No. 12-N-32

Appeal No. 1264

Award No. 663

INTRODUCTION

An arbitration hearing between the parties was held in Harvey, Illinois, on April 17, 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. H. F. Kaiser, Superintendent, Galvanizing
Mr. T. J. Peters, Assistant Superintendent, Labor Relations
Mr. R. J. Wilson, Supervisor, Insurance, Personnel
Mr. E. R. Kroenke, Sr. Claims Administrator, Insurance, Personnel
Mr. C. C. Scott, Investigator, Insurance, Personnel
Mr. M. S. Riffle, Labor Relations Coordinator
Mr. J. T. Surowiec, Labor Relations Representative
Mr. J. Jones, Coordinator, Personnel
Mr. J. J. Spear, Labor Relations Representative

For the Union:

Mr. Theodore J. Rogus, Staff Representative

Mr. Joseph Gyurko, Chairman, Grievance Committee

Mr. Paul Litton, Assistant Griever

Ms. Darcus Dean Jefferson, Grievant

Arbitrator:

Mr. Bert L. Luskin

BACKGROUND

Darcus Dean Jefferson was employed by the Company on April 9, 1976. She was assigned to work at the Plant No. 1 Galvanizing Department.

On April 3, 1978, Ms. Jefferson sought medical treatment for a condition diagnosed by her doctor as "syncope and vertigo." She was considered "totally disabled," and on April 5, 1978, she was issued a First Notice of Claim - Sickness and Accident Benefits. Her claim was approved and she began receiving S & A benefits on April 10, 1978. The benefits under the S & A program continued until they were terminated on August 12, 1978.

On May 15, 1978, Ms. Jefferson's doctor submitted a report releasing her for return to work with certain specified medical restrictions. Inland's Medical Department evaluated the report, the restrictions and the available work, and concluded that Ms. Jefferson could not be returned to work in the light of the imposed restrictions. She was continued on medical lay off and was thereafter provided with forms identified as Sickness and Accident Insurance Benefits for Temporary or Permanently Restricted Employees. The submission of those forms

permitted Ms. Jefferson to continue to receive S & A benefits. In accordance with Company procedures, the form had to be completed; the questions posed therein, answered; and the procedure had to be repeated every two weeks. Ms. Jefferson came to the plant and completed the forms on May 22, June 7, June 21, July 5, July 20 and August 3, 1978. Among the eight questions that had to be answered was question No. 7 which read as follows: "Have you received money for any work or services performed by you during this disability? If yes, give details." The form contained spaces permitting the person filling in the form to answer "yes" or "no" by checking off the appropriate space. Question No. 7 was answered in the negative by Ms. Jefferson on each of the six occasions when she submitted the form required of employees who are temporarily or permanently restricted. That form contained the following certification:

"I certify that the answers to the following questions are true and correct; that any falsification, misrepresentation, or withholding of the pertinent information is cause for termination of my sickness and accident benefits."

The original claim forms and the continuation and termination forms for S & A benefits filed by Ms. Jefferson before the work restrictions were imposed contained the following certification and authorization:

"In filing this claim, I attest that the information provided is correct, and I authorize any individual or organization to release information required for its processing. I understand that any omission or misrepresentation of material fact may be considered just cause for rejecting of this claim or disciplinary action, including suspension subject to discharge. Furthermore, I authorize the Company to deduct the amount of any overpayment which may occur in connection with this claim, from any monies due me, including wages and pension benefits."

The Company was informed by one of its employees that Ms. Jefferson had been observed working at McDonald's Restaurant. An investigation was conducted and the Company was informed by the restaurant's Unit Manager that Ms.

Jefferson had been employed with that restaurant for the period between June 25 and July 15, 1978. Inland was informed that Ms. Jefferson had been paid \$76.62 on July 6, 1978, and the sum of \$64.29 on July 20, 1978. The Company concluded that since Ms. Jefferson had received a check for earnings from McDonald's on July 6, 1978, the form she had filed on July 20, 1978 (for continuation of S & A benefits) contained false and fraudulent information concerning her outside employment. The Company concluded that when Ms. Jefferson had filed the S & A benefit form for restricted employees on August 3, 1978, she had already received two checks from McDonald's in payment for her period of employment at that restaurant. The Company terminated Ms. Jefferson's S & A benefits after she had received benefit payments totaling \$2,339.26 for the period between April 10 and August 12, 1978.

The alleged falsification of the insurance forms was thereafter reported to Ms. Jefferson's superintendent, and, on October 16, 1978, Ms. Jefferson was suspended preliminary to discharge for falsifying her insurance claim in violation of the Company's rules prohibiting falsification and theft. The Company also considered the record of her prior disciplinary offenses for the period between November 18, 1976, and March 27, 1978.

A hearing was held on October 23, 1978. At that hearing, when Ms. Jefferson was asked why she failed to inform the Company of her employment at McDonald's, she allegedly stated that she "was afraid to put it down for fear that they would cut off my insurance."

The Company referred to a 1975 Letter of Understanding signed by a representative of the Company and the President of the United Steelworkers of

America outlining the conditions of the August 1, 1975, Insurance Agreement between the parties which provided in part that:

"An employee's rights and the Company's right to discharge him shall not be enlarged or affected by reason of any provision of this Agreement."

The Company contended that the parties to the program of insurance benefits made it eminently clear that they did not intend the program or the rules regarding its administration to place any restriction upon the Company's right to enforce its basic plant rules and regulations. The Company contended that the grievant had violated Rules 127-j and 127-k of the General Rules for Safety and Personal Conduct, and the Company had the right to discharge the grievant for falsification of records and theft.

A grievance was filed on November 3, 1978, challenging the discharge action. The Union's initial position was that the Company may have had the right to recoup monies paid to the grievant during the period when she was employed at McDonald's, but that the Company did not have the right to terminate the grievant from employment. The Union's position adopted thereafter was that the grievant was entitled to continue to receive S & A benefits during the period of her employment at McDonald's and the Company could not, under the circumstances present in this case, impose a form of discipline which would result in the termination of the grievant from employment.

The issues arising out of the filing of the grievance became the subject matter of this arbitration proceeding.

DISCUSSION

The basic facts are not in dispute. Ms. Jefferson became ill. Her condition was diagnosed by her doctor and she submitted claim forms for S & A benefits. She was considered "totally disabled." She submitted a medical report on May 15, 1978, releasing her for work "with restrictions." The Company took the position that it had no position open for her which would have permitted her to work with the restrictions imposed by her doctor. On or about May 22, 1978, she submitted a report from her doctor releasing her for return to work "without restrictions." The Company's Medical Department refused to accept that recommendation and she was informed that she would be unable to return to work until January, 1979. Ms. Jefferson wanted to return to work and she thereafter was examined by a neurologist who reported that she was able to return to work without restrictions. The Company's Medical Department again refused to accept that recommendation. The Company continued to impose a restriction and Ms. Jefferson had no alternative other than to continue on S & A benefits. Since she was on medical restriction, she was no longer required to submit the form for S & A benefits identified as "Notice of Continuation or Termination of Disability." Ms. Jefferson was considered to be "totally disabled" within the meaning of the term as used in Section 2 of the Program of Insurance Benefits (PIB). That provision of the PIB is hereinafter set forth as follows:

"SECTION 2. "SICKNESS AND ACCIDENT BENEFITS

"ELIGIBILITY

"2.0 If you become totally disabled as a result of sickness or accident so as to be prevented from performing the duties of your

employment and a licensed physician certifies thereto, you will be eligible to receive weekly sickness and accident benefits. Benefits will not be payable for any period during which you are not under the care of a licensed physician. In order for you to be eligible for benefits the Company must receive written notice of your claim within 21 days after your disability commences, but this requirement will be waived upon showing of good and sufficient reason that you were unable to furnish such notice or have it furnished by someone else on your behalf as described in paragraph 2.8."

After May 15, 1978, Ms. Jefferson was required to report to the Company's Insurance Department every two weeks and to complete a questionnaire form which provided the Company with certain information concerning her status. That form contained a certification which was substantially different from the certification appearing in the first notice of claim or in the supplemental notices which provided the Company with medical information. The restricted form did not ask for medical information or verification relating to her continuing disability. It should be noted that her status of "total disability" was based upon a determination made by the Company's Medical Department and was not based upon any request for that status by the grievant at any time after May 15, 1978.

The information requested by the Company in the "restricted employees" forms was based upon the disposition of a grievance in 1969 concerning the medical status of an employee named Cullin L. Saunders. That employee was released for return to work after a period of disability with medical restrictions limiting him to "light duty." He was examined by the Inland Medical Department and was informed that there was no light duty work available for him to perform. Since he had been released by his doctor and was no longer "under the care of a licensed physician," his S & A benefits under the provisions of

Section 2.0 of the PIB were terminated. A grievance was filed. A substantial number of similar grievances were pending. Representatives of the parties met in an effort to resolve the Saunders grievance and to establish a basis upon which similar grievances could be resolved. The grievance was resolved by a signed disposition whereby Saunders was to be paid S & A benefits until he could be assigned to a job he could perform without violating his medical restriction; or until he could be released to return to work without medical restrictions; or the expiration of the benefit period. The settlement agreement provided that future cases must be decided "on their own merits." The parties did, however, reach a firm understanding with respect to future claims when they provided that "...an employee's refusal of an offer to work any other occupation or working for another employer, will disqualify an employee for S & A benefits, notwithstanding any other circumstances." The disposition of the Saunders' grievance and the understandings reached between the representatives of the parties at that time resulted in the development by the Company of the restriction form that would thereafter be completed and signed by any employee on restriction who would thereby be eligible for continued S & A benefits.

If Ms. Jefferson had answered question No. 7 in the affirmative on the permanent restriction forms which she completed on July 20 and August 3, 1978, she could not have been charged with fraud or misrepresentation. The issue in this case does not concern itself with whether Ms. Jefferson was or was not "totally disabled" within meaning of the term as used in Section 2.0 of the PIB. For the purpose of that provision, the Company considered her to be "totally disabled" even though her own doctor had certified her for return

to work without restriction. Under these circumstances there would have been nothing wrong with Ms. Jefferson's acceptance of employment at McDonald's provided that she had disclosed that fact when she completed the July 20 and August 3, 1978, forms. Had she answered question No. 7 in the affirmative in completing both of those forms, the Company would then have had to make a determination with respect to whether the moneys she had received from McDonald's would have to be "carved out" from the amount of S & A benefits which she had received for the corresponding period of time or whether the application of the provisions of the PIB would have resulted in disqualifying Ms. Jefferson for further S & A benefits. The matter of continuing eligibility for S & A benefits is not in issue in this case. The issue in this case is limited to the question of whether just cause existed for Ms. Jefferson's termination from employment based upon her alleged fraudulent act in providing the Company with erroneous information in the completion of an S & A form which resulted in a violation of a plant rule or rules (127-j and 127-k).

It must be emphasized that the grievant in this case, by accepting employment at McDonald's when she was under a Company-imposed work restriction, did not commit a fraud upon the Company nor did she make a fraudulent claim that she was "totally disabled." Ms. Jefferson had offered to return to work and had attempted to return to work. The Company placed her on restrictive status, continued her disability, and informed her that she could not return to work until January, 1979.

The facts in this case are similar in some respects to the fact situations that were the basis for Umpire Cole's decision in Inland Awards

No. 608 and No. 609. Both of those cases involved S & A benefit claims by Inland employees. Umpire Cole found in Award No. 608 that the grievant's claim included "misstatements on their face." The grievant in that case had been discharged for "fraudulent insurance claims." He had falsely reported that he had no other coverage when, in fact, he did have other coverage with a different company with whom he was employed at the same time that he was employed at Inland. Umpire Cole found that the grievant did not have guilty knowledge of his misstatements "to a degree necessary to support a charge of willful fraud...." After having found that the grievant had received S & A benefits "to which he was not entitled," Umpire Cole ordered the grievant to return to the Company certain specific sums paid to him for S & A benefits and, upon making restitution, the grievant would be reinstated to employment with the Company with "no back pay." Umpire Cole specifically stated that it was "not intended to suggest that this ruling should serve as a precedent in any other instance in which an employee may make a similarly improper insurance benefit claim."

In Inland Award No. 609 Umpire Cole found that a failure to disclose certain facts did not constitute either "...fraud or misrepresentation justifying discharge." He further found that, although the grievant's actions were neither "representation nor misrepresentation," they were "...a breach of an obligation to inform the Company so that it might be reimbursed or take steps to be reimbursed." He found that the grievant in that case was not guilty of a falsification of records "as to merit discharge." After finding that the Company would be entitled to make certain deductions in order to make itself "substantially whole," he concluded that the grievant's conduct was "not candid

or exemplary," but the evidence would not support a finding that it was of such a character as to constitute deliberate misrepresentation and fraud that would justify the ultimate penalty of discharge. Umpire Cole specifically referred to the fact that the grievant was a long-time employee "on the eve of his retirement."

It is evident that the rules relied upon by the Company do not in each and every case mandate discharge. It is evident that fraud or misrepresentation in connection with claims for S & A benefits can justify an employee's termination from employment "for just cause." It is also evident that certain acts constituting minor forms of misrepresentation or failure to accurately disclose essential facts may be cause for the imposition of severe disciplinary measures short of termination from employment.

In the opinion of this arbitrator, the grievant's conduct in this case would not justify the imposition of the penalty of termination from employment despite the fact that her failure to disclose her employment at McDonald's was a deliberate concealment and was not a mere oversight. The arbitrator is mindful of the record of discipline imposed against this grievant since her employment in April, 1976. The arbitrator is of the opinion that Ms. Jefferson should be restored to eligibility for active employment with the Company, but without any back pay for the period between the date of her termination from employment and the effective date of her restoration thereto.

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

AWARD

Grievance No. 12-N-32

Award No. 663

Darcus Dean Jefferson should be restored to eligibility for active employment with the Company with seniority rights, but without any back pay for the period between the date of her termination from employment and the effective date of her restoration thereto.

Best of Luck

ARBITRATOR

April 30, 1979

CHRONOLOGY

Grievance No. 12-N-32

Grievance filed	November 3, 1978
Step 3 hearing	November 22, 1978
Step 3 minutes	January 4, 1979
Step 4 appeal	January 11, 1979
Step 4 hearing	January 25, 1979
Step 4 minutes	March 14, 1979
Appeal to arbitration	March 20, 1979
Arbitration hearing	April 17, 1979
Award issued	April 30, 1979