Award No. 664
In the Matter of the Arbitration Between
INLAND STEEL COMPANY
AND
UNITED STEELWORKERS OF AMERICA
AND ITS LOCAL UNION 1010
Grievance No. 7-N-30
Appeal No. 1268
Arbitrator: Burt L. Luskin
June 28, 1979

INTRODUCTION

An arbitration hearing between the parties was held in Harvey, Illinois, on May 21, 1979.

APPEARANCES

For the Company:
Mr. T. L. Kinach, Arbitration Coordinator, Labor Relations
Mr. Robert H. Ayres, Manager, Labor Relations, Industrial Relations
Mr. A. R. Swatek, Superintendent, Plant No. 2 Mills
Mr. G. Lundie, Director, Safety and Plant Protection
Mr. D. Eldredge, Mechanical General Foreman, Plant No. 2 Mills
Mr. J. Hamers, General Electrical Foreman, Plant No. 2 Mills
Mr. I. D. Ison, Mechanical Turn Foreman, Plant No. 2 Mills
Mr. T. Sepiol, Vocational Mechanic, Plant No. 2 Mills
Mr. E. Andrews, Mechanical Foreman, Plant No. 2 Mills
Mr. D. E. Guadagno, Senior Safety Engineer, Safety
Mr. J. T. Surowiec, Senior Labor Relations Representative
For the Union:
Mr. Theodore J. Rogus, Staff Representative
Mr. Joseph Gyurko, Chairman, Grievance Committee
Mr. Don Lutes, Secretary, Grievance Committee
Mr. Alexander Jacque, Griever
Mr. Robert R. Jones, Grievant

BACKGROUND

Robert R. Jones was employed by the Company on February 16, 1971. In October, 1978, Jones was working as a mechanic and was assigned to Plant No. 2 Mills Department.

On or about October 1, 1978, a grease pump located in the No. 2 billet mill hydraulic basement overflowed resulting in the spillage of approximately 150 pounds of industrial grease. The primary mass of grease was removed, leaving a grease residue on the pump, the pump's connecting parts, the basement floor and the basement floor walkway adjacent to the pump.

On October 4, 1978, Mechanical Foreman Andrews assigned Jones the task of cleaning up the grease residue remaining on the pump and the surrounding area. Jones was directed to use a Turco solvent used generally throughout the plant to remove oil and grease residue. Jones allegedly responded to the direction of supervision by stating: "Oh! So you're gonna start this bullshit again--giving me all the dirty jobs." Supervisor Andrews responded by informing Jones that the employee who would normally have been given the assignment was away from work on that day and the foreman wanted the task completed and the area cleaned up. Jones allegedly asked the foreman whether there were wires running to the system and, when the foreman responded in the affirmative, Jones stated that the assignment was unsafe since the grease could serve as a conductor of electricity.

There is a conflict in the testimony concerning the time when the supervisor amended his working direction. It was the Company's contention that the supervisor amended his direction by informing Jones that he was to clean up the walkway and the area around the pump, but he was not to perform any grease removal from the pump itself or the electrical parts. Jones allegedly responded by stating that he would not perform the clean-up work unless he was allowed to shut down the grease pump while he worked near it. The foreman responded by informing Jones that the grease pump could not be shut off while the mill was in operation since the pump would have to cycle periodically (approximately 5 minutes within each 30-minute period) in order to provide the mill with the required lubrication. The supervisor informed Jones that the assignment was not unsafe and, since Jones would not be coming into contact with the pump itself or any

electrical connections associated with the pump, the assignment involved only the clean up of grease residue on the floor and in the areas adjacent to the pump.

Jones left the area stating that he would view the job site. He returned shortly thereafter and informed the supervisor that he did not believe that it was safe to clean the grease pump while it was running. The foreman allegedly responded again by stating that he did not want the pump cleaned, and the grievant was instructed to perform the assignment or be sent home for insubordination. Jones requested relief from the assignment, made a motion in the direction of the area and then stated: "I'm going to shut it down." The foreman thereupon directed Jones to proceed to the foreman's office. When Jones was again asked to perform the assignment, he did not respond. The foreman telephoned the Mechanical General Foreman who spoke with Jones and informed him that he must work as directed by his foreman or face disciplinary action. When Jones did not respond to that direction, he was escorted from the plant. Jones did not work on October 5, 1978, and he next reported for work on October 6, 1978.

October 5, 1978, was a repair day for the No. 2 billet mill maintenance crews. The grease residue was not cleaned up on that day. Jones reported for work on October 6, 1978, and was again assigned by the foreman to clean the floor and the area. Jones was told to use either Turco (a cleaning solvent) or Solturge (an industrial detergent). Jones was directed to clean the area and to avoid contacting the electrical parts. He was told not to clean the pump and he was told not to clean any electrical equipment. Jones responded by informing the supervisor that the job was as unsafe on that day as it had been when he refused to perform the assignment on October 4, 1978. Jones insisted that the grease would serve as a conductor of electricity and he demanded that the pump be shut down before the work began. The supervisor attempted to induce Jones to perform the assignment without shutting the pump down and Jones insisted that the pump would have to be shut down before he would perform the work. Jones insisted that the job was unsafe, and Foreman Andrews insisted that the assignment was not unsafe. Jones asked to be relieved and he was informed that he was being insubordinate in failing to carry out a direction of supervision in performing a task which was not unsafe and which did not involve the clean up of the pump or the electrical parts associated with the pump operation. Jones was then escorted from the plant and he was thereafter suspended from employment pending discharge on October 11, 1978. A hearing was held on October 17, 1978. On October 26, 1978, Jones was terminated from employment. A grievance was filed protesting Jones' termination from employment. The grievance was processed through the preliminary steps of the grievance procedure and the issue arising therefrom became the subject matter of this arbitration proceeding.

DISCUSSION

The Union contended that Jones had properly asked to be relieved from the assignment pursuant to the provisions of Article 14, Section 6, of the Collective Bargaining Agreement. The Company contended that it had complied with the provisions of Article 14, Section 6, and that the termination of Jones was for cause pursuant to the provisions of Article 3, Section 1, and Article 8, Section 1, of the Collective Bargaining Agreement.

The provision of the Agreement cited as directly applicable in the instant case is hereinafter set forth as follows:

"ARTICLE 14

"SAFETY AND HEALTH

14.7 "SECTION 6. DISPUTES. An employee or group of employees who believe that they are being required to work under conditions which are unsafe or unhealthy beyond the normal hazard inherent in the operation in question shall discuss the complaint with his or their foreman. Following such discussion, the oral disposition form provided for in Step 1 of Section 3 of Article 6 shall be immediately prepared, signed and distributed as therein provided. If the complaint remains unsettled, the employee or group of employees shall have the right to: (a) file a grievance in Step 3 of the grievance procedure for preferred handling in such procedure and arbitration or (b) relief from the job or jobs, without loss to their right to return to such job or jobs; and, at the Company's discretion, assignment to such other employment as may be available in the plant; provided, however, that no employee, other than communicating the facts relating to the safety of the job, shall take any steps to prevent another employee from working on the job. Should either the Management or the arbitrator conclude that an unsafe condition within the meaning of this Section existed and should the employee not have been assigned to other available equal or higher-rated work, he shall be paid for the earnings he otherwise would have received."

The clean up of grease spills around pumps has been performed for many years by lube tenders and by mechanics under almost identical circumstances that existed on October 4 and October 6, 1978. In some

instances the pump was shut down. In other instances the area could be cleaned without shutting the pump down. The electrical wires were not exposed and the evidence would indicate conclusively that the grease and the Turco solvent or the detergent which the grievant was asked to use on October 6, 1978, would not serve as conductors of electricity. They would not have placed the grievant in a situation that was either unsafe, unhealthy or beyond the normal hazard inherent in the operation in question.

The evidence would clearly indicate that if a mechanic or a lube tender was assigned to seek out the source of the problem causing the grease spill, then and in that event the electrical current going through the pump would have to be cut off since the pump would have to be opened and the internal parts exposed. In an ordinary clean up there would be no need to turn off the current. In the instant case, although the grievant may have been asked on October 4, 1978, to clean the grease from the pump and the surrounding area, the evidence would clearly demonstrate that on October 6, 1978, the order was changed and the grievant was asked only to clean up the surrounding area and to avoid using a solution on the pump itself.

Jones was unhappy with the original assignment given to him on October 4, 1978. He made that fact evident when he made the comment "Oh! So you're gonna start this bullshit again--giving me all the dirty jobs." The evidence clearly indicates that mechanics and lube tenders had been given identical assignments in the past and the evidence would indicate that the foreman did not seek to punish the grievant by assigning him to the task in question. The evidence would also indicate that there was no animosity between the foreman and Jones. There is testimony in the record that they had been friendly and, in fact, had been together several days prior to the incident in question when they had gone shooting.

Jones' initial reaction to the working direction on October 4, 1978, would indicate that he was not particularly concerned with a safety hazard and he was not particularly concerned with the fact that the clean up work in question would be unsafe or unhealthy "beyond the normal hazard inherent in the operation in question. . . ." The foreman relieved Jones from work for the balance of the shift and he did not assign anyone to perform the clean up functions on October 5, 1978, although that would have been an opportune time to have had the work done since the mill was down and the pump was not in operation. The foreman was placed in a dilemma since, if he allowed Jones to be relieved from the assignment in question, the foreman would be placed in the uncomfortable position of subjecting himself to justifiable complaints and criticism from other employees in the mechanic classification who would have believed that they ware being assigned to perform a relatively dirty task after Jones avoided that task by making a safety claim which had little or no merit whatsoever.

It becomes evident that Jones sought to engage in a confrontation and to force his will upon the foreman and other members of supervision. Jones is a skilled mechanic. He knew how the pump operated and he knew that the pump cycled for a five-minute period every half hour. Jones knew that the entire task of cleaning the pump and the surrounding area with a detergent or a solvent could have been accomplished in approximately twenty minutes. As a matter of fact, two employees who performed the operation on October 8 and who also made repairs to the pump by opening the pump and cleaning the strainer, completed the task in approximately thirty minutes. Jones knew or should have known that if he cut off the current, he could have cleaned the area in a few minutes without missing a cycle. If a cycle was missed, he knew or should have known that the pump could have been recycled in a matter of seconds without in any way impairing the operation on the mill or placing the mill equipment in danger of damage.

The evidence will not support a conclusion or finding that the pump is shut off in every single instance when clean up functions are performed. A member of supervision who had caused a number of charts to be examined testified that in each instance when clean up work was performed, there was no record of the pump having been cut off during periods of time when the mill was in operation.

The type of assignment given to Jones on October 4 and again on October 6, 1978, was neither unique, unusual or out of the ordinary. It was a normal type of assignment that had been performed regularly by employees work in that area and who are in the mechanic or in the lube tender classification.

In the opinion of the arbitrator, Jones' opposition to the assignment and his contention that the assignment was unsafe and unhealthy and dangerous unless the switch could be cut off was simply not a good-faith assertion of something that Jones truly believed was unsafe or unhealthy. There were no new hazards involved in the operation. Jones was asked to perform a housekeeping function which did not require that he come in contact with the pump. The solution which he was asked to use has been used in large quantities in the plant for years and under almost identical sets of circumstances. There has never been a recorded instance of a flash fire nor has there been an instance of the solution serving as a conductor of electrical currents. As a matter of fact, on October 6, 1978, the foreman suggested to Jones that he use a water-base detergent which had no flashpoint and which could not be considered to be dangerous for use around

electricity or electrical currents. There is evidence in the record that all the main electrical leads going to the pump were encased in conduit and, if Jones cleaned the area around the pump, there would have been no reason whatsoever for Jones to have come in contact with the pump or in contact with any wires leading to the pump.

The principles outlined by Arbitrator Cole in Inland Award No. 208 would be most appropriate in analyzing the situation as it existed in this case. Arbitrator Cole made the following statement in that award:

". . . the agreement predicates the subsequent course on the belief of the employee or groups of employees who are to perform the work, and not on the belief of others. . . .

"The primary test must, then, be the sincerity or the good faith of the employee's belief that the work is unsafe or unhealthy beyond the normal hazard inherent in the operation. Clearly, this calls for more than a mere assertion that he has such a belief. . . . This provision certainly was not meant to provide a shield for malingerers or shirkers. This presents obvious difficulties, since a person's state of mind must be inquired into. . . ."

The only reasonable conclusion that this arbitrator can reach is that Jones did not raise the objection to the performance of the assignment in question based upon a sincere belief that the operation would be unsafe or unhealthy "beyond the normal hazard inherent in the operation. . ." if he was not permitted to cut the motor to the pump.

It should be noted that great care must be exercised to make certain that an employee who believes that an assignment could be unsafe or unhealthy beyond the normal hazard inherent in the operation in question should have access to the contractual procedures set forth under Article 14, Section 6. The provision in question is of significant importance and is entitled to full faith and credit. It should be administered in the precise manner called for in the Collective Bargaining Agreement. It is not designed, however, to be used by an employee to evade an assignment because it is a dirty job and who uses the provision in question to become obstructive, contentious and argumentative in order to avoid the performance of the assigned task. It would be manifestly unfair if the grievant in this case avoided the assignment in question when there was absolutely no danger involved in the performance of the assignment as it was initially outlined, and to thereby saddle a fellow employee with the performance of an unpleasant task that was properly assigned to the grievant in the first instance.

On October 8, 1978, two employees were assigned to perform the operation which Jones had refused to perform unless he was permitted to cut the motors of the pump. Those two employees did (after fifteen minutes) turn off the current. It was necessary, however, that they turn off the current since they not only cleaned the pump and the area around the pump, they opened the pump and they made the mechanical repairs necessary to put the pump back into good operating condition. In addition thereto, the mill was shut down in the precise same period of time when the repairs were being made and the cut off of the current had absolutely no effect or impact upon the operation of the mill and the movement of grease to the vital portions of the roller bearings.

In substance, this arbitrator must find that Jones was insubordinate when he raised a contention that was without merit or substance involving a work assignment which was neither unsafe nor unhealthy and which had been performed in an identical fashion on numerous occasions by other employees. Jones was not motivated in refusing to perform the assignment by considerations of safety. He attempted to avoid the performance of the operation unless he could do it "in his way."

In determining the degree of penalty to be imposed against Jones, the Company took the fact situation in this case into consideration and also looked at Jones' record of warnings and discipline. In March, 1975, Jones had been disciplined for three turns for horseplay and profane language directed toward other employees. In June, 1975, he had been suspended for two turns for riding on the outside of a crane cab. In August, 1978, he had been suspended preliminary to discharge and returned to work after losing thirteen turns on a "last-chance basis." That issue was the subject of a grievance and was submitted to arbitration. This arbitrator concluded in that case that the suspension penalty imposed against Jones was for just cause. In September, 1978, Jones failed to remove a safety lock, causing a twenty-minute mill delay, and he was disciplined for one turn.

It becomes evident that Jones has difficulty in accommodating himself to the rules that have been adopted by the Company and which all employees are expected to observe. Jones is not entitled to special privileges. There comes a point in time when the Company should not be required to retain an employee who consistently demonstrates over a period of time that he is unwilling to accept the same rules that other employees follow as a matter of course. In the opinion of the arbitrator, Jones should be provided with one

final opportunity to demonstrate that he can and he will accept direction of supervision and avoid confrontations of the types involved in the incidents of October 4 and 6, 1978, which led Jones to conduct himself in an insubordinate manner. While Jones should be restored to employment, with seniority rights, he is not entitled to any back pay in the light of the record in this case and the record of his prior discipline. For the reasons hereinabove set forth, the award will be as follows:

AWARD

Grievance No. 7-N-30

Award No. 664

Robert Jones committed acts of insubordination on October 4 and 6, 1978. Jones should be offered restoration to employment with the Company, with seniority rights, but without any back pay for the period between the date of his suspension and termination from employment and until his restoration to employment. The intervening period shall constitute a period of disciplinary suspension from employment.

/s/ Burt L. Luskin

ARBITRATOR

June 28, 1979