

Award No. 666
In the Matter of the Arbitration Between
INLAND STEEL COMPANY
AND
UNITED STEELWORKERS OF AMERICA
AND ITS LOCAL UNION 1010

Grievance No. 9-N-63

Appeal No. 1265

Arbitrator: Burt L. Luskin

July 6, 1979

INTRODUCTION

An arbitration hearing between the parties was held in Harvey Illinois, on May 22, 1979.

APPEARANCES

For the Company:

Mr. T. L. Kinach, Arbitration Coordinator, Labor Relations

Mr. Robert H. Ayres, Manager, Labor Relations, Industrial Relations

Mr. H. C. Easter, Superintendent, 10" and 14" Mills

Mr. T. J. Peters, Assistant Superintendent, Labor Relations

Mr. R. LaBarge, Administrative Foreman, 10" and 14" Mills

Mr. M. R. Zarowny, Coordinator, Insurance, Personnel

Mr. R. K. Scholes, Labor Relations Representative

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. James F. Bonewits, Griever

Ms. Geraldine L. Williams, Grievant

BACKGROUND

Geraldine L. Williams was employed by the Company on June 14, 1971, and assigned to the 10" Mill Department. In 1978 Ms. Williams held the position of stocker helper in the 10" Mill clerical sequence. Ms. Williams was absent from work commencing on October 20, 1978, because of an illness diagnosed as pneumonia and acute pyelitis. On November 22, 1978, the Company wrote to Ms. Williams informing her that she had been suspended for five calendar days and was subject to discharge at the expiration of that period. She was informed that the Company's action was being taken because of her "chronic and excessive absenteeism." Ms. Williams requested and was granted a hearing that was held on November 29, 1978. On December 1, 1978, Ms. Williams was informed that, following an investigation conducted by the Company at the conclusion of the suspension hearing, the Company could find no basis for altering the decision of the Department Superintendent and the suspension was converted to a discharge from employment. A grievance was filed by Ms. Williams contending that her suspension and discharge were "unjust and unwarranted in light of the circumstances." She requested reinstatement to employment and payment for all moneys lost.

The Company contended that during Ms. Williams' 7-1/2 years of employment with the Company she had suffered periods of extended absences from work because of illness in each and every year of her employment. The Company pointed to the fact that she had been absent during 102 complete weeks for various forms of illnesses and she had been absent on single or multiple day occasions for a total of 66 days in that same period of time. The Company pointed to the fact that in addition to the absences for illness and for other reasons, the record indicated that Ms. Williams had worked partial turns on 24 different occasions. The Company pointed to the fact that since April 8, 1974, Ms. Williams had been reprimanded on four occasions for absenteeism and on two occasions for poor work performance. In additions to the reprimands for absenteeism, Ms. Williams had been suspended for one turn on July 9, 1976, for absenteeism, for one turn on May 9, 1977, for absenteeism, and for two turns on February 14, 1978, for absenteeism. On July 11, 1978, she received a record review with her superintendent and was given a final warning concerning her absenteeism at that time. She was informed that, unless her attendance record improved, she would be terminated from employment.

The Company contended that the grievant's record of absenteeism had reached a point where the Company could no longer continue the grievant in employment and the Company contended that it was completely justified in exercising its right to terminate the grievant for cause.

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

DISCUSSION

The basic facts are not in dispute. In every year of her employment since 1971 Ms. Williams was away from work for extended periods of time because of illness. In addition thereto she periodically lost time from work for other reasons, some of which were for single days of illness, some of which were personal in nature, and some of which were related to illnesses of members of her family. In 1971 she had a 7-week period of extended illness. In 1972 she had three periods of extended illnesses consisting of an absence of 4 weeks, an absence of 7 weeks, and an absence of 2 weeks. In 1973 she had a period of extended illness of 3 weeks and a period of extended illness of 12 weeks. In 1974 she had periods of absences for illness covering a 6-week period, a 1-week period, and a 2-week period. In 1975 she had one period of extended illness of 20 weeks and one period of extended illness of 3 weeks. In 1976 she had periods of extended illnesses of 1 week, 8 turns and 1 week. In 1977 she was absent because of an extended illness for 2 weeks, followed shortly thereafter by a period of 9 weeks of extended illness and she thereafter lost 14 turns of work because of various days of illness. In 1978 she was absent for one period of 18 weeks on an extended illness and, on her return to work in July, 1978, she was given a record interview at which time she received a final warning concerning her absenteeism. She was informed that unless her attendance improved she would be terminated from employment. Ms. Williams was again absent for illness for a 4-week period in October and November, 1978, after which she was terminated from employment.

During her period of employment with the Company Ms. Williams has suffered from pelvic inflammatory disease. She had undergone four surgical procedures for ovarian problems, and she has had pneumonia on two occasions including an acute kidney disorder diagnosed as pyelitis. On a number of occasions when medical reports indicated the removal of ovarian cysts, she was informed that the problems should not recur. The fact remains, however, that they did recur and during the period of her 7-1/2 years of employment with the Company she lost more than two years of work because of various illnesses.

The Union contended in part that the language of Article 13, Section 11 (Reference Paragraph 13.68), provides for accumulation of continuous service where an employee is absent because of "physical disability" for varying periods of time. The Union contended that an employee who is sick cannot and should not be terminated from employment.

The Company contended that there is nothing in the Collective Agreement between the parties which would preclude the Company from terminating the services of any employee who is excessively absent and who (irrespective of the reasons for the absences) cannot be expected to report for work on a regular basis. The Company contended that (based on the grievant's record of absences for illness and other reasons) there is nothing in that record that would permit a conclusion to be drawn that she is likely to be able in the future to maintain the consistent, productive attendance required of any employee. The Company contended that there is no reasonable basis for concluding that the grievant can improve her attendance and that at some point in time a decision had to be made to remove her from the payroll when it became evident that no useful purpose would be served in retaining her on the active payroll.

In a 1958 decision written by Arbitrator Seitz (assistant to Permanent Arbitrator Cole), the Arbitrator referred to the Company's right "to be assured a responsible work force." He pointed to the fact that regularity of attendance of employees "is essential to the fulfillment of the managerial functions." He made specific reference to the fact that, although absenteeism may be explained on grounds that furnish reasonable excuse, the absenteeism when it occurs with "excessive frequency" becomes a hindrance to the Company's operations. He made reference to the fact that "excessive frequency" is a question to be determined by the facts presented in each case in order to determine whether "proper cause" has been met for the employee's termination from employment. He then made reference to standards of inquiry in order to determine the circumstances surrounding the absence, the mental attitude of the grievant and the possibilities for rehabilitation.

Arbitrator Mittenthal in a Copperweld Steel Company decision (1967) stated that isolated absences from work or a series of absences for illnesses or other reasons may be excused. He pointed out, however, that "when a pattern of repeated absenteeism continues indefinitely, month after month and year after year, a point is reached where the reason for the absences becomes immaterial."

An employee who is ill and who substantiates that illness must be excused from work. By the same token, an employee who suffers a series of illnesses must be excused from work. There comes a point, however,

when chronic illnesses and a continuing series of absences because of various illnesses over extended periods of time, makes it evident that an employee cannot work in an industrial atmosphere and such an employee must be separated from active employment. That concept does not conflict with the decision of Permanent Arbitrator Cole in Inland Award No. 628, issued on January 26, 1976. Arbitrator Cole found in that case that the Company had a right to expect regular and timely attendance in order that it could maintain its obligation to schedule and regulate operations. In that same decision, however, Arbitrator Cole found that "if the Company were disciplining grievant for absences caused by his injury or other actual illness, there would surely be a lack of good cause."

This arbitrator must agree with the Company's contention that ". . . each case of excessive absenteeism must turn on the facts and circumstances of the individual case . . . the use of the term 'average' is inappropriate. . . ."

The Company does not question the legitimacy of the illnesses suffered by the grievant over the entire period of her employment with the Company. It argues basically that the regularity of her absences, the extended periods of her absences, the chronicity of her illnesses, and the additional days of absence for reasons other than illness, makes it evident that the grievant has built a record of poor attendance that would warrant and justify her termination from employment within the concept of just cause.

It would appear from an analysis of the medical record in this case that a substantial portion of the grievant's medical problems have been relieved and should no longer preclude the grievant from working on a regular basis. It is the opinion of this arbitrator that the grievant should be afforded an additional opportunity to demonstrate that her physical problems have been corrected and that she can report for work on a regular basis, consistent with that required of any other employee at this plant. It is conceivable that the long absence from work in the period following her termination from employment in December, 1978, may not only have served to correct the grievant's health problems but may have also impressed upon the grievant the necessity for regularity of attendance whenever she is physically able to report for work as scheduled. The grievant should be restored to employment, with seniority rights. She should not, however, receive any back pay for the period from 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. 9-N-63

Award No. 666

Geraldine L. Williams should be restored to 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.

/s/ Burt L. Luskin

ARBITRATOR

July 6, 1979