

In the Matter of the Arbitration Between

INLAND STEEL COMPANY)

AND)

UNITED STEELWORKERS OF AMERICA)
LOCAL UNION 1010)
_____)

) Grievance No. 10-N-28
) Appeal No. 1267
) Award No. 667

INTRODUCTION

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

APPEARANCES

For the Company:

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

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

Mr. R. A. Senour, Superintendent, Plant No. 1 Mills

Mr. W. P. Boehler, Assistant Superintendent, Labor Relations

Mr. R. J. Wilson, Supervisor, Insurance, Personnel

Mr. C. Rumsey, Training Coordinator, Personnel and Training, Industrial Relations

Mr. E. R. Kroenke, Senior Claims Administrator, Insurance, Personnel

Mr. R. T. Larson, Labor Relations Coordinator

Mr. J. T. Surowiec, Senior Labor Relations Representative

Mr. J. J. Spear, Labor Relations Representative

Mr. R. V. Cayia, 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. Kermit C. Ray, Jr., Griever
Mr. Gilberto F. Cantu, Griever
Mr. John Deardorff, Insurance Representative
Mr. Fedro Hicks, Griever
Mr. John A. Santos, Grievant

Arbitrator:

Mr. Bert L. Luskin

BACKGROUND

John A. Santos was hired by the Company on August 6, 1969. In December, 1978, Santos was employed in the Plant No. 1 Mill Department.

In August, 1975, Santos had completed the standard-type of card for information concerning his marital status and the number of his dependents in order that they could be covered under the Company's insurance medical and dental program. That form, signed by Santos, indicated that he was married to Patricia and he had two minor children of that marriage.

On January 16, 1978, an insurance claim form was issued by the insurance section to Patricia Santos for reimbursement for dental services performed on Patricia's behalf. That claim was paid in accordance with the allowable benefits, and on June 8, 1978, a second form was issued by the insurance

section for dental work to be performed on Patricia's behalf. That claim was also paid in accordance with the established benefit program. The two claims paid for Patricia Santos totaled \$561.75.

On or about September 15, 1978, the insurance section received information to the effect that Santos and his wife Patricia had been divorced. In a telephone call made to Santos he confirmed the fact that he had been divorced and that the divorce had become final on or about May 23, 1977. The Company asked Santos to provide the Company with a certified copy of his divorce decree. Santos did not respond to that request. In November, 1978, the matter was turned over to an insurance investigator who checked and determined that the divorce had been granted and John Santos and his wife Patricia had been divorced in the State of Indiana on May 23, 1977. The Company thereafter requested its insurance carrier (Equitable) to conduct an investigation and to determine whether claims had or had not been paid on behalf of Patricia Santos at any time after the divorce decree had been entered. The investigation disclosed the fact that the sum of \$561.75 had been paid for dental services on behalf of Patricia Santos after the decree for divorce had been entered in May, 1977.

Santos came to the Company's insurance office on November 28, 1978. He readily conceded that he had been divorced and a discussion ensued concerning recoupment to the insurance carrier of the sum of \$561.75. Santos asked for a delay. On December 11, 1978, Santos came to the office and an arrangement for recoupment was completed whereby Santos agreed to permit a payroll deduction in the amount of \$100.00 from each two-week pay check until such time as the entire amount had been returned to the Company's insurance carrier.

The results of the investigation conducted by the insurance section were then communicated to the Personnel Department. The matter was called to the attention of members of supervision and, on December 29, 1978, Santos was suspended from employment. He was charged with having submitted fraudulent insurance claims and the Company relied in part on Santos' "unsatisfactory work record."

A hearing was held on January 3, 1979, and on January 11, 1979, Santos was informed that he had been terminated from employment. He was informed that an investigation following the hearing failed to disclose any circumstances that would justify altering the decision of the Department Superintendent. The suspension was thereupon converted to a discharge.

On January 15, 1979, a grievance was filed contending that the suspension which culminated in discharge on January 11, 1979, was "unjust and unwarranted in light of the circumstances." Santos requested reinstatement to employment and pay for all moneys lost. He contended that the Company's action had resulted in a violation of Article 3, Section 1, and Article 8, Section 1, of the Collective Bargaining Agreement between the parties. The grievance was thereafter processed through the remaining steps of the grievance procedure and the issue arising therefrom became the subject matter of this arbitration proceeding.

At the Step 3 hearing the Union offered an amendment to the grievance contending that the Company had violated Article 4, Section 2, of the Collective Bargaining Agreement on the theory that Santos as a Grievance Committeeman had been subjected to discrimination when he was terminated from employment. When the Union did not offer any evidence to support its contention

that the circumstances in this case would justify an amendment to the grievance, the Company refused to accept the amendment and the issue proceeded into the 4th Step of the grievance procedure on the basis of the original contentions advanced by Santos and the Union concerning the alleged violations of the provisions of Article 3, Section 1, and Article 8, Section 1.

DISCUSSION

The basic facts are not in dispute. The events which preceded the grievant's termination from employment have been set forth in the background portion of this opinion and award.

Santos was married, divorced, and approximately eight months after his divorce became final an insurance claim form for dental work performed on behalf of his divorced wife was issued by the Company and signed by Santos. The form was thereafter completed by the dentist, the claim was submitted, and it was paid in accordance with the benefit tables for the type of dental work that was performed. Some five months later a second claim was made on behalf of Santos' divorced wife. That claim was also signed by Santos, and the same procedure was followed, after which payment was made. The claims had been approved by the insurance company and confirmation letters were forwarded to Santos. There were approximately six letters sent to Santos acknowledging receipt of the claims, the processing of the claims and the amount of payments made by the insurance company on behalf of Patricia Santos' claims for dental services performed after the divorce decree had been entered and long after Patricia Santos was no longer eligible to receive benefits as a dependent of John Santos.

Santos acknowledged receiving the confirmation letters from the insurance company regarding payment of the claims, but he contended that, although he received, opened and cashed checks from the same insurance company on claims that were due to him personally, he did not open (for a long period of time) the verification and confirmation letters from the insurance company that were sent to Santos advising him of the claims on behalf of Patricia Santos and the payments made thereunder.

Santos contended that he may have been negligent and careless, but he did not commit a fraud. In support of his contention he pointed to the fact that on at least two separate occasions he made personal claims for insurance benefits and submitted reports at the Company's clinic and at a hospital wherein he represented himself as being unmarried and the father of two dependent children. In one instance he referred to himself as being "single" and he contended that he had never been informed that he was required to immediately report to the Company any change in the status of those persons whom he had listed as dependants when the dependency form was originally prepared and submitted to the Company in 1975. The Company conceded that employees are not required to immediately notify the Company of changes in their dependency status, although the Company contended that many employees do so voluntarily. The Company contended that Santos knew that he had no right to submit claims on behalf of a divorced wife who was no longer his dependent under the Company's insurance programs. The Company contended that Santos knew that he was violating plant rules and regulations and was perpetrating a fraud upon the Company when he signed the claim forms as the husband of Patricia Santos and permitted the insurance company to make the two payments in question for the dental services that were performed for Patricia Santos.

There is nothing in this record that would in any way indicate that the Company's decision to terminate Santos was motivated by the fact that Santos was a Grievance Committeeman. Santos is a literate, intelligent person who was a member of the negotiating committee that entered into an agreement with the Company resolving Local issues in the 1977 negotiations. Santos was a signatory to that agreement and the fact that he held Union office would have nothing whatsoever to do with the fact that he either committed the fraud or allowed the fraud to be committed by gross carelessness on his part.

In September, 1973, Permanent Arbitrator Cole issued his opinion and award in Inland Award No. 608. In that case the discharged grievant had held a maintenance millwright position on a fulltime basis at a different steel company in addition to his fulltime position at Inland. He submitted a disability claim at Inland for periods of time during which he worked fulltime at the other steel company. Arbitrator Cole, in discussing the preparation of forms by a Company clerk in the Insurance Department, found that the Company's charge of willful fraudulent knowledge or intent as grounds for the discharge "is not as clear as it appeared to be when this action was decided upon." He found that the grievant in that case did not have the guilty knowledge "to the degree necessary to support a charge of willful fraud...." He gave weight to the grievant's record of twenty-one years of service with Inland with an unblemished personnel record and, after concluding that the grievant was "not without fault," he required the grievant to make full restitution of the amounts to which he was not entitled, and he restored the grievant to employment with the intervening period to constitute a period of suspension. Having found that the penalty would be "severe

enough under the unusual facts of this case," he further noted that the long period of suspension would put the grievant (and all employees) on notice that the course followed by the grievant in that case was "seriously improper and a basis for severe disciplinary penalty." Arbitrator Cole concluded with the following sentence:

"It is 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 most of the supporting citations submitted by the Company and by the Union, the facts therein are singularly distinctive from the facts in this case. In most cases where an employee embarks on a course of action which constitutes deliberate fraud by submitting false and spurious claims or alters documents or forges doctors' names to reports, the cited decisions almost unanimously would support termination from employment as the penalty for commission of the described offenses. The cited cases involving deliberate misrepresentation of employment information on employment applications are significantly different from the fact situation in this case.

This arbitrator must find that the grievant may not have committed "willful fraud," but he knew or should have known that the Company was being asked to pay insurance claims which it was not obligated to pay. Putting the best possible light on Santos' conduct, it would appear that he was singularly careless, allowed a fraud to be committed, and caused the Company's insurance carrier to pay for dental work performed on his divorced wife which the insurance company should not have been required to pay. Santos became liable for

the return of the money paid by the insurance company and he conceded that liability. He offered to pay the full amount of the improper payments and he made partial payments prior to his termination from employment. Provision is made in the insurance claim forms for recoument of moneys improperly paid out on the behalf of erroneous or false information and there can be no question but that Santos admitted his obligation and his liability to return the money that was improperly paid out.

It would be most difficult for the Union to plead for a modification of the penalty of discharge based upon Santos' record of discipline with the Company. In October, 1974, he left his assigned working area without permission and was suspended for the balance of the turn and three additional turns. In May, 1975, he altered a posted schedule and was suspended for four turns of work. In May, 1976, he was suspended for one turn for refusal to work overtime. In July, 1976, he again left his working area and was suspended for five turns. He received reprimands for absenteeism and insubordination in March and August, 1978. On August 10, 1978, he was suspended for five days for insubordination arising out of the use of abusive and profane language directed towards a foreman. In September, 1978, he received a record review and a final warning. On December 5, 1978, he was suspended for five days and received a final warning after having been charged with committing an act of insubordination directed toward his superintendent. Although grievances are still pending in connection with the last two suspensions issued against Santos, the record is an unenviable one.

This arbitrator is not convinced from the evidence in this record (as was Arbitrator Cole in Award No. 608) that the offense committed by Santos was planned and perpetrated in a form which would constitute willful fraud. The fact remains that Santos signed the claims and thereby assumed responsibility for the events which flowed thereafter and which resulted in defrauding the Company's insurance carrier of sums of money which it was not legally obligated to pay. Santos must bear the burden and the responsibility for his conduct. The fact that he may have indicated that he was "single" when he made insurance claims on his own behalf, would not relieve him of responsibility for the acts in question. The arbitrator is of the opinion that the facts in this case do not permit a finding that Santos committed a willful, deliberate, fraudulent act or acts. He must, however, be severely disciplined for his conduct. The penalty of discharge will be modified to a penalty of suspension from employment conditioned upon the return by Santos of the moneys that were improperly paid for the dental services performed on behalf of Santos' divorced wife Patricia.

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

AWARD

Grievance No. 10-N-28

Award No. 667

John A. Santos shall be restored to employment with the Company with full seniority rights, but without any back pay for the period between the date

of his suspension and subsequent termination from employment and the effective date of his restoration thereto. The intervening period shall be considered to constitute a period of disciplinary suspension from employment. His return to employment shall be conditioned upon the repayment of any sums of money paid by the Company or its insurance carrier for dental services performed on behalf of Patricia Santos after John A. Santos and Patricia Santos were divorced in May, 1977.


ARBITRATOR

July 13, 1979

CHRONOLOGY

Grievance No. 10-N-28

Grievance filed	January 15, 1979
Step 3 hearing	January 25, 1979
Step 3 minutes	February 14, 1979
Step 4 appeal	February 26, 1979
Step 4 hearing	March 1, 1979
Step 4 minutes	April 9, 1979
Appeal to Arbitration	April 11, 1979
Arbitration hearing	June 22, 1979
Award issued	July 12, 1979