

Award No. 682
In the Matter of the Arbitration Between
INLAND STEEL COMPANY
AND
UNITED STEELWORKERS OF AMERICA
AND ITS LOCAL UNION 1010

Grievance No. 9-N-89

Appeal No. 1287

Arbitrator: Bert L. Luskin

February 25, 1980

INTRODUCTION

An arbitration hearing between the parties was held in Harvey, Illinois, on January 31, 1980.

APPEARANCES

For the Company:

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

Mr. R. T. Larson, Coordinator, Labor Relations Department

Mr. E. J. Skuse, Assistant Superintendent, Merchant Mills

Mr. L. C. Marshall, Mill Foreman, 10" Mill

Mr. R. K. Scholes, Senior Representative, Labor Relations Department

Mr. R. Jackson, Associate Representative, Labor Relations

Mr. M. Oliver, Representative, Labor Relations

For the Union:

Mr. Theodore J. Rogus, Staff Representative

Mr. Joseph Gyurko, Chairman, Grievance Committee

Mr. Phil King, Acting Secretary, Grievance Committee

Mr. James F. Bonewits, Griever

Mr. John Deardorff, Insurance Representative

Mr. James E. Weathersby, Grievant

BACKGROUND

James E. Weathersby was employed by the Company on August 24, 1978, and was assigned to work in the 10" Mill Department. On May 31, 1979, the grievant was scheduled to work the midnight to 8:00 A.M. turn as a Charging Hooker at the 10" mill billet dock. Shortly after the start of the turn Weathersby asked his foreman (Leo Marshall) for a supply of heavier gauge wire than was available in Weathersby's work area. The foreman informed him that a supply was available at the opposite end of the building and that it would have to be moved by crane. Weathersby was informed that the foreman would make arrangements to bring a supply of heavier gauge wire as soon as he could free himself of some operating details with which he was immediately concerned. Shortly thereafter Foreman Marshall directed Weathersby to hook up a billet dock Dempster (a large steel garbage container) in order that the box containing garbage could be removed from the department by means of an overhead crane.

An incident occurred thereafter and Foreman Marshall charged Weathersby with insubordination. He also charged Weathersby with directing profane and abusive statements to Foreman Marshall. Weathersby was escorted from the plant, and on June 1, 1979, he was suspended for five days preliminary to discharge. Weathersby requested a discharge hearing that was held on June 6, 1979. On June 11, 1979, Weathersby was informed that he had been terminated from employment. On June 13, 1979, Weathersby filed Grievance No. 9-N-89, contending that his suspension and discharge were unjust and unwarranted "in light of the circumstances." The grievant requested restoration to employment and pay for all moneys lost. The grievant charged that the Company had violated Article 3, Section 1, and Article 8, Section 1, of the Collective Bargaining Agreement.

The grievance was denied and was thereafter processed through the remaining steps of the grievance procedure. The issue arising thereafter became the subject matter of this arbitration proceeding.

DISCUSSION

The Company offered the testimony of Leo C. Marshall, a foreman at the 10" mill. Marshall testified that he had been employed by the Company for some seventeen years. He has been a foreman for nine years. Marshall testified that he had no recollection of ever having supervised Weathersby prior to the 12:00 to 8:00 turn on May 31, 1979.

Marshall testified that shortly after the start of the shift, Weathersby approached him and asked him for a supply of heavy gauge wire that was used by hookers to temporarily wire-up small billet squares until they could be permanently tied. Marshall testified that he informed Weathersby that he would make arrangements to bring a supply of heavy gauge wire from the opposite end of the building (to replace the light gauge wire that Weathersby was using) as soon as a crane could be made available. Marshall testified that he left the area, performed some assignment functions, returned and noted that a dumpster was filled with garbage. He wanted it removed from the area immediately, since it would otherwise attract rodents. He asked Weathersby to hook-up the dumpster so that it could be moved by an overhead crane. Marshall testified that Weathersby again asked for some heavy gauge wire and, when Marshall repeated his statement concerning the availability of the wire, Weathersby stated "If you can't do your job, get someone who can." Marshall testified that he made no response to what he considered to be an uncourteous statement other than to repeat his direction to Weathersby to hook-up the dumpster. Marshall testified that when Weathersby made no movement to comply with that direction, he stated to Weathersby "I'm not asking, I am ordering you to hook-up that box." Marshall testified that Weathersby responded by stating "Don't talk to me in that tone of voice. You don't know who you're fooling with." When Weathersby made no further attempt to comply with the foreman's direction, Marshall informed Weathersby that he was being sent home and Plant Protection would be called to escort him from the plant. Marshall testified that he asked Weathersby to follow him to an office, and Marshall proceeded in the direction of the office. Marshall testified that after he had walked a short distance in the direction of the office and had approached a group of employees, Weathersby called out to him and shouted "You don't talk to me like that, you mother-fucking asshole." Marshall testified that he entered an office, and Weathersby followed him into the office. Marshall testified that when he asked Weathersby for his name and asked him to spell it, Weathersby stated, "Why do you ask me that, you don't even know my name." Marshall testified that members of the Plant Protection Department arrived at the site and escorted Weathersby from the plant. Marshall testified that he did not swear at Weathersby and he denied that he had ever addressed a racial slur to Weathersby or to any other employee. He categorically denied referring to Weathersby as a "little black fucking punk." Marshall testified that nothing had occurred prior to the incident in question which would have caused him to have any animosity toward Weathersby.

Weathersby testified that he had been using heavy gauge wire for small billets. He testified that the wire available at the start of the turn in question was light gauge and rusty. He testified that the rust was entering his eyes and that the light gauge wire was penetrating his gloves and injuring his hands. He testified that he had asked Foreman Marshall about the availability of heavy gauge wire on two occasions shortly after the start of the shift. He testified that Foreman Marshall asked him to hook-up a dumpster and, when Weathersby again asked about the availability of heavy gauge wire, Foreman Marshall allegedly stated to him, "Listen, you little black fucking punk, you don't run things around here." Weathersby testified that he responded by stating to Foreman Marshall, "You don't dare to talk to me in that tone of voice. All I said was that I wanted some ten-gauge wire." Weathersby testified that the entire conversation took approximately one minute and that he was never warned that he would be sent home if he did not immediately comply with Foreman Marshall's direction to hook-up a dumpster.

Weathersby testified that Foreman Marshall had informed him that he (Marshall) would obtain a supply of heavy gauge wire for use by Weathersby and he testified that he had raised no objection to Foreman Marshall's direction to hook-up the dumpster. He conceded that he had "stalled" and had not performed the hook-up function immediately after he had been instructed to do so. He testified that when he was asked to go to the office, he did not immediately comply with that direction since he had to step behind some billets in order to "fix his pants." He testified that the area was dark and he did not immediately see Foreman Marshall walk away so that the foreman had walked some distance before he was observed by Weathersby, who then followed him to the office. Weathersby testified that when Foreman Marshall asked him for his name, Weathersby stated, "You're sending me home and you don't even know my name." He denied stating to Foreman Marshall, "You don't know who you're fooling with," and he could not recall receiving a "direct order" to hook-up the dumpster.

There is evidence in the record that at the suspension hearing and at the 3rd Step meeting Weathersby may have conceded that he used a profane expression, but he denied that the profanity was directed toward Marshall in any personal vein. He conceded that there may have been an "outburst," but he contended that any argument between them had taken place only after he had been in the office and had been informed that he was being escorted from the plant by a member of the Plant Protection Department.

The Company charged Weathersby with violating Plant Rules 127.o and 127.p. Those plant rules are hereinafter set forth as follows:

"127. The following offenses are among those which may be cause for discipline, up to and including suspension preliminary to discharge:

"o. Insubordination (refusal or failure to perform work assigned or to comply with instructions of supervisory forces).

"p. Use of profane, abusive, or threatening language towards subordinates or other employees or officials of the Company, or any non-Inland personnel."

The Union contended that the evidence offered by the Company would not serve to establish that any cause existed for the suspension or the termination of the services of the grievant in this case. The Union contended that, while some words may have been exchanged between Weathersby and Foreman Marshall, the Company had failed to carry its burden of proof and to establish with any degree of certainty that Weathersby had either been insubordinate or that Weathersby had directed profane, abusive or threatening language toward Foreman Marshall. The Union contended that the Company had failed to follow its plant procedures relating to the imposition of progressive discipline and the Union contended that Weathersby had never been made aware of the fact that his short delay in responding to Foreman Marshall's direction to perform a hook-up function would lead to his suspension and subsequent termination from employment. From an analysis of all of the evidence in the record it would appear that there are serious inconsistencies and contradictions in the version of the incident as testified to by the grievant, Weathersby. By contrast, Marshall's testimony was completely consistent and credible.

Weathersby's contention that Foreman Marshall allegedly directed a racial slur to him is a serious charge. It was Weathersby's contention that the racial slur was so provocative in nature as to cause him to indicate his resentment by delaying the carrying out of the foreman's instruction, and it provoked his verbal statement to the foreman when he said, "You don't have to talk to me in that tone of voice." It should be noted that Weathersby's own statement in response to the alleged racial slur made no reference to the slur or to the alleged associated profanity. It referred only to the foreman's "tone of voice." It becomes readily evident that the reference to Foreman Marshall's "tone of voice" was in reference to the words used by Foreman Marshall when he stated to Weathersby, "I'm not asking, I am ordering you to hook-up that box."

There is nothing in this record that would in any way indicate that during Foreman Marshall's some seventeen years of employment with the Company, and with nine of those years served in the capacity of a supervisor, that Marshall had ever been accused of directing racial slurs toward any employee with whom he may have worked either as a Bargaining Unit employee or as a member of supervision.

The arbitrator must find from all of the evidence in the record that Weathersby failed to carry out a reasonable direction of supervision. He was directed to perform a simple function on three different occasions. He admittedly "stalled" and he failed to respond to Foreman Marshall's order when he was told clearly and unambiguously that he was being "ordered" to perform the hook-up and was not being "asked" to hook-up the dumpster preliminary to movement by a crane. The arbitrator must further find that Weathersby expressed his resentment to receiving a direct order by stating to Foreman Marshall "You don't talk to me that way, you don't know who you're fooling with." The most serious of the continuing series of incidents occurred shortly thereafter when, in the presence of other Bargaining Unit employees, Weathersby called out to Foreman Marshall in a loud tone of voice and shouted, "You don't talk to me like that, you mother-fucking asshole."

Weathersby was not only insubordinate when he admittedly "stalled" in carrying out a reasonable direction of supervision, he failed to perform a relatively simple task when asked to do so on three different occasions. He failed to perform the hook-up and he did not immediately follow the foreman to the office. Weathersby attempted to justify that delay by stating that he had gone behind a stack of billets to "fix his pants" and he had thereafter momentarily lost sight of the foreman.

Weathersby used profane and abusive language toward Foreman Marshall. The ordinary use of profanity may be overlooked in some instances, but the profane remarks directed toward Foreman Marshall were so completely abusive as to justify the imposition of the severest form of disciplinary measures commensurate with the committed offense.

This arbitrator has on a number of occasions pointed out to the parties that the preamble to Rule 127 indicates that the listed offenses may be cause for discipline "up to and including suspension preliminary to discharge." In determining the degree of the severity of the penalty that would be justified for the breach of either rule 127.o or 127.p, consideration must be given to the nature of the offenses and to all of the

surrounding facts and circumstances. Weathersby's conduct would, in the opinion of this arbitrator, justify the imposition of the penalty of termination from employment.

The record would indicate that Weathersby had been employed with the Company for a little more than nine months. Within that short period of time Weathersby had been reprimanded for absenteeism, disciplined by a one-day suspension for absenteeism, and by a three-day suspension for absenteeism. In addition thereto he had been suspended for the balance of a turn and for an additional turn of work on January 31, 1979, for directing abusive language toward a supervisor. The arbitrator must, therefore, find that there is nothing in this record that would support a conclusion or finding that a modification of the penalty of termination from employment would be warranted or justified.

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

AWARD

Grievance No. 9-N-89

Award No. 682

The grievance of James E. Weathersby is denied.

/s/ Bert L. Luskin

ARBITRATOR

February 25, 1980