Award No. 684
In the Matter of the Arbitration Between
INLAND STEEL COMPANY
AND
UNITED STEEL WORKERS OF AMERICA
AND ITS LOCAL UNION 1010
Grievance No. 17-N-33
Appeal No. 1289
Arbitrator: Bert L. Luskin
March 17, 1980

INTRODUCTION

An arbitration hearing between the parties was held in Harvey, Illinois, on February 29, 1980. Pre-hearing statements were filed on behalf of the respective parties.

APPEARANCES

For the Company:
Mr. R. T. Larson, Labor Relations Coordinator
Mr. T. L. Kinach, Arbitration Coordinator, Labor Relations
Mr. R. C. Weymier, Superintendent, No. 1 and No. 2 Cold Strip
Mr. C. R. Krstich, Superintendent, Galvanizing
Mr. J. Trent, General Supervision Representative, Apprentice Programs, Training
Mr. J. T. Bean, Clinic Counselor, Medical
Mr. R. B. Castle, Senior Representative, Labor Relations
Mr. J. L. Federoff, Assistant Superintendent, Labor Relations
For the Union:
Mr. Theodore J. Rogus, Staff Representative
Mr. Joseph Gyurko, Chairman, Grievance Committee
Mr. Kermit C. Ray, Griever
Mr. Willie B. Pierce, Grievant

BACKGROUND

Willie B. Pierce was employed by the Company on September 15, 1964, as a laborer. He entered the millwright line of progression and became a millwright (standard) assigned to the Coil Processing Department.

On June 22, 1979, Pierce attempted to enter the plant and report for work. He was stopped and was found to be carrying a six-pack of beer concealed in a bag under some articles of clothing. The beer was confiscated at the gate by employees of the Company's Plant Protection Department, and Pierce was denied entry into the plant.

On June 25, 1979, Pierce was informed that he was suspended preliminary to discharge for violation of Rule No. 127-d of the Company's General Rules for Safety and Personal Conduct and for his overall unsatisfactory work record. Pierce requested and received a hearing pursuant to the provisions of Article 8, Section 1. The Union requested, at that hearing, that Pierce be returned to work with all time off as discipline for the offense which he committed. The Company concluded that a mitigation was not justified, and Pierce was discharged on July 3, 1979. A grievance was filed on July 9, 1979, contending that Pierce's discharge "was unjust and unwarranted in light of the circumstances." The grievance requested Pierce's restoration to employment with pay for all moneys lost. In subsequent steps of the grievance procedure and at the arbitration hearing the Union requested that Pierce he restored to employment with the Company without back pay and with the intervening period of time between the date of his suspension and the date of the issuance of the award to be considered as a period of disciplinary suspension from employment.

The parties agreed that Pierce had violated Plant Rule 127-d and had attempted to enter the plant while in possession of a six-pack of beer. There was no issue concerning the disciplinary record of Pierce in the period between August 19, 1974, and the effective date of his termination from employment. His disciplinary record submitted by the Company for the period between August 13, 1974, up to the suspension and discharge action which resulted from the June 22, 1979, incident is hereinafter set forth as follows:

| Date | Infraction | Action |
|---|---|---|
| 8-13-74 | Failure to report off | Discipline - 1 turn |

| | | |
|---|---|---|
| 8-15-74 | Absenteeism | Discipline - 2 turns |
| 1-8-75 | Absenteeism | Discipline - 3 turns |
| 2-18-75 | Absenteeism | Record review with assistant superintendent |
| 7-16-75 | Absenteeism | Suspended preliminary to discharge |
| 7-29-75 | | Discharged |
| 9-3-75 | | Reinstated - last chance stipulations outlined in Grievance No. 17-M-5 |
| 8-29-77 | Absenteeism | Discipline - 3 turns |
| 9-26-77 | Absenteeism | Record review with assistant superintendent |
| 10-4-78 | Failure to report off | Discipline - 1 turn |
| 2-15-79 | Absenteeism | Discipline - 3 turns |
| 3-15-79 | Absenteeism | Record review with assistant superintendent |

The parties are in agreement that Pierce was discharged by the Company on July 29, 1975, for absenteeism. The parties are in agreement that Grievance No. 17-M-5 was filed protesting Pierce's termination from employment and that during the processing of that grievance in the various steps of the grievance procedure a contention was advanced by the Union and by Pierce that Pierce'sabsentee problems stemmed from a "drinking problem." The Union had requested that Pierce be provided with one final opportunity to demonstrate that he could overcome that problem, participate in the Company's planned "problem drinking program," and to thereafter demonstrate that he could become a responsible employee who would report for work on a regular basis as scheduled. The parties are in agreement that on or about September 3, 1975, an understanding was reached that resulted in Pierce's restoration to employment (without pay) based upon the following terms and conditions:

"1. Demotion to the Labor Pool for a probationary period of six months.

"2. Enrollment and regular attendance in the Company Problem Drinking Program and meet all requirements attendant thereto until cleared or released by the Inland Medical Department.

"3. All time lost as a result of the suspension and discharge action, until placed on the work schedule, constitutes disciplinary time off.

"This decision is made with the understanding that failure to meet the stipulations set forth above or any repetition of the conduct which led to the suspension and discharge or violation of other Company rules or regulations will cause the grievant to be separated from the Company payroll."

The parties are in agreement that Pierce was informed of the terms and conditions of his restoration to employment (last chance agreement), accepted those terms and conditions, signed the understanding, and that he was fully aware of the consequences that would flow from his failure to carry out the terms and provisions of that agreement.

The Union contended that almost four years had elapsed between the date of the grievance settlement agreement of September, 1975, and the date of Pierce's termination from employment in July, 1979. The Union contended that Pierce continued to have a drinking problem and that, following his most recent termination from employment, Pierce entered a drinking control program operated under the Union's auspices, and that since July, 1979, Pierce has regularly and consistent attended the Union's problem drinking program and has been able to control his addiction to alcohol. The Union contended that Pierce, by reason of his record and by reason of his long period of service with the Company, has earned the opportunity to demonstrate that he can meet his commitments as an employee, and that he should be afforded the opportunity for restoration to employment (without back pay).

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

DISCUSSION

The Company has had a rule for approximately sixty years which prohibits the possession or the consumption of intoxicants on plant premises. Its most current rule is Rule No. 127-d of its General Rules for Safety and Personal Conduct which reads as follows:

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

"d. Reporting for work under the influence of intoxicating beverages; being in possession of, while on Plant property or bringing onto Plant property intoxicating beverages."

In Inland Award No. 635 Arbitrator Mittenthal characterized drugs, alcohol and guns inside plant premises as "incendiary devices which represent a clear and present danger to employees and management alike ..…." Attempting to bring a six-pack of beer into the plant must be viewed in the most serious light and would clearly serve to justify the imposition of disciplinary measures "up to and including suspension preliminary to discharge." Under some circumstances discharge would be an appropriate penalty for a first offense involving the violation of Rule No. 127-d. Under other circumstances penalties less severe than that of termination would be warranted and justified.

Pierce had been employed with the Company for almost fifteen years preceding his termination from employment. He was hired as a laborer and demonstrated ambition and ability when he was able to progress into the starting program for millwrights, after which he became a qualified, capable, competent millwright whose actual work record was considered to be better than average. An analysis of his disciplinary record over a period of five years preceding termination indicated that every penalty imposed against Pierce in that period of time was predicated upon failures to report off or for absenteeism. What becomes evident is that his record of poor attendance that resulted in a series of suspensions (between 1974 and 1979) was attributed directly to his addiction to alcohol. His termination in 1975 was based upon his unwillingness or his inability to improve his attendance record. That fact was realized when the parties entered into a last chance agreement that resulted in Pierce's restoration to employment, conditioned upon his acceptance of a demotion to the labor pool for a six-month probationary period, his restoration to employment without back pay, and his agreement that he would enroll in and regularly attend the Company's problem drinking program and would remain in that program until "cleared or released by the Inland Medical Department." The evidence would indicate that Pierce did not enter the Company's problem drinking program and he did not participate therein. The Company, however, did not invoke its right to impose discipline against Pierce for his failure to carry out one of the terms and conditions of the last change agreement. There is nothing in the record, however, that would indicate that the Company had taken any affirmative steps to terminate or otherwise discipline Pierce for that failure to comply with the last chance agreement.

The evidence would indicate that the last chance agreement of 1975 did have a salutary effect upon Pierce since for a period of some two-years (September, 1975, to August 29, 1977) Pierce's record must have substantially improved. There is no evidence of the imposition of disciplinary measures against Pierce within that two-year period of time. When Pierce again began to build a poor attendance record in August, 1977, the Company did not invoke its right to discipline under the last chance agreement, and it did not exercise its right under that agreement to terminate Pierce from employment. It began a new series of disciplinary suspensions commencing with a three-day suspension in August, 1977, followed by a record review. In October, 1978, there was a one-day suspension for failure to report off, and in February, 1979, a three-turn disciplinary suspension was imposed against Pierce for absenteeism. There were record reviews in February and in March, 1979, at which time Pierce was warned by two different members of supervision about his developing poor attendance record. In neither instance, however, was the supervisor aware of the fact that Pierce's developing poor attendance record constituted a violation of a 1975 last chance agreement. The last chance agreement became a matter of serious moment (after 1975) only when Pierce committed the offense (on June 22, 1979) of reporting for work with a concealed six-pack of beer.

This arbitrator in other Inland awards and in decisions under other steel plant agreements has indicated on numerous occasions that last chance agreements must be respected and honored. In many instances a last chance agreement indicates a willingness by the Company to recede from an otherwise firm position under circumstances where the Company may have believed that it had just cause for terminating the services of an employee. That type of agreement is designed to provide an employee with one more chance to demonstrate that he is willing and able to remain in continued employment with the Company based upon the acceptance of the imposed conditions set forth in such an agreement.

In the instant case some consideration must be given to the fact that some four years had elapsed since the execution of the last chance agreement of 1975. Some consideration should also be given to the fact that there was a two-year period of significant and substantial improvement in Pierce's record of attendance, especially since poor attendance was the primary basis for the 1975 termination.

Consideration should be given to the mitigation and modification of the of termination imposed in this case only because of compelling circumstances. This arbitrator has, on a number of occasions, pointed out that a

long period of service does not in and of itself provide an employee with immunity from termination. That same principle has been enunciated by other arbitrators in awards issued at this plant.

Pierce has been characterized by his supervisors as a good millwright and an otherwise good employee. Pierce testified that he is 38 years of age and that, subsequent to his termination, he realized that he was in the "second half of his life." He conceded that, although he knew in 1975 that he was an alcoholic, he refused to admit at that time that he was unable to cope with alcohol in any form. He testified that he always believed that he (Pierce) "could handle it." He testified that he now realizes that he cannot drink and he has abstained from the consumption of intoxicating beverages for a period of more than six months following his termination from employment. He testified that he has entered an alcohol control program and that since his termination from employment he has regularly attended the alcohol control program sponsored by the Union. In the period between July and December, 1979, he attended more than fifty such meetings, and that in that period of time he had refrained from the consumption of alcoholic beverages in any form.

Although the Company argued that Pierce's demonstrated good intentions were "after the fact," one consideration in determining whether the penalty should mitigated is the possibility that Pierce can return to work with the Company, report regularly, and conduct himself in a manner consistent with that expected and required of any other employee. In the opinion of the arbitrator, Pierce should be provided with one further opportunity to return to employment with the Company. He would be expected to report for work regularly and to observe the rules and regulations relating to employee conduct in the same manner as that required of any other employee.

Pierce and the Union have waived any request for back pay, and no back pay will be awarded. Pierce will be restored to employment with the Company, with seniority rights, and with the period between the date of his termination and the effective date of his restoration to be considered to constitute a period of disciplinary suspension from employment.

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

AWARD

Grievance No. 17-N-33

Award No. 684

Willie B. Pierce shall be restored 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 the effective date of his restoration thereto. The intervening period shall be considered to constitute a period of disciplinary suspension from employment.

/s/ Bert L. Luskin

ARBITRATOR

March 17, 1980