Award No. 686
In the Matter of the Arbitration Between
INLAND STEEL COMPANY
AND
UNITED STEELWORKERS OF AMERICA
AND ITS LOCAL UNION 1010
Grievance No. 24-N-102
Appeal No. 1285
Arbitrator: Bert L. Luskin
June 4, 1980

INTRODUCTION

An arbitration hearing between the parties was held in Harvey, Illinois, on May 19, 1980. Pre-hearing briefs were submitted by the parties.

APPEARANCES

For the Company:
Mr. R. T. Larson, Labor Relations Coordinator
Mr. T. L. Kinach, Arbitration Coordinator, Labor Relations
Mr. Robert H. Ayres, Manager, Labor Relations, Industrial Relations
Mr. W. B. Stallard, Superintendent, Stores and Trucking
Mr. T. J. Peters, Assistant Superintedent, Labor Relations
Mr. R. J. Wilson, Supervisor, Hourly & Clerical Employment, Personnel
Mr. D. E. Johnson, Supervisor, Insurance Section, Personnel
Mr. J. J. Hermann, Senior Claims Administrator, Insurance Section, Personnel
Mr. J. J. Spear, Senior Labor Relations Representative
Mr. K. Whiten, Industrial Relations Trainee
Mr. F. Picciola, Assistant Benefits Manager, Equitable Life Assurance Society
For the Union:
Mr. Theodore J. Rogus, Staff Represantative
Mr. William Andrews, President, Local 1010
Mr. John Deardorff, Insurance Representative
Mr. Phil King, Acting Secretary, Grievance Committee
Mr. Jack Thill, Griever
Mr. Louis Britton, Grievant

BACKGROUND

Louis Britton was employed by the Company on November 17, 1958. In 1979 Britton had become established as a Storeroom Attendant in the Stores and Trucking Departent. Britton and his wife (Bobbie) had been married since August, 1958. Britton had listed his wife, Bobbie, as his dependent for insurance coverage, pursuant to the applicable provisions of the Company's insurance benefit program. Their children were later included on Britton's dependent card.

In February, 1979, the Company's insurance section was informed by another group carrier (Amalgamated Life and Health Insurance Company) that insurance benefits had been paid to Louis Britton's spouse, Bobbie. The Company commenced an investigation and learned that Bobbie Britton had been employed with the Arthur Wiener Company in Gary, Indiana, since October, 1972, and she had, at all times, been eligible for insurance coverage as an employee of that company through its insurance carrier, Amalgamated Life and Health Insurance Company. Inland's carrier (Equitable Life Assurance Society) checked its insurance-claim records for Inland employees that were available. All such records prior to 1975 had been purged. The Company found that between August 25, 1975, and December 14, 1978, thirteen insurance claims had been filed by Britton claiming benefits arising out of illnesses or accidents suffered by Britton's wife, Bobhie. In each case Louis Brittan had filed claims for payment through Inland's carrier (Equitable) and in each case Britton had identified the patient as "Bobbie Britton" and the relationship of the patient to Britton as Britton's wife. In all of the thirteen claims filed between August 25, 1975, and December 14, 1978, Britton (in response to questions on the claim form asked orally by an employee of Inland' s insurance section) responded by stating that he (Britton) was married and that the patient (Bobbie Britton) was not employed. When Britton was asked to provide the information required in the claim form concerning other insurance, he responded by stating that the patient (Bobbie Britton) was not covered by any other insurance. In all thirteen cases Britton signed the claims and made the following attestation:

"In filing this claim, I attest that the information provided is correct, and I authorize any individual or organization to release information required for its processing. I understand that any emission or misrepresentation of material fact may be considered just cause for rejecting of this claim or disciplinary action, including suspension subject to discharge. Furthermore, I authorize the Company to deduct the amount of any overpayment(s) which may occur in connection with this claim, for any monies due me, including wages or salary, and pension benefits."

Inland's insurance carrier (Equitable) thereafter compared all of the claim records filed by Britton since August, 1975, with the claims filed by Bobbie Britton with her employer's insurance carrier (Amalgamated). The two insurance companies concluded that the duplication of benefits resulted in overpayments made by Equitable in the amount of $1,069.25. On May 31, 1979, Equitable wrote to Britton setting forth in detail the overpayments made on three specific claims, breaking down the amounts of Equitable benefit, Amalgamated benefit, and the overpayment it made by Equitable. In June, 1978, Equitable had paid the sum of $894.75 to St. Mary's Medical Center; on June 20, 1978, it had paid the sum of $91.00 to Northwest Anesthesia; and on June 20, 1978, it had paid the sum of $275.00 to a Dr. Johnson. The overpayment to Dr. Johnson, based upon the Amalgamated benefit, together with the payments made to the Medical Center and the anesthesiologist, totaled $1,069.25. Britton was informed in that letter that Equitable had learned that the benefits paid by Amalgamated had been paid directly to their insured (Bobbie Britton), and Equitable then requested that, in accordance with the non-duplication clause providing for reduction of benefits by benefits payable by another group plan, it was insisting upon reimbursement. Thereafter, on or about June 12, 1979, Britton remitted the sun of $1,069.25 to the Company's insurance section in the form of a cashier's check which had been purchased by Bobbie Britton. The procedure followed by the insurance section and the information obtained the insurance section as a result of its own investigation and the information reported by Inland's carrier, Equitable, was furnished to the Company's Personnel Department which, in turn, provided the information to the Stores and Trucking Department where Britton was employed.

On July 2, 1979, a departmental investigation was conducted by Britton's department superintendent. The basic facts concerning Britton's marriage, his wife's employment, and, his wife's insurance coverage with Amalgamated (through her employer) were confirmed. The exact amount of the three claims paid by Inland's carrier (Equitable) which it was not obligated to pay, was confirmed, as was the demand made by Equitable for reimbursement and the subsequent return of the money by Britton. Britton admitted falsifying the insurance claim forms, and his explanation was that he had followed that procedure in order "…to save hassle and expedite payments from the Company." The Company thereafter concluded that Britton had willfully submitted fraudulent insurance claim forms and, on July 9, 1979, he was informed that he was suspended preliminary to discharge for violation of General Rules of Safety and Personal Conduct (Rule No. 127 k), and for his overall unsatisfactory personnel record.

In support of its contention that Britton had developed an unsatisfactory work record prior to the elicited facts and circumstances that led to his suspension and subsequent termination from employment, the Company cited the following record that had accumulated between August, 1974, and the July 9, 1979, suspension from employment:

"Date	Infraction	Action
8-9-74	Poor work performance	Reprimand
1-16-75	Collision while operating a truck	Safety discipline-3 turns off
1-20-75	Poor work performance	Discipline - 2 turns off
4-28-75	Record review with assistant superintendent	Final warning
2-6-76	Negligence and overall unsatisfactory personnel record	Suspension preliminary to discharge (returned to work without back pay on a "last Chance" basis, 2-17-76)
7-30-76	Insubordination and overall unsatisfactory personnel record	Suspension preliminary to discharge (returned to work without back pay on a "last chance" basis, 8-11-76)
7-11-78	Not wearing proper safety apparel	Safety Warning
5-11-79	Sleeping in the plant	Discipline - 1 turn off"

A suspension hearing was held pursuant to the procedures set forth in Article 8, Section 1, of the Collective Bargaining Agreement on July 13, 1979. On July 23, 1979, Britton was informed that he had been

terminated from employment. On July 24, 1979, Grievance No. 24-N-102 was filed protesting the discharge action. 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.

DISCUSSION

Britton knowingly provided the Company with false information and he informed the Company on thirteen different occasions in the period between August, 1975, and 1979, that his wife was not employed and that his wife was not covered by other insurance. The claims of illness or injury filed on behalf of Bobbie Britton may not have been false claims and we must assume that they were based upon legitimate claims for illnesses or injuries. Although the Company (or its carrier) did not necessarily pay a substantial number of claims that it was not required to pay, the fact remains that three claims were paid that should not have been paid by Inland's carrier. The fact that restitution was made after the improper claims came to light does not alter the fact that Britton committed a fraud upon the Company and, if it was Britton's wife who benefited thereby, it was Britton's affirmative deceptive statements that made the fraud possible.

There are some unusual facts and circumstances present in this case. Britton testified that he had been involved in marital difficulties and that he instituted divorce proceedings against his wife in 1977. Although the divorce proceedings were dismissed by Britton in 1979, the three claims on which improper payments were made and for which restitution was received in 1979 arose in the period between the institution of the divorce action by Britton and the dismissal thereof.

Britton claimed that he did not personally profit from the payment of the claims since the money was paid directly to Bobhie Britton. Britton testified that during the period of his marital difficulties he was trying to save his marriage end he tried to "please" his wife. Unfortunately Britton attempted to "please" his wife at the expense of his employer and his employer' s insurance carrier.

Britton asked for consideration based upon his more than twenty-one years of service with the Company. Britton has held various offices with the Union, including the positions of assistant griever, griever and steward. He was a steward at the time of his termination from employment, and he knew full well that the commission of willful acts of fraud would result in his termination from employment. He had been the beneficiary of two last-chance agreements. In February, 1976, he had been suspended preliminary to discharge and had been returned to work (without back pay) on the basis of a last-chance agreement. Five months later in July, 1976, he was again suspended preliminary to discharge and was once again returned to work (without back pay) on the basis of a last-chance agreement. Britton should be aware of the fact that his twenty-one years of service do not provide him with immunity from discharge, and he should he aware of the fact that his pleas for consideration based upon his long period of service with the Company must eventually wear thin.

This arbitrator has in the past informed the parties in other decisions that last-chance agreements must be honored. The fact remains, however, that the Company did not elect to terminate Britton when he was charged with sleeping in the plant in May, 1979, and Britton was disciplined for one turn as a result thereof. Consideration should be given to the fact that three years had elapsed between the last-chance agreement of July, 1976, and the incident which led to his termination from employment in July, 1979. In that intervening three-year period, Britton had received one safety warning and a one-day suspension for sleeping in the plant.

In Award No. 667 this arbitrator, in a case involving a charge of fraudulent insurance claims, restored the grievant to employment (without back pay) on the basis of a finding that the grievant may not have committed "willful fraud." The grievant in that case knew or should have known that the Company was being asked to pay claims which it was not obligated to pay and, since the grievant was found to be careless and was responsible for permitting the fraud to be committed, his restoration to employment was "without back pay." In that case this arbitrator referred to the decision of Arbitrator Cole in Inland Award No. 608 wherein that arbitrator found that the grievant did not have the guilty knowledge "to the degree necessary to support a charge of willful fraud." Arbitrator Cole gave weight to the grievant's unblemished record of twenty-one years of service and, although the grievant in that case had filed claims with Inland for disability benefits at a time when he was employed elsewhere, the arbitrator required the grievant to make restitution and to thereby become eligible for restoration to employment without back pay.

The facts and circumstances in each case will determine whether willful fraud existed that would justify termination from employment. The Company must be able to impose severe measures of discipline against any employee who submits fraudulent insurance benefit claims. The Company receives some 3,500 claims each week and it must, in great measure, rely upon the honesty and integrity of the claimants since it would be physically impossible to make an in-depth investigation of every claim that is submitted. Increases in

costs predicated upon false claims can only serve to have an eventual adverse impact upon benefits available to all employees.

Britton's fairly good record for a period of some three years preceding his termination from employment, his twenty-one years of service with the Company, and his immediate restitution of the sum of $1,069.00 paid by the Company as a result of Britton's deceit, are some of the factors considered by the arbitrator in determining whether just cause did or did not exist for Britton's termination from employment. There is some doubt with respect to whether Britton's acts were willful in nature and Britton will be given the benefit of that doubt. The Union's request that Britton be provided with one further opportunity for restoration to employment (without back pay) will be granted.

The arbitrator will, therefore, find that Britton should be restored to employment with the Company with seniority rights, but without back pay for the period between the date of his termination from employment and the effective date of his restoration thereto.

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

AWARD NO. 686

Grievance No. 24-N-102

Louis Britton shall be restored to employment with the Company with seniority rights, but without any back pay. The intervening period between the date of Britton's suspension and termination from employment and the effective date of his restoration thereto shall be considered to constitute a period of disciplinary suspension.

/s/ Bert L. Luskin

ARBITRATOR

June 4, 1980