

Award No. 689
In the Matter of the Arbitration Between
INLAND STEEL COMPANY
AND
UNITED STEELWORKERS OF AMERICA
AND ITS LOCAL UNION NO. 1010

Grievance No. 8-N-30

Appeal No. 1282

Arbitrator: Bert L. Luskin

July 31, 1980

INTRODUCTION

An arbitration hearing between the parties was held in Harvey, Illinois, on July 14, 1980. Pre-hearing briefs were filed on behalf of the respective parties.

APPEARANCES

For the Company:

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

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

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

Mr. A. R. Swatek, Superintendent, Plant No. 2 Mills

Mr. D. Kovan, General Foreman, Plant No. 2 Mills

Mr. R. V. Cayia, Representative, Labor Relations

Mr. P. S. Jaynes, Jr., Senior Safety Engineer, Safety & Plant Protection

For the Union:

Mr. Theodore J. Rogus, Staff Representative

Mr. Joseph Gyurko, Chairman, Grievance Committee

Mr. Bobby J. Thompkins, Secretary, Grievance Committee

Mr. Raymond Lopez, Griever

Mr. Tim Hannah, Grievant

BACKGROUND

Tim Hannah was employed with the Company for approximately thirty-three years. For twenty-eight years he had worked as a craneman. He was established in the Plant No. 2 Mills Department in the occupation of craneman-shipping in the No. 3 Finishing End Head Loader Sequence.

Hannah was scheduled to work on the 8:00 A.M. to 4:00 P.M. turn on January 7, 1979, after he had worked the 4:00 P.M. to midnight turn on January 6, 1979. Hannah reported to his department at the start of the shift. He proceeded to climb to the crane cab. At approximately 10:00 A.M. Hannah was discovered asleep in the crane and was awakened by his foreman. The foreman detected a strong odor of alcohol coming from Hannah, who was thereafter escorted to the Inland Medical Department by members of the Plant Protection Forces. A breathalyzer test was administered and, on the basis of the results, the Company concluded that Hannah was under the influence of alcohol and was in no fit condition to continue in employment. Hannah was sent home for the balance of the turn.

The parties had used breathalyzer tests for some period of time and the results thereof had been accepted by the parties as representing an accurate measure of an employee's sobriety or his degree of intoxication. Hannah was thereafter suspended for three additional days for violation of a plant rule that subjects employees to the imposition of disciplinary measures up to and including termination from employment for the possession and/or consumption of alcohol on Company premises.

On January 22, 1979, a seniority action form was issued to Hannah advising him that (effective January 19, 1979) he had been permanently demoted to the lower-rated occupation in the sequence of Loader Assistant, Code 6502, pursuant to the provisions of Article 13, Section 8-b, of the Collective Bargaining Agreement. That action had been taken as a result of the incident which occurred on January 7, 1979. Hannah was informed that he would no longer be permitted to work in the plant in the Craneman occupation.

A grievance was filed on March 13, 1979, challenging Hannah's permanent demotion and contending that Hannah was entitled to restoration to his former craneman position, including pay for any moneys that he was caused to lose as a result of the Company's demotion 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 proceeding.

DISCUSSION

Under the provisions of Article 3, Section 1 (Plant Management), the Company has the vested right to demote employees for cause. Under the provisions of Article 13, Section 8 b, employees demoted for cause (under Article 3) may later correct the cause for the demotion action. Under the provisions of Article 13 (Seniority), Section 2, the Company is required to maintain personnel records which include an employee's service record that will cover matters relative to an employee's work performance and length of service. Unsatisfactory ratings must be recorded therein and will include records of poor work performance that may have an influence on a determination with respect to an employee's "ability to perform the work" as that term is used in Article 13, Section 1.

The Company's General Rules for Safety and Personal Conduct contain a rule and regulation which has been in force and in effect at this Company for more than forty years. That rule, including the preamble, is 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:

"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."

Under the provisions of Article 14 (Safety and Health), Section 1, the parties have agreed to cooperate in the continuing objective to eliminate accidents and health hazards. The Company has agreed therein that it "...shall make reasonable provisions for the safety and health of its employees at the plant."

The Company introduced evidence to support its contention that cause existed for the demotion of Hannah when it pointed to the fact that crane operators must exercise "extreme care" for the safety of others. The Company pointed to the factors and ratings appearing in the craneman job description indicating the need for alertness, dexterous coordination, judgment of speed and distance of travel, and the need to exercise "extreme care" in order to avoid striking others with lift or hooking equipment. The Company pointed to the fact that in the five-year period between April 1, 1975, and March 31, 1980, there were ten fatal accidents at the Company's Indiana Harbor Works and in forty percent of those accidents the action or inaction of overhead crane operators either contributed to or could have prevented the fatal accidents. The Company pointed to the fact that there were 217 disabling injuries due to accidents in the plant during that same period of time, and eighteen percent of those disabling injuries involved crane operations.

The crane operated by Hannah was an overhead crane that was used to move, store, position and remove large amounts of steel. Employees working on the floor perform the hooking function and the craneman operated by means of signals. The Company could not permit an employee to operate that crane or any other crane of that type unless that employee was able to respond to signals, judge speed and distances, and generally operate the crane in a safe and efficient manner. Any employee who demonstrates that he does not possess the requisite physical abilities necessary to operate the crane cannot be permitted to perform that type of function. An employee who is under the influence of an intoxicant, is in no condition to operate a crane, and the Company is required to take the steps necessary to make certain that an employee under the influence of an intoxicant is removed from the crane. The issue in this case concerns itself with the procedures that were followed by the Company in an instance where an employee, scheduled to operate a crane, was found to be under the influence of an intoxicant after he reported for work and began his shift of work.

Hannah was found to be intoxicated some two hours after the start of his shift. The Company quite properly removed him from the crane and sent him home after the breathalyzer test confirmed his state of intoxication. He was suspended for the balance of that turn and he was suspended for three additional turns of work thereafter. The Company took that action as a form of discipline resulting from the breach of Rule 127d of the Company's General Rules for Safety and Personal Conduct. The Company did not terminate Hannah, and the disciplinary penalty imposed against Hannah was justified. The issue in this case arose when Hannah was informed, on January 22, 1979, that he would be permanently demoted from the craneman occupation.

The Company justified the demotion action on the basis that it has consistently demoted crane operators working in the Plant No. 2 Mills Department who have attempted to operate a crane while under the influence of an intoxicant. No such formal rule has ever been published and, although the Company contended that some four or five crane operators have been demoted for similar reasons, it specifically cited an instance that occurred in 1975 when a crane operator (Holden) was suspended from employment for five days subject to discharge after the employee was found to be in his crane in an apparent unconscious state following an accident. That employee failed the "ethylism" test. A hearing was held and the Company decided to provide that employee with one more chance based upon his willingness to accept a permanent

demotion from the crane sequence and a return to employment without back pay as disciplinary time off. The employee accepted those conditions and returned to work. The resolution of that issue, based upon an acceptance of a demotion coupled with a last chance agreement, cannot be considered to constitute a firm and unequivocal understanding between the parties that crane operators in all instances would suffer permanent demotion from that position as a form of discipline if they were found to be working while under the influence of an intoxicant.

Under ordinary circumstances demotions occur because an employee has demonstrated that he lacks the ability to safely and efficiently perform the duties of an occupation. Under certain circumstances the debilitating effects of injuries, illness or age may result in an employee's inability to fully, safely and efficiently perform the duties of an occupation, even though he had filled that position for a substantial period of time in an efficient and satisfactory manner. It is conceivable that a crane operator may have to be removed from his position for considerations of safety to himself and to others if his off-the-job consumption of intoxicants results in a demonstrable impairment of his ability to safely and efficiently perform his assigned functions.

If the evidence would have supported a conclusion or finding that Hannah had developed a record where he could no longer be reasonably expected to safely and efficiently carry out the duties of his occupation, then and in that event the Company would have had a contractual right to demote Hannah from the craneman occupation. The fact remains, however, that Hannah has been employed with the Company for some thirty-three years. He has been a craneman for approximately twenty-eight years preceding his demotion from that position. The record is devoid of any evidence that would indicate that Hannah has demonstrated a propensity for reporting to work under the influence of intoxicants. No warnings and no suspensions were imposed against Hannah in the one-year period preceding January 7, 1979. The Company may not, under those circumstances, unilaterally impose a regulation that one incident of intoxication while in the cab of a crane would in all cases result in demotion from the craneman occupation.

In the instant case, the violation of Company Rule 127d on January 7, 1979, subjected Hannah to the imposition of disciplinary measures and, under the rule, Hannah became subject to discipline "up to and including suspension preliminary to discharge." The Company's election to impose a suspension against Hannah for three days in addition to the remaining hours of the turn of work on January 7, 1979, is not in issue in this proceeding. The evidence will not support a conclusion or finding that Hannah has demonstrated that he lacks the requisite abilities necessary to safely and efficiently perform the duties of the craneman occupation. With the exception of the one incident of January 7, 1979, there were no recorded instances of any attempt on the part of Hannah to operate a crane while he was under the influence of an intoxicant.

The Company is rightfully concerned with the hazards that are created by any employee who attempts to operate an overhead crane while under the influence of intoxicants. The Company is rightfully concerned for the safety and well being of substantial numbers of employees who work underneath the crane. The Company is rightfully concerned with the statistical data compiled over the most recent five-year period indicating the necessity for demanding from crane operators that they be, at all times, alert and that they possess the coordination and dexterity necessary for the safe operation of the overhead crane. An employee who has demonstrated that he cannot be trusted to report regularly in a condition where he can perform his functions with coordination, alertness and dexterity, must be removed from the position of craneman.

The evidence will not support a conclusion or finding that Hannah cannot be trusted to safely and efficiently operate an overhead crane. Cause existed for the imposition of disciplinary measures as a result of the incident of January 7, 1979, and disciplinary measures were imposed against Hannah. The fact that the Company might have imposed a greater or mere severe form of disciplinary penalty would have no effect on the ultimate disposition of the issue in this case. The Company, on the basis of the record as it existed on January 19, 1979, did not have cause for demoting Hannah from the craneman occupation.

Hannah must be restored to the craneman's occupation that he was holding as of January 19, 1979, with full seniority rights. In addition thereto, Hannah must be compensated for any moneys that he was caused to lose as a result of the demotion that became effective on January 19, 1979.

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

AWARD NO. 689

Grievance No. 8-N-30

The grievance of Tim Hannah is sustained. Hannah should be restored to the craneman occupation which he held prior to January 19, 1979, with full seniority rights. Hannah should be made whole for any moneys that he was caused to lose as a result of the demotion which took place on January 19, 1979.

/s/ Bert L. Luskin
ARBITRATOR
July 31, 1980