

Award No. 699

In the Matter of the Arbitration Between

INLAND STEEL COMPANY

AND

UNITED STEELWORKERS OF AMERICA

AND ITS LOCAL UNION 1010

Grievance No. 3-P-1

Appeal No. 1301

Arbitrator: Bert L. Luskin

February 27, 1981

INTRODUCTION

An arbitration hearing between the parties was held in Harvey, Illinois, on February 17, 1981. Pre-hearing briefs were filed on behalf of the respective parties and exchanged between them.

APPEARANCES

For the Company:

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

Mr. A. A. Bracco, Superintendent, Plant No. 2 Coke Department

Mr. T. J. Peters, Assistant Superintendent, Labor Relations

Mr. R. B. Castle, Senior Representative, Labor Relations

Mr. M. Oliver, Representative, Labor Relations

Mr. W. Jenkins, Mechanical Foreman, Plant No. 3 Coke Department

Mr. M. Campo, Labor Foreman, Plant No. 3 Coke Department

Mr. P. Conners, Safety & Training Foreman, Plant No. 3 Coke Department

Mr. S. W. Nelson, Representative, Labor Relations

Mr. S. M. DelVecchio, Associate Employment Representative, Personnel

For the Union:

Mr. Theodore J. Bogus, Staff Representative

Mr. Joseph Gyuzko, Chairman, Grievance Committee

Mr. William Gailes, Vice Chairman, Grievance Committee

Mr. Don Lutes, Secretary, Grievance Committee

Mr. James Alexander, Griever

Mr. Joe Frantz, Griever

Mr. James Freeman, Griever

Mr. Kenneth Merrell, Assistant Griever

Mr. Gilbert L. Serrano, Grievant

BACKGROUND

Gilbert L. Serrano was employed by the Company on May 13, 1965. On August 13, 1980, Serrano was working the day shift as a member of the labor crew at the No. 3 Coke Plant. That crew had been assigned to clean the quench tracks. Serrano operated a payloader that moved back and forth over the tracks and performed a cleaning function that would permit members of the crew who were following the payloader to perform their cleaning functions with the use of shovels.

At the same time that the labor crew was cleaning the quench tracks, a mechanical crew was in the process of removing a canopy from inside a coke oven on the coke-side bench level of the coke battery. The canopy was approximately 8" x 18" x 40' and weighed approximately 300 pounds. A mobile crane was used to pull the canopy from the coke oven. The crane then left the area and the canopy remained standing on ground level leaning against the bench level handrails. Members of the mechanical crew then pushed the canopy against the handrails until it fell to the ground.

Prior to the time that the canopy was pushed to the ground, Serrano had encountered a mechanical problem while operating the payloader. A hydraulic line had burst and had sprayed hydraulic fluid across the payloader and across the windshield of the cab. The cleaning operation stopped while repairs were being made to the payloader. Serrano had stopped the payloader at a switch located some distance from the point where the canopy was dropped to the ground. There is some testimony in the record that the payloader was parked approximately 90 feet from the canopy and there is some testimony in the record that would indicate that the position at the switch was approximately 60 feet from where the canopy was dropped to the ground.

Shortly after the canopy fell to the ground Serrano approached Mechanical Foreman Jenkins, who had supervised the removal of the canopy from the coke oven and who had established the processes that were followed in dropping the canopy to the ground from the position where it had been left after the mobile crane had pulled it from the coke oven.

Serrano, who served as an Assistant Grievance Committeeman in that area, approached Foreman Jenkins and accused him of performing the operation in an unsafe manner. There was an exchange of words between Jenkins and Serrano, after which Serrano left the area and entered the office of his immediate supervisor, Labor Foreman Campo. Serrano complained to Campo about a condition that he considered to be unsafe. Campo had difficulty understanding Serrano, who spoke in a loud tone and in an excited manner. Campo asked Serrano to wait in the office while he went out to the area to discuss the matter with Mechanical Foreman Jenkins. After viewing the site and after talking with Foreman Jenkins and Labor Leader Byrd, Campo returned to the office and found that Serrano had left the office. Campo assumed that Serrano had gone to see the superintendent of the No. 3 Coke Plant (Bracco) and he proceeded to Superintendent Bracco's office where he found Serrano waiting to see Superintendent Bracco. A meeting was held between Superintendent Bracco, Foreman Campo and Serrano, after which Foreman Campo and Serrano were directed by Superintendent Bracco to return to their respective working positions.

Serrano and Campo returned to Campo's office where Campo directed Serrano to return to work. Serrano refused to comply with that direction and he was informed by Campo that a refusal to comply with a direction of supervision would constitute an act of insubordination. Serrano then asked for "relief" from the job. Serrano was informed by Foreman Campo that the removal of the canopy had been completed and the canopy was safely on the ground. Serrano allegedly contended that he felt "threatened" because of his encounter with Foreman Jenkins, and Serrano insisted that he be relieved from the job and be permitted to leave the plant. It was Serrano's contention that he wanted to be relieved from the job because the canopy had almost struck Serrano when it was dropped to the ground and he believed that he had been threatened by Foreman Jenkins. Serrano was also of the opinion that the machine which he was operating was being repaired and the repairs could not be completed for some period of time.

When Serrano insisted that he be relieved from the job and when Campo continued to order Serrano to return to work, Serrano's refusal to return to his working position was considered by Foreman Campo to constitute an act of insubordination. Serrano was also charged with having left his working position without permission when he left Foreman Campo's office to see Superintendent Bracco at a time when he had been asked to wait in the office while Campo was conducting an investigation of the incident relating to the canopy's removal and the dropping of the canopy to the floor as a part of that operation. Forman Campo called Plant Protection and Serrano was escorted from the plant.

On August 14, 1980, Serrano was suspended preliminary to discharge. He was charged with a violation of Rule No. 127-1 (Being Out of an Employee's Work Area Without Permission) and Rule No. 127-o (Insubordination) of the General Rules for Safety and Personal Conduct. In addition thereto Serrano was informed that the Company had taken into consideration Serrano's "overall unsatisfactory personnel record".

Serrano requested a suspension hearing pursuant to the procedures set forth in Article 8, Section 1, of the Collective Bargaining Agreement. That hearing was held on August 18, 1980, and on August 25, 1980, Serrano was informed that the investigation failed to disclose circumstances that would justify altering the suspension action. The suspension thereupon concluded with Serrano's discharge from employment.

Serrano filed a grievance on August 26, 1980, contending that his suspension and discharge were unwarranted in light of the circumstances. He charged the Company with a violation of Article 3, Section 1, and Article 8, Section 1, of the Collective Bargaining Agreement, and he requested reinstatement to employment and pay for all time lost from work. The parties thereafter moved the grievance into Steps 3 and 4 of the grievance procedure. When the issue could not be resolved, the grievance was thereafter certified to arbitration and the issue arising therefrom became the subject matter of this arbitration proceeding.

DISCUSSION

There is some dispute concerning the events which preceded the dropping of the canopy. Foreman Jenkins testified that adequate and appropriate safety precautions had been taken to insure against possible injury to any employee working in the area. The procedures had been discussed with the mechanical crew and those procedures were followed. Foreman Jenkins had contacted Labor Leader Byrd and had alerted him to the fact that the mechanical crew would drop the canopy to the floor from its leaning position. Jenkins testified that Byrd informed him that the labor crew would be working in the direction opposite from where the

canopy was to be dropped. Foreman Jenkins testified that he had asked Labor Leader Byrd to make certain that no member of the labor crew would enter the area near where the canopy would fall. A mechanical employee was posted as a safety man. The quench car and the door machine were de-energized in order to prevent their movement while the canopy was being dropped. Foreman Jenkins made a visual inspection of the area in order to make certain that the canopy would not strike any object after it landed on the ground. Foreman Jenkins testified that the members of the labor crew were at least sixty feet away from the position where the canopy landed on the ground.

Serrano contended that he was approximately ten feet away from when the canopy fell to the ground. Labor Leader Byrd (who had offered testimony to the contrary in other steps of the grievance procedure) did not testify in this proceeding. Serrano's testimony was conflicting in nature. He testified that he was in the area where his piece of equipment had stopped. That area was admittedly and concededly at least sixty feet away from where the canopy was dropped to the ground.

Serrano decided to make an issue of the procedure followed by Foreman Jenkins. He approached Foreman Jenkins and charged the foreman with having followed a procedure that was unsafe and that could have caused harm to employees working in the area. Jenkins denied that the procedure was unsafe and, when Serrano persisted in arguing with Jenkins, Jenkins responded by informing him that "the day you get a white hat, you can tell me how to do my job". Serrano responded by stating that he intended to report the matter to Superintendent Bracco, and Jenkins then stated that Serrano could discuss the matter with anyone in supervision.

There is evidence in this record that the procedure followed by the mechanical foreman on the day in question was not an unusual procedure. It had been followed in the past under similar circumstances. The fact remains, however, that Serrano would have a right to register a complaint if he believed that the procedure followed by supervision in dropping the canopy to the floor would endanger the safety and well being of himself or of the employees with whom he was working. Serrano was an Assistant Grievance Committeeman and he was well aware of the procedure that should be followed if he desire to register a complaint concerning an alleged unsafe operating condition. Serrano had every right to discuss the matter with his foreman (Campo). There may have been some confusion concerning Serrano's intention to discuss the matter with Superintendent Bracco. It is conceivable that Foreman Campo misunderstood Serrano when Serrano stated that he intended to discuss the matter with Superintendent Bracco. The fact that Serrano sought an appointment with Superintendent Bracco and had entered the superintendent's office for that purpose, would not indicate that Serrano had (at that point in time) deliberately violated Rule No. 127-1 of the General Rules for Safety and Personal Conduct by leaving his working area without permission of his supervisor.

The initial discussion between Serrano and Foreman Jenkins had become heated. Nothing that Foreman Jenkins said to Serrano, however, could in any way be construed to constitute a threat to Serrano. The words used by Jenkins were neither threatening nor intimidating. The discussion between Serrano and Foreman Jenkins could not possibly be construed to have created a condition whereby Serrano had any reason to feel "threatened" by Jenkins.

Although Serrano at a later point in time contended that the safety rules for the Coke Oven Department would have required that the entire area be "flagged off" because of falling objects, a reading of that rule makes it evident that it had no direct application to the particular fact situation that existed on the day in question. No one was working overhead and objects were not being dropped from overhead. There were no nuts, bolts or debris of any kind that were falling anywhere in the area. The only thing that fell was the canopy and that object was deliberately pushed from its leaning position until the force of gravity caused it to drop to the ground at a point that was at least sixty feet away from the nearest member of the labor crew. The Labor Leader had been forewarned that the canopy would be dropped. He was asked to make certain that there were no members of his crew in the immediate vicinity. The operating procedure followed by Foreman Jenkins, as well as the discussion that subsequently ensued between Foreman Jenkins and Serrano, did not create a condition or atmosphere that could be considered to be dangerous or threatening to Serrano.

At the time that the issue arose Serrano did not raise a complaint pursuant to the procedure set forth in Article 14, Section 6 (Safety and Health). The grievance filed by Serrano at a later point in time did not contend that the Company had violated that article and section of the Contract. In any event, the particular operation complained of had been completed. It should have been readily evident that the condition was not a continuing one and there were no working directions issued to Serrano or any member of the labor crew that would have required any of them to perform their functions in an area where an operation was being

performed that could be considered to be "unsafe or unhealthy beyond the normal hazard inherent in the operation in question....."

The events concerning Serrano's activities after he had left the superintendent's office on the day in question are not in dispute. Foreman Campo directed Serrano to return to his working area and Serrano refused to do so. Serrano stated that he believed that he might be harmed by Foreman Jenkins and that a canopy could fall. Serrano was informed that he was not being supervised directly by Foreman Jenkins and Serrano was informed that the job had been completed, the canopy had been dropped to the ground and had been removed from the area by members of the mechanical crew. It was at that point in time that Serrano asked to be relieved from the job. Serrano was incoherent, excited and angry, and he continued to refuse to return to his working position.

Article 14, Section 6, is not applicable in the instant dispute. It should have been evident to everyone concerned that there were no conditions present in the department that could possibly be construed to be "unsafe or unhealthy beyond the normal hazard inherent in the operation." There was no continuing danger. If Serrano believed that an improper procedure had been followed when the canopy had been dropped to the ground, he had every right to raise that issue in the grievance procedure for resolution in the normal course of events. There was no continuing problem and Serrano knew that if he returned to his assigned working position he would thereafter be performing work under conditions that were normal and that would raise no safety problems that were any different from the normal problems that arise on any other operating day.

Serrano could not possibly have had a good faith belief that a return to the area would have placed him in a position that was either unsafe or unhealthy beyond the normal hazard inherent in the operation. The fact that Serrano may have been excited and upset and had argued with Foreman Jenkins, could not possibly create a set of conditions and circumstances that would have permitted Serrano to invoke the provisions appearing in Article 14, Section 6 of the Contract in order that he could be relieved from the job.

Under the facts, circumstances and conditions prevailing on the day in question, Serrano was required to carry out the directions of his supervisor and to return to his working position after he had been ordered and directed to do so and after he had been informed that a failure to carry out those directions would constitute an act of insubordination. Serrano had no right to assume that his position as Assistant Grievance Committeeman provided him with immunity from discipline if he committed an act of insubordination. Serrano had no right to assume or believe that his period of more than fifteen years of employment with the Company gives him special privileges that would permit him to refuse to carry out a reasonable direction of supervision.

Serrano has had problems in the past and he has been reprimanded, disciplined, suspended and warned on record review that if he continued his acts of misconduct he would be terminated from employment.

There is evidence in the record that within his most recent five-year period of employment Serrano was reprimanded for insubordination on September 30, 1976, and again on March 10, 1978. On November 17, 1978, Serrano left his working area (and the plant) without permission. He was suspended for three turns of work as a result of the commission of that offense. On November 25, 1978, he again left his working area (and the plant) without permission, and he was suspended for a period of five turns for the commission of those offenses. On September 3, 1978, Serrano again left his working area without permission and was thereupon suspended for a period of five turns of work. On September 7, 1979, he received a record review with his superintendent and was informed at that time that he was receiving a final warning and that unless he corrected his conduct he would be terminated from employment.

It would appear from all of the evidence in the record that Serrano believed that his fifteen years of service with the Company, coupled with the Union office that he held, somehow granted him special privileges and immunity from termination from employment. Serrano must understand that he must accept directions from supervision and must carry them out in exactly the same manner as would be required of any other employee. Serrano had every right to approach Foreman Jenkins and to complain to Foreman Jenkins when he believed that an operating procedure had been followed that Serrano considered to be unsafe. Serrano had a right to approach his own foreman and to complain about what he considered to be the unsafe procedure followed by Foreman Jenkins. He had a right to seek permission to see Superintendent Bracco and to register a complaint at that level of supervision. He had no right, however, to take matters into his own hands and proceed to Superintendent Bracco's office and ask for an interview without receiving permission to leave his working area. The arbitrator does not believe, however, that Serrano should be charged with leaving his work area without permission in view of the fact that there may have been some

confusion concerning what Serrano believed to have been his supervisor's approval to see the superintendent.

After Serrano left the superintendent's office, he was ordered and directed on several occasions by his supervisor, Foreman Campo, to return to his working area. There is evidence in this record that the equipment being operated by Serrano had been repaired and was once more ready for operation. If the equipment had not been repaired, Foreman Campo could have assigned Serrano to other work. Article 14, Section 6, was not applicable on the basis of the undisputed facts and circumstances in this record. The lowering of canopy had been completed and the canopy had been removed from the area. Any contention advanced by Serrano that the procedure that had been followed was unsafe, could have been raised in the grievance procedure. There was no continuing or contemplated type of operation that could possibly have affected Serrano to a degree that would have justified the application of Article 14, Section 6. Under the existing facts and circumstances, Serrano had no right to request that he be relieved from the job.

In substance the arbitrator must find that Serrano should not be disciplined for leaving Foreman Campo's office and proceeding to the office of Superintendent Bracco to register his protest and concern regarding the procedure used in the removal of the canopy. The arbitrator has found that Article 14, Section 6, was not applicable under the facts and circumstances that prevailed on the day in question. Serrano did commit an act of insubordination when he refused to carry out a direction of his supervisor to return to his working position. He thereby subjected himself to the imposition of disciplinary measures.

Serrano has demonstrated on other occasions that he has difficulty accepting direction from supervision. Within a period of less than two years Serrano was suspended on three different occasions. He was also warned in a record review that his continuing course of conduct would result in his termination from employment. Although Serrano was clearly insubordinate in this instance, his failure to immediately respond to the direction of his supervisor would not, in this case, justify the imposition of the penalty of termination from employment. Although Serrano should be severely disciplined, the penalty of termination from employment should be modified. The penalty of termination should be set aside and should be substituted by a two-month period of suspension from employment commencing on August 13, 1980.

Serrano would be entitled to pay for time lost from work for the period between October 13, 1980, and the effective date of his restoration to employment. The intervening period between August 13, 1980 and October 13, 1980, should be considered to constitute a period of disciplinary suspension from employment. For the reasons hereinabove set forth, the award will be as follows:

AWARD NO. 699

Grievance No. 3-P-1

1. Gilbert L. Serrano shall be restored to employment with the Company, with seniority rights.
2. Gilbert L. Serrano shall be entitled to back pay for time lost from work for the period between October 13, 1980, and the effective date of his restoration to employment. The intervening period between August 13, 1980, and October 13, 1980, shall be considered to constitute a period of disciplinary suspension from employment.

/s/ Bert L. Luskin

ARBITRATOR

February 27, 1981