

Award No. 702
In the Matter of the Arbitration Between
INLAND STEEL COMPANY
AND
UNITED STEELWORKERS OF AMERICA
AND ITS LOCAL UNION 1010

Grievance No. 23-N-28

Appeal No. 1305

Arbitrator: Bert L. Luskin

May 19, 1981

INTRODUCTION

An arbitration hearing between the parties was held in Harvey, Illinois, on May 11, 1981. Pre-hearing briefs were filed on behalf of the respective parties.

APPEARANCES

For the Company:

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

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

Mr. T. L. Kinach, Assistant Superintendent, Labor Relations

Mr. P. M. Dunning, Director, Medical Department

Dr. M. Wigutow, Company Psychiatrist

Mr. R. R. Marinconz, Assistant Superintendent, No. 1 Cold Strip

Mr. J. J. Hermann, Senior Claims Administrator, Insurance Section, Personnel

For the Union:

Mr. Theodore J. Rogus, Staff Representative

Mr. Joseph Gyurko, Chairman, Grievance Committee

Mr. William Gales, Vice Chairman, Grievance Committee

Mr. John Deardorff, Insurance Representative

Mr. J. C. Porter, Assistant Secretary, Grievance Committee

Mr. Gilbert F. Cantu, Griever

Mr. Bobby G. Thompkins, Griever

Mr. Rufus Davis, Grievant

BACKGROUND

Rufus Davis was employed by the Company in 1966. In June, 1979, Davis worked at the No. 3 Cold Strip Mill West Department. Davis commenced an extended absence from work on June 19, 1979, caused by an illness that was diagnosed by his attending physician as "schizophrenia-acute, undifferentiated type." Davis remained away from work as a result of that illness until he appeared at the Inland clinic on August 14, 1979, with a note from his attending doctor (Dr. Hammond) dated August 13, 1979, which certified that Davis had been under Dr. Hammond's care for a condition of "schizophrenic reaction." Dr. Hammond certified that Davis was "able to return to work on 8-14-79." Davis was seen at the Inland clinic by Dr. Hooker, who released Davis to return to his regular position.

Davis reported to his department for work on August 16, 1979, and was interviewed by General Foreman Marinconz. That procedure is normally followed when an employee has been away from work for a substantial period of time in order that the general foreman could be certain that matters of normal safety procedures could be discussed with the employee prior to his return to work. In checking Davis' record, General Foreman Marinconz noted that on November 8, 1978, the assistant superintendent of the No. 3 Cold Strip Mill had conducted an interview with Davis (in the presence of his grievance committeeman) concerning Davis' excessive and extended periods of absence from work. When General Foreman Marinconz attempted to discuss that interview with Davis in order to impress upon Davis the necessity for maintaining a satisfactory level of attendance after his return to work, Marinconz noted that Davis seemed to be having problems understanding and communicating with Marinconz. Davis seemed to be unaware of the November, 1978, interview. Davis seemed to be easily startled, and when Marinconz continued to have difficulty in communicating with Davis, Marinconz became concerned, especially because he was aware of the fact that Davis had a prolonged history of illnesses diagnosed as schizophrenic reaction. Marinconz was of the opinion that Davis appeared to be disoriented, confused and incapable of accepting directions. Marinconz was concerned with the possibility that if Davis was returned to a position of coiler operator or

tractor operator he might be exposing himself and other employees to danger if he was, in fact, unable to accept directions and carry out directions of his supervisor.

Marinconz called the Inland clinic and was informed that a doctor at the Inland clinic had released Davis for return to work based upon his opinion that Davis could handle any responsible work assignment. Marinconz informed the person with whom he spoke at the clinic that he did not agree with that conclusion. Marinconz was then informed that the Inland clinic could handle the matter and Davis was directed to return to the clinic.

The Inland clinic thereafter reviewed Davis' medical record, his most recent period of illness, the reports that Inland had received from Davis' doctor, and the repeated periodic absences, some of which were for prolonged periods of time because of Davis' mental condition. The Inland Medical Department thereafter concluded that it would rescind its return-to-work direction and would arrange to have Davis examined by a Company psychiatrist.

In reviewing Davis' record, the Inland clinic noted that on May 28, 1978, Davis had returned to work after a four-month absence for a condition diagnosed as "schizophrenic reaction." Davis was again absent for a period of time and returned on October 15, 1978, with a report from his doctor indicating that his absence had been occasioned by a condition diagnosed as "anxiety reaction."

In December, 1978, the Company was informed by Davis' doctor (Dr. Hammond) that Davis would be hospitalized for several months for treatment for a mental condition. Davis returned to the plant on April 30, 1979, with a note from Dr. Hammond. Davis was asked to return with a report indicating the nature of his illness. On May 7, 1979, Davis returned with a completed form signed by Dr. Hammond indicating that Davis had been under Dr. Hammond's care for a condition diagnosed as "schizophrenia." Davis was examined by the Company's psychiatrist (Dr. Wigutow) who reported to the Company that he believed that Davis was "non-psychotic" at that time and that it was safe to return Davis to employment. Davis returned to work and continued to work thereafter until he commenced his last period of absence in June, 1979.

Following the Inland Medical Department's rescission of its return-to-work direction on August 16, 1979, Davis was placed back on disability and continued to receive S & A benefits. On September 7, 1979, Davis was seen by Dr. Wigutow at the Inland Medical Department and arrangements were made for Dr. Wigutow to conduct an examination of Davis on September 10, 1979. Dr. Wigutow saw Davis on September 10, 13 and 14, 1979. On each of those occasions he spent approximately thirty minutes with Davis, and he thereafter concluded (in a report sent to the Company on September 27, 1979) that Davis was actively psychotic and that he needed and required therapy and medication. Dr. Wigutow recommended that after a course of treatment (that should be administered by Davis' doctor) Davis should once again be evaluated before being permitted to return to work.

Davis was interviewed by the Company's medical doctor (Dr. Dunning) on October 9, 1979. Davis was informed of the report and the recommendation received from Dr. Wigutow. Davis was asked to see his own doctor (Dr. Hammond) and to accept treatment from Dr. Hammond. The Company's insurance office was notified of the Medical Department's conclusions, and Davis thereafter received S & A benefits. Davis made no immediate objection to the decision of the Company's Medical Department. There were no further reports from Dr. Hammond until February, 1980, and there is evidence in the record that Davis did not visit Dr. Hammond nor did he receive medical treatment from Dr. Hammond for the period between August 13, 1979, and February 4, 1980.

Davis next submitted a report to the Company signed by Dr. Hammond on February 4, 1980, stating that Davis was "currently a patient under my care. He is released to return to work effective 2-5-80." The Company arranged to have Davis examined by Dr. Wigutow who concluded that Davis showed no signs of the existence of any form of mental illness and, in the opinion of Dr. Wigutow, it was safe to return Davis to active employment. Davis was then returned to active employment on February 19, 1980.

A written grievance had been filed on behalf of Davis on November 15, 1979, contending that he had been improperly laid off from employment by General Foreman Marinconz and that the action was "unjust and unwarranted due to the circumstances involved." The grievance requested that Davis be returned to employment and paid all moneys lost from August 16, 1979, and until his restoration to active employment with the Company. The grievance charged a violation of Article 3, Section 1, and Article 13, Sections 1 and 23, of the Collective Bargaining Agreement. The grievance was thereafter processed through the preliminary steps of the grievance procedure and the issue arising therefrom became the subject matter of this arbitration proceeding.

DISCUSSION

Davis had developed mental problems in May, 1978. Since that time he had been regularly and periodically under the treatment and care of Dr. Hammond, who specialized in the care and treatment of persons suffering from various types of mental disorders. The history of Davis' mental illnesses since early in 1978 would indicate that Davis' condition would be under control for relatively short periods of time. He would return to work based upon releases from his doctor and, after short periods of time, the condition would recur and he would again be away from work while he was under the care of Dr. Hammond and was being treated for a form of "schizophrenia" or an "anxiety" condition. On one occasion when Davis returned after a period of absence with a release from Dr. Hammond, the Inland medical clinic concluded that it should obtain an evaluation from its psychiatrist. Davis was seen by Dr. Wigutow, who concluded in May, 1979, that Davis was not psychotic (at that time) and he concurred in Dr. Hammond's opinion that it was safe to permit Davis to return to work.

It is unnecessary for the purpose of the disposition of the issue in this case to again analyze the system and procedure followed by the Company when an employee offers himself for return to active employment after having been ill for substantial periods of time. An employee brings his return-to-work slip to the Inland clinic and a Company doctor at that time makes an informed judgment with respect to whether the employee can or cannot be returned to employment. An employee may be placed on medical restriction, in which event his department is notified of the restriction and the employee can only be returned to work within the limits of the restriction.

Issues involving medical problems of returning employees at this Company have been the subject of numerous decisions by Umpire Cole and his associates, and by this arbitrator. All of the arbitrators have at one time or another pointed out the obligation of the Company under Article 14, Section 1, to make reasonable provisions for the safety and health of its employees. The arbitrators have referred to certain guidelines and standards that would determine whether a decision of the Company to place a medical restriction on a returning employee was a reasonable or an unreasonable exercise of judgment. Each case has been determined on the basis of its own fact situation. The instant case involving the grievant Davis raises a somewhat unique question based upon an unusual set of facts and circumstances.

The arbitrator must assume on the basis of the record in this case that when Dr. Hammond released Davis for work on or about August 13, 1979, Dr. Hammond believed that Davis was physically and mentally able to resume his normal work duties. When Davis presented himself to the Inland clinic on or about August 14, 1979, the Company doctor who saw Davis at that time found no reason for placing any medical restriction upon Davis and he was released for return to work. Davis reported for work on August 16, 1979. When he was interviewed at that time by General Marinconz, the General Foreman evidenced concern based upon what he believed to be Davis' evident confusion, his disorientation, his lack of memory, and his apparent inability to understand and comprehend direction. Although General Foreman Marinconz is not a doctor and is obviously not qualified to make a medical diagnosis, he certainly is in a position to note and to report actions and conduct of an employee that were disturbing to General Foreman Marinconz and which led him to believe that further medical evaluation was not only warranted but required. General Foreman Marinconz did not place a medical restriction upon Davis. He merely asked that Davis be seen again by Inland's Medical Department in view of Davis' response to the General Foreman's questions when he was interviewed on August 16, 1979.

The fact that Davis had been released on August 13, 1979, by his doctor, and had been released for return to work by the Inland Medical Department on August 14, 1979, would not necessarily mean that a problem could not have developed within the following two days. When Davis was sent back to the Medical Department, a Company doctor made a further analysis of his medical history and concluded that Davis should be withheld from employment until such time as Davis could be examined by a Company psychiatrist. Davis, however, was not seen by a Company psychiatrist until September 7, 1979. Davis was seen on that date by Dr. Wigutow, who did not examine Davis but arranged to have Davis come in for an examination on September 10, 1979. After three visits by Davis (on September 10, 13 and 14, 1979), Dr. Wigutow reported to the Company on September 27, 1979, that Davis was actively psychotic, needed therapy and medication, and should be treated for his mental disorder before he could be safely returned to employment. That decision was not communicated to Davis until October 9, 1979. In essence, Davis was not examined by a Company doctor who would have been qualified to pass judgment upon Davis' mental condition for the period between August 14, 1979, and September 10, 1979. After the three days of examinations in September, 1979, Davis was not informed until October 9, 1979, that he could not return to work until he had received medical treatment from his own doctor.

Davis did not return to see Dr. Hammond, nor did he receive treatment from Dr. Hammond between the date of his release on August 13, 1979, and until on or about February 4, 1980. It is reasonable to conclude that Davis' condition had improved, there had been a remission, and as of February 4, 1980, Dr. Hammond found Davis to be physically and mentally capable of returning to full employment with the Company without any medical restriction. When Davis was thereafter examined by the Company psychiatrist (Dr. Wigutow) he concurred with Dr. Hammond that Davis was then free of psychotic symptoms and he could be safely returned to employment.

The evidence in this record would support a conclusion and finding that there was no sound medical basis upon which the Company could rely in concluding that Davis was physically or mentally incapable of being returned to active employment with the Company on or about August 16, 1979. Although the Company had every right to be alerted to a possible problem by General Foreman Marinconz and to take active steps to obtain a further medical evaluation of Davis, it did not do so until the examination of September 10, 1979, followed by Dr. Wigutow's report of September 27, 1979, and the communication of that information to Davis on October 9, 1979.

There is nothing in this record that would indicate that as of October 9, 1979, Davis' doctor believed that Davis was physically or mentally capable of being safely returned to employment with the Company. Davis did not return to see Dr. Hammond until February 4, 1980. Dr. Hammond's report of February 4, 1980, could not, therefore, purport to cover Davis' condition between August 16, 1979, and February 4, 1980. In substance, although General Foreman Marinconz had a right and, in fact, an obligation to communicate to the Medical Department what he believed to be a peculiar form of behavior by Davis, the Company (in order to establish an appropriate medical restriction) would have been required to base that restriction upon an examination and the opinion expressed by a doctor or doctors specializing in the care and treatment of persons suffering from mental disorders. The restriction was properly imposed after examination by Dr. Wigutow and a submission of those reports to the Company. That restriction, however, should not have been placed upon Davis until such time as Davis was informed of the results of that examination and of Dr. Wigutow's findings. The placement of the restriction on Davis as of October 10, 1979, was appropriate. When the Company received the report from Dr. Hammond on February 5, 1980, it had a right to delay Davis' return to work until Davis could be examined by Dr. Wigutow. When the Company received Dr. Wigutow's report confirming Dr. Hammond's findings, Davis was returned to active employment with the Company on or about February 19, 1980.

Throughout the entire period of time between August 16, 1979, and February 19, 1980, Davis was on disability and receiving the contractual benefits to which he was entitled. The Company, however, did not establish, by competent medical evidence, that Davis should have been under medical restriction for the period between August 16, 1979, and September 27, 1979, when Dr. Wigutow concluded that Davis was actively psychotic and in no condition to return to work without treatment and medication. Davis was entitled to be informed of that medical decision, and, since he was not informed of the restriction being placed upon him as a result of Dr. Wigutow's findings until he was called in to the Medical Department and told of those restrictions on October 9, 1979, the medical restriction should not properly have become effective until that date.

In the opinion of the arbitrator, Davis is entitled to be made whole for any losses that he may have sustained for the period between August 16, 1979, and until October 10, 1979. Davis' request that he be made whole for the entire period of time between August 16, 1979, and until his return to employment on February 15, 1980, will be denied.

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

AWARD NO. 702

Grievance No. 23-N-28

1. Rufus Davis was improperly laid off for medical reasons for the period between August 16, 1979, and October 10, 1979. Davis should be made whole for any monetary losses that he may have incurred as a result of the denial of employment for that period of time.
2. Rufus Davis was properly on medical lay off for the period between October 10, 1979 and February 19, 1980.

/s/ Bert L. Luskin

ARBITRATOR

May 19, 1981