

In the Matter of the Arbitration Between

INLAND STEEL COMPANY

AND

UNITED STEELWORKERS OF AMERICA
AND ITS LOCAL UNION NO. 1010

Grievance No. 25-P-21

Appeal No. 1314

Award No. 710

Termination of Maria Espinosa

INTRODUCTION

An arbitration hearing between the parties was held in Harvey, Illinois, on December 14, 1981. Pre-hearing statements of position were submitted on behalf of the respective parties.

APPEARANCES

For the Company:

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

Mr. W. P. Boehler, Assistant Superintendent, Labor Relations

Mr. R. B. Castle, Coordinator, Labor Relations

Mr. W. D. Bozeman, Assistant Superintendent, 80" Hot Strip Mill

Mr. M. M. Roglich, Coordinator, Labor Relations

Dr. S. Solomon, Associate Medical Director, Medical

For the Union:

Mr. Thomas L. Barrett, Staff Representative

Mr. Joseph Gyurko, Chairman, Grievance Committee

Mr. Don Lutes, Secretary

Mr. James Alexander, Griever

Mr. Araldo Manzo, Griever

Mr. John Deardorff, Insurance Representative

Ms. Maria Espinosa, Grievant

Arbitrator: - - -

Mr. Bert-L. Luskin

BACKGROUND

Maria Espinosa was employed by the Company on August 30, 1973. She was initially assigned to the 80" hot strip mill and she had become established in the position of crane follower in the No. 3 Conditioning Dock Sequence. From time to time Ms. Espinosa had been assigned to higher-rated positions in the sequence and had, for varying periods of time, operated a gantry crane.

On June 14, 1981, Ms. Espinosa came to the Company's Medical Department for treatment relating to an occupational injury that she had sustained some time prior thereto. Her blood pressure was found to be unusually high, and she was "yellow carded" and released to the care of her personal physician for treatment for that condition. Ms. Espinosa was hospitalized for the period between June 14 and June 19, 1981. On June 16, 1981, the Company suspended Ms. Espinosa preliminary to discharge because of her excessive absenteeism and her overall record.

Ms. Espinosa requested and received a suspension hearing pursuant to the provisions of Article 8, Section 1, of the Collective Bargaining Agreement. The hearing was held on June 22, 1981, and the grievant contended that her most recent hospitalization was occasioned by inflammation of her "ovary and tube." She informed the Company that she was receiving medication for that condition and was scheduled to take a liver scan, and had been told that surgery might be indicated.

Ms. Espinosa had received a medical information form on June 12, 1981. It was dated June 22, 1981, and returned to the Company indicating that she had been treated on June 12, 1981, had been hospitalized for the period between June 14 through

June 19, 1981, and her condition had been diagnosed as "hypertensive crisis, chronic lumbar myofascial pain with sacroiliac component disruption." Her medical report indicated a recommended return to work of three to four weeks with a "future possible surgery."

On July 1, 1981, the Company wrote Ms. Espinosa informing her that an investigation failed to disclose any circumstances that would justify an alteration of the Company's decision to terminate Ms. Espinosa from employment. A grievance was filed on July 6, 1981, contending that the discharge was unjust and unwarranted, and requesting reinstatement and pay for all time lost from work. The grievance charged the Company with a violation of Article 3, Section 1, and Article 8, Section 1, of the Collective Bargaining Agreement. 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

The Company, in determining that Ms. Espinosa should be terminated from employment, relied upon her work record for the period between October 13, 1978, and May 24, 1981. That record of imposed discipline is hereinafter set forth as follows:

<u>"Date</u>	<u>Infraction</u>	<u>Action</u>
"10/13/78	Improperly boarding cranes and violation of Safety Rule 127-1 (out of work area)	Safety Discipline - balance and 1 turn
"6/25/79	Unsatisfactory attendance record	VODG - warning by General Foreman
"9/8/79	Violation of Safety Rules 127-j & p (malicious conduct and threatening language)	Safety Discipline - 5 turns
"4/1/81	Unsatisfactory attendance and overall record	Record Review and Final Warning with Assistant Superintendent

"5/24/81 - Unsafe crane operation

Safety Discipline -
1 turn"

In the period between 1975 and the date of her termination from employment, Ms. Espinosa was absent from work on ten different occasions, each of which was an extended period of absence. Those periods and the submitted medical diagnoses for each of those periods of absence are hereinafter set forth as follows:

<u>"Dates</u>	<u>Medical Diagnosis</u>
"9/25/75 - 1/3/76	Muscle spasm - cervical spine
"11/6/76 - 11/18/76	Second degree burns to face
"10/3/77 - 10/29/77	Pain and swelling to left ankle and knee
"10/29/78 - 1/6/79	Probable peptic ulcer - pseudo cyst of pancreas
"1/11/79 - 4/10/79	Lower back pain
"10/5/79 - 11/16/79	Acute myofascial pain left shoulder, arm, neck, and back
"12/6/79 - 5/12/80	Acute and herniated cervical disc, cervical strain
"6/11/80 - 9/19/80	Hypertrophy, gastritis, esophagitis, sliding hiatal hernia, obesity, anxiety reaction
"10/15/80 - 2/21/81	Esophagitis, gastritis, irritable bowel syndrom, severe cestechedritis, probable fractured rib
"6/12/81 - 6/19/81 (grievant was suspended 6/16/81)	Hypertensive crisis, chronic lumbar myofascial pain with sacroiliac component disruption."

Within the period of time hereinabove set forth as periods of absence from employment for various and varying types of illnesses and injuries, Ms. Espinosa was absent from work on 527 days on which she would have otherwise been scheduled to work. The breakdown for each of the years of 1975 through 1981 is hereinafter set forth as follows:

"1975 - 73 turns (includes 72 extended)
"1976 - 18 turns (includes 12 extended)
"1977 - 18 turns (includes 15 extended)
"1978 - 44 turns (includes 39 extended)
"1979 - 126 turns (includes 121 extended)
"1980 - 207 turns extended
"1981 (to
6/16) - 41 turns extended"

Within the above specified periods of time the Company paid to Ms. Espinosa in excess of \$11,000 in S & A benefits, and it made medical payments to hospitals and doctors in the amount of approximately \$17,000.

It was the Company's position that the grievant's unsatisfactory attendance record had reached a point where the reasons for her continued absences became immaterial, and the only issue remaining for resolution was whether the Company was required to continue Ms. Espinosa in employment in the light of her record of consistent, regular and periodic absences from work. The Company contended that, although each and every instance of recorded absences for illnesses or injuries was considered to be legitimate, Ms. Espinosa had reached a point in time where her failure (or her inability) to report for work with a reasonable degree of regularity constituted cause for her termination from employment.

The Company pointed to the fact that in the period between 1975 and the date of her termination in 1981, Ms. Espinosa had suffered from four recurring types of medical conditions. She has had repeated back-related disc and sacroiliac problems. She has suffered varying forms of conditions identified as esophagitis-gastritis. She has suffered from and has been treated for cardio-vascular diseases identified as hypertensive crisis. She has been treated for gynecological disorders

with an indication for possible surgery for that condition. The Company contended that all of the four different forms of illnesses have a form of chronicity that would lead to a reasonable conclusion that they will continue to recur in the future as they have in the past and there is no reasonable anticipation that her future attendance record will show improvement.

The Company contended that arbitrators have almost unanimously agreed that in cases of this type the Company should not be required to continue an employee in employment when it is reasonable to believe that the employee will continue to be regularly and periodically absent from work for various forms of illnesses. The Company contended that no matter how legitimate the illnesses may be, there comes a period in time when the Company cannot be reasonably expected to continue a chronically ill employee in employment with the Company.

The Union contended that Ms. Espinosa has been a good employee, with a relatively good record, and that each and every form of illness that caused Ms. Espinosa to be absent from work was documented, diagnosed and identified by her doctors as well as by Company doctors.

The Union contended that the grievant cannot be held responsible for a series of legitimate illnesses since they were beyond her control. The Union pointed to the fact that the last illness that precipitated her termination was discovered by the Company's Medical Department on June 12, 1981, and that as a result of her being "yellow carded" the grievant was hospitalized and treated for two different forms of illnesses.

The Union contended that in matters involving the development of a poor attendance record and the continuation of unacceptable periods of absences, the Company has regularly and historically imposed various forms of progressive discipline

before it will terminate the services of such an employee. The Union contended that in the instant case Ms. Espinosa did not receive any forms of discipline which could be considered to be progressive in nature and which would have justified her eventual termination from employment.

The Union contended that since the illness which precipitated the termination of the grievant from employment was a matter which was beyond her control, she should not have been subjected to any form of discipline and her work record, including her periods of absence from employment, did not justify the imposition of disciplinary measures that resulted in her termination from employment.

The Union contended that Ms. Espinosa should be restored to employment, with seniority rights, and with all back pay for the time for which she was caused to lose from work for her unjust termination from employment.

The basic facts are not in dispute. It is significant to note that in the period between 1975 and the date of her discharge on July 1, 1981, Ms. Espinosa had ten different extended periods of absences for varying types of illnesses and injuries. She lost 527 days from work within that period of time resulting in a thirty percent rate of absence from work. The medical problems were varied and included gastric disorders, orthopedic injuries, back problems, obesity, hiatal hernia, and an emotional problem diagnosed as "anxiety reaction." She suffered from high blood pressure and a form of female disorder which may require surgery at some later point in time.

Ms. Espinosa was warned and cautioned on a number of occasions that her attendance record had to improve or she would be terminated from employment. As late as April 1, 1981, she received a record review and was informed that she was receiving a final warning concerning her unsatisfactory attendance and overall record.

The principles relied upon by the Company in this case are neither novel nor unique. Issues of an identical nature have been the subject matter of awards issued by almost all permanent arbitrators serving under collective bargaining agreements between various companies in the basic steel industry and this same International Union. Those arbitrators have enunciated the basic principles that are involved in instances involving continuing forms of absences occasioned by illnesses causing absences over an extended period of time. Those arbitrators have set forth their opinions and findings with an almost universal degree of unanimity. In each instance they have distinguished between an extended absence occasioned by an illness or injury and those types of absences for illness which serve to demonstrate the development of chronic forms of illnesses that lead to a series of continuing periods of short and prolonged absences. Those arbitrators have pointed out that a distinction must be made in instances involving isolated absences from work for illnesses or a series of illnesses and those forms of absences for illnesses which indicate the existence of a pattern of continuing absenteeism that continues indefinitely for prolonged periods of time. Those arbitrators have consistently pointed out that where absences for illnesses recur with regularity, the reasons for the absences become immaterial and the Company can no longer be expected or required to retain such an employee as a member of its work force.

In Inland Award No. 628, Permanent Arbitrator Cole pointed out that the Company had a right to expect regular and timely attendance in order that it could maintain its obligation to schedule and regulate its operations. Arbitrator Cole carefully pointed out in that decision that if certain absences were caused by an injury or illness, good cause would not exist for termination. It would follow, therefore, that each cause of excessive absenteeism must turn on the facts and circumstances

CHRONOLOGY

Grievance No. 25-P-21

Grievance filed	July 6, 1981
Step 3 hearing	July 23, 1981
Step 3 minutes	September 8, 1981
Step 4 appeal	September 22, 1981
Step 4 hearings	September 25, 1981 October 8, 1981
Step 4 minutes	December 2, 1981
Appeal to Arbitration	December 3, 1981
Arbitration hearing	December 14, 1981
Award issued	April 14, 1982

The record in this case leaves some doubt with respect to whether Ms. Espinosa should have been terminated on the basis of the undisputed record of illnesses over a period of some six years. The evidence in this case will not support a conclusion or finding that Ms. Espinosa is suffering from either permanent or chronic forms of illnesses so serious in nature as to serve to disqualify her from continuing in active employment with the Company.

On the basis of the record in this case, it is the opinion of this arbitrator that Ms. Espinosa should be provided with one more opportunity to demonstrate that she can report for work on a regular basis consistent with that expected of any other employee. If upon restoration to employment Ms. Espinosa continues to find it necessary to be absent from work because of varying forms of illnesses, then and in that event she would have demonstrated beyond doubt that she does not possess the requisite physical ability necessary to continue in regular employment in her occupation as a crane follower and a gantry crane operator.

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

AWARD No. 710

Grievance No. 25-P-21

Maria Espinosa shall be restored to employment with the Company, with seniority rights, but without any back pay for the period between the date of her termination from employment and the effective date of her restoration thereto.

Bert L. Luckin
ARBITRATOR

April 14, 1982

in the individual case. Under ordinary circumstances, an employee who is absent because of illness and who substantiates that illness must be excused. That principle would also hold true in the case of an employee who suffers from an unusual series of illnesses. In Inland Award No. 666 this arbitrator made the following statement:

"There comes a point, however, when chronic illnesses and a continuing series of absences because of various illnesses over extended periods of time makes it evident that an employee cannot work in an industrial atmosphere, and such an employee must be separated from active employment."

This arbitrator pointed out in that same decision (Award No. 666) that those principles were completely consistent with the principles enunciated by Permanent Arbitrator Cole in Inland Award No. 628. Mr. Cole pointed to the principles enunciated by Arbitrator Mittenthal in a decision in 1967 (Copperweld Steel Company) where that arbitrator stated that "when a pattern of repeated absenteeism continues indefinitely, month after month and year after year, a point is reached where the reasons for the absences become immaterial."

The issue in this case should not be construed as an instance involving disciplinary action on the part of the Company. The Company agrees that in each and every instance of extended absences involving the grievant in this case for illness, she substantiated those illnesses by medical reports that were accepted by the Company as justifiable reasons for those absences. The issue in this case goes to the question of whether the Company should be required to retain in employment a person who has demonstrated over a prolonged period of time that she suffers from different forms of illnesses as well as from muscular and spinal weaknesses, to a degree where she may not have the physical capacity necessary to engage in the day-to-day functions required of all employees working in the same position held by Ms. Espinosa as a crane follower and as the operator of a gantry crane.