

Award No. 712
 In the Matter of Arbitration Between
 INLAND STEEL COMPANY
 Indiana Harbor Works
 AND
 UNITED STEELWORKERS OF AMERICA
 Local Union No. 1010
 Grievance No. 28-N-55
 Appeal No. 1316
 Arbitrator: Shyam Das
 Award Issued:
 April 6, 1982
 Subject: Discharge of James S. Frechette
 Contract Provisions Involved: Articles 3 and 8 of the August 1, 1977 Basic Labor Agreement.
 Statement of the Award: The grievance is denied.

CHRONOLOGY

Grievance filed: October 4, 1979
 Step 3 hearing: October 30, 1979
 Step 3 minutes: November 26, 1979
 Step 4 appeal: December 10, 1979
 Step 4 hearing(s): December 13, 1979
 February 22, 1980
 August 13, 1981
 September 15, 1981
 Step 4 minutes: January 4, 1982
 Appeal to arbitration: January 6, 1982
 Arbitration hearing: March 3, 1982
 Transcript Received: March 19, 1982
 Award Issued: April 6, 1982

APPEARANCES:

On Behalf of the Company:
 R. T. Larson, Arbitration Coordinator, Labor Relations
 On Behalf of the Union:
 Thomas L. Barrett, Staff Representative

BACKGROUND

This grievance from the No. 3 Cold Strip East Department protests that Grievant was improperly discharged. On September 21, 1979 Grievant was issued a five-day suspension for insubordination and overall unsatisfactory work record. Following a hearing, as provided for in Article 8, Section 1 of the Labor Agreement, this suspension was converted to discharge.

Subsequent to the Step 3 meeting on this grievance, Grievant was arrested and charged with committing criminal offenses under federal law. He later pled guilty to the charges and was sentenced to a term in prison. At the Union's request, in December 1979 the parties agreed to extend the grievance time limits while waiving monetary liability. This extension was effective through August 13, 1981, by which time Grievant had been released from prison on probation. At arbitration, the parties mutually agreed to waive the sixty-day time limitation set forth in Marginal Paragraph 8.3.1 of the Labor Agreement.

Grievant was hired by the Company on September 14, 1976. At the time of his discharge, three years later, he was working as a Craneman in the No. 3 Cold Strip East Department. His prior disciplinary record is as follows:

"DATE	INFRACTION	ACTION
6/13/77	Absenteeism	Reprimand
10/31/77	Left job early	Discipline - 1 turn
11/29/77	Absenteeism	Discipline - 1 turn
11/16/78	Absenteeism	Discipline - 2 turns
3/27/79	Absenteeism	Discipline - 3 turns

4/13/79	Insubordination	Discipline - 3 turns
4/20/79	Leaving work area without permission	Discipline - 1 turn
8/02/79	Excessive absenteeism and disregard of departmental rules and regulations	Record Review and Final Warning with Assistant Superintendent"

On Wednesday, September 19, 1979 Grievant worked the 1st and 2nd turns as a Craneman on No. 28 crane. He had volunteered to double out that day. The No. 28 crane services the 80" Tandem Mill, one of the most important production units in the Department. On the preceding Saturday there had been an electrical fire which burned up the mill's generator. Repair work was performed around the clock until the mill resumed operations on Friday, September 21. On the two turns Grievant operated No. 28 crane on September 19, the crane was used only to service the repair crews working on the mill. Grievant's second shift that day ended at 3:30 P.M. Grievant's relief, who was also doubling out that day, was working on another crane on the 7:30 - 3:30 shift.

Turn Foreman--Services Sparks testified that the General Foreman had issued a directive that all Cranemen on the No. 28 crane were to relieve on the job during the repair outage so as to ensure uninterrupted crane service for the electrical repair crews. He said he assumed this directive had been posted for the Cranemen to see, although he was not positive of that. He added that the Cranemen ought to have been personally told this by the Foremen on their turns as well.

Sparks was assigned to the 3rd turn on September 19. He testified that at about 3:00 P.M. Grievant came up to him at the sign-in-desk and asked for his time card. Sparks said he told Grievant he could not leave the crane until he was properly relieved and that they had to man the No. 28 crane until the unit was back in production. Sparks stated that he told Grievant to go back to the crane, but Grievant refused. Sparks said he then told Grievant that he had to go back and cover the job until he got his proper relief or Sparks would have no other choice but to send him home. Grievant again refused to return to his crane, according to the Foreman, and said to Sparks: "You goddamn foremen are all like. You like for someone to do you a favor, but you won't do a favor for them." Sparks then sent Grievant to the office and called Plant Protection to escort him from the plant. He said he also assigned another employee to cover the crane job until the relief showed up.

Sparks insisted that Grievant did not say anything to him about being too tired to go back to the crane or request to be sent to the clinic or anything of that nature. Sparks also noted that the crane work on No. 28 crane that day was relatively light and not physically taxing, since the unit was out of operation, and that it was not uncommon for employees to double out on a crane even during normal operations.

Sparks further stressed that when he directed Grievant to return to the crane, in accordance with the General Foreman's directive that it be manned at all times during the outage, he had no way of knowing what, if any, repair work was then being performed over at the Tandem Mill, located three bays away. Moreover, he stated, Grievant made no statements to him regarding that.

Sparks acknowledged that, depending on the job, it was not unusual for some Cranemen, under normal circumstances, to come down 15-20 minutes before the end of their shifts, especially if they had doubled out, but he emphasized that in this case he had directed Grievant to remain at his crane in accordance with the General Foreman's orders.

Sparks noted that he had limited prior contact with Grievant, who usually did not work on his turn. In particular, he had no involvement in the prior discipline issued to Grievant and had experienced no prior problems with him. His role in the present instance was limited to sending Grievant home. The decision to issue Grievant a five-day suspension, subject to discharge was made by his Department Superintendent.

Grievant testified that he believed it was closer to 3:10 P.M. when he went to the sign-in desk and stressed that by then the repair crews had all left the work area at the Tandem Mill.<FN 1> Grievant said that when he saw a check mark next to the name of his relief at the sign-in desk he asked Sparks for his time card.

Grievant stated that Sparks then told him that he had to go back up in the crane and that he had orders to have someone in the crane at all times. Grievant said he asked Sparks what was the sense of his going back to the crane since all the work had been done and that, anyway, he was too tired to go back. Grievant said he also requested to go to the clinic. When Sparks then told him that he had to go back on the crane or Sparks would call Plant Protection to take him out of the mill, Grievant stated, he told Sparks: "Well, I think you are violating a safety rule." Sparks then sent him to the office and called Plant Protection.

Grievant testified that prior to his discussion with Sparks that afternoon, he was never told that he had to be relieved on the crane during the outage, nor did he see any posting to that effect. He noted that, more often

than not, the Cranemen left their cranes before they were relieved. He said that when he had come on to the job that day there was no one on the crane. He also said he didn't see or hear Sparks assign anyone else to cover the crane while he was being sent home.

Grievant stated that he was rather tired since he had worked both the 1st and 2nd shifts and had been up before he had come in to work. He said he could not recall having used any abusive language towards Sparks, although it was possible that he had done so, given how tired he was.

The Craneman who relieved Grievant on the No. 28 crane on September 19, 1979 could not remember anything about that day in particular. (The arbitration hearing was held 2 1/2 years later, and he had not previously been questioned about the events on that day.) He did state, however, that he never saw any posting or received any directive not to leave a crane until relieved. He explained that, while the official policy was that the Cold Strip Cranemen relieved on the job, in practice they generally came down if their work was finished or caught up and there was nothing else to do. He also acknowledged, however, that in the 29 years he worked as a Craneman at the plant he never refused to follow a Foreman's directive. The Union contends that the Company did not have proper cause to discharge Grievant under all of the facts and circumstances. It stresses that he had been working for over 15 1/2 hours and was too tired to safely continue operating the crane, and that he should have been allowed to go to the clinic as he requested. It further points to Grievant's testimony that there was no work to be done at the time Grievant left the crane. It asserts that the Company's alleged directive that the Cranemen relieve on the job during the outage was not disseminated to the employees and was not followed, as witnessed by the fact that no one was on the crane when Grievant arrived there at the start of the day.

The Company insists that Grievant was insubordinate in failing to follow the reasonable direction of his Foreman to remain on the crane until he was relieved at the end of the shift. It argues that the credible evidence establishes that Grievant had no legitimate basis for not following that directive. In view of his short length of service and substantial prior discipline record, including a 3-day suspension for insubordination, the Company maintains that discharge was proper.

Additional matters were raised by the Company at arbitration, to which the Union took objection. In view of the Findings made in this Award, resolving the issues discussed above, there is no need here to go into any further detail on those additional matters.

FINDINGS

Grievant was not disciplined because he left his crane before he was relieved, but for refusing to obey his Foreman's direction, personally given to him at that time, to return to his crane and remain there until he was relieved. As the Foreman explained to Grievant at that time, he had been instructed to make sure the crane was manned at all times during the repair outage. Clearly, Grievant did not want to go back to the crane and quite possibly he felt there was no need for him to do so, but that was not his decision to make. Moreover, he may have been tired after working two shifts starting at around midnight, but that by itself cannot justify his refusal to return to the crane for the remaining 20-30 minutes before he was to be relieved at the end of the turn. Even assuming he told the Foreman he was too tired to go back on the crane and wanted to go to the clinic, which the Foreman denies, it is evident that he did so solely to avoid having to comply with the Foreman's direction and not because of any real physical impairment.

Thus, it must be concluded that Grievant had no legitimate basis on which to refuse to return to the crane as directed by his Foreman. Under all of the circumstances, moreover, that insubordinate conduct cannot be dismissed as an insignificant infraction. The fact that he had worked two shifts and, hence, may have been somewhat tired, while not justifying his conduct, does constitute a mitigating circumstance. Against that, however, must be weighed the poor discipline record he amassed during his relatively short period of employment with the Company, including prior suspensions for insubordination and leaving his work area. Only a month or so earlier, Management had conducted a record review with him to discuss his excessive absenteeism and disregard of departmental rules and regulations. At that time, he was given a final warning and informed that:

"...there must be an immediate improvement in your attendance and a reversal of your poor attitude toward rules and regulations and if there was not, you would be suspended preliminary to discharge."

Grievant's insubordinate conduct on September 19, 1979, unfortunately, was quite inconsistent with the type of progress reasonably expected of him.

Under all of the relevant circumstances, it is concluded that the Company had proper cause to discharge Grievant. Accordingly, this grievance will be denied.

AWARD NO. 712

GRIEVANCE NO. 28-N-55

The grievance is denied.

/s/ Shyam Das

Shyam Das, Arbitrator

<FN 1> According to another Union witness, the maintenance employees--at least the Motor Inspectors--change shifts at 3:00 P.M. Thus, while the employees working 7 to 3 may have left sometime before 3:00 P.M., it would appear that those on the next shift quite possibly would have arrived before 3:30 P.M., when Grievant's shift ended.