

Award No. 713  
In the Matter of the Arbitration Between  
INLAND STEEL COMPANY  
AND  
UNITED STEELWORKERS OF AMERICA  
AND ITS LOCAL UNION NO. 1010  
Grievance No. 4-P-18  
Appeal No. 1319  
Arbitrator: Seymour Strongin  
May 19, 1982  
INTRODUCTION

An arbitration hearing between the parties was held in Harvey, Illinois, on March 22, 1982. Pre-hearing briefs were filed on behalf of the respective parties.

#### APPEARANCES

For the Company:

MR. R. T. LARSON, Arbitration Coordinator, Labor Relations,  
MR. C. L. COE, Assistant Superintendent, No. 4 B.O.F.,  
MR. C. VERMEJAN, General Foreman, No. 4 B.O.F.,  
MR. T. L. KINACH, Assistant Superintendent, Labor Relations,  
MR. R. B. CASTLE, Coordinator, Labor Relations,  
MR. R. V. CAYIA, Senior Representative, Labor Relations.

For the Union:

MR. TOM BARRETT, Staff Representative,  
MR. JOSEPH GYURKO, Chairman, Grievance Committee,  
MR. DON LUTES, Secretary,  
MR. JIM ROBINSON, Griever,  
MR. BERNARD BROWN, Grievant,

#### BACKGROUND

Grievant, hired by the Company on September 1, 1978, was assigned to work on the 11 p.m. turn on March 23, 1981, as a mobile driver on the service floor (third level) of the No. 4 B.O.F. Department. During a routine inspection in the course of that turn, Temporary Foreman Zelanik noted that grievant was not on the service floor, and eventually located him on the ground floor. In the ensuing conversation Zelanik told grievant that he was out of his work area in violation of instructions which Zelanik had repeated to his crew, including grievant, in a safety meeting held before the start of that turn. Grievant denied that he was improperly out of his area. According to Zelanik's written statement, grievant's excuse was that he had come to report a lime spill, an excuse Zelanik rejected as grievant could have used the P.A. system, and in any event the foreman's office to which the report would be made was not on the ground floor. Grievant testified that the lime spill had occurred earlier, and that on this occasion he told Zelanik he was on the ground floor because his work was finished for the time being and his job was covered so he had standing permission to go to the ground floor to get away from the smoke and fumes.

Zelanik and grievant started up the stairs, and Zelanik said he was sending grievant home for being out of his work area. According to Zelanik, he told grievant to go to the office to wait for plant protection to escort him from the plant. According to grievant, Zelanik told him to "take my ass upstairs where I was assigned at." During this conversation, according to Zelanik grievant "became loud and started calling me names like chump, white boy, and honky. At the end of his name calling, he said, 'Wait till I see you outside. I am going to whip your ass.'"

Grievant went back to his work floor, where plant protection, responding to Zelanik's call, found him and escorted him from the plant. The Company, crediting Zelanik's version of the events, discharged grievant for being out of his work area, for insubordination (failure to go to the office as directed), and for threatening the foreman.

#### DISCUSSION

The Company's case turns essentially on its finding that grievant in fact threatened the foreman with bodily harm. The other offenses - being out of the work area and returning to the work floor rather than going to the office - would not of themselves constitute just cause for discharge, and the Company throughout the processing of the grievance has focussed on the threat. In support of its finding that such a threat was made

the Company relies on the evidence of Foreman Zelanik. In support of its denial that such a threat was made, the Union relies on the testimony of the grievant. There were no other witnesses to the conversation. Foreman Zelanik did not testify, and indeed was precluded from testifying by Article 13, Section 14, of the Agreement. His evidence was given in the form of a written statement which he submitted to General Foreman Vermejan the day after the episode. This document was admitted into evidence before the Arbitrator in accordance with Arbitrator Luskin's decision in Award No. 706, issued November 16, 1981. The case therefore comes down to a conflict in the evidence between the only two persons who were present at the time of the critical event, and the Arbitrator is asked to determine which of these two diametrically opposing views of the facts he should accept.

The mere fact that the evidence is evenly balanced as to the number of persons supporting each view does not of itself establish that the Company has failed to sustain its burden of proof. If it did, the Company would necessarily lose every "one against one" case, and employees would be free to threaten supervisors if they could do so in private. By the same token, the fact that the foreman's evidence consists solely of a written statement does not mean that the employee's sworn testimony, denying the statements attributed to him, must be accepted as true and correct. There may well be situations in which surrounding circumstances render the written version more credible than the testimony contradicting it. If, however, there are no circumstances which tend to shed further light on the matter, the Arbitrator may give more weight to testimony which has withstood cross-examination than to a written statement, the author of which has not been subject to cross-examination.

In this case, the record shows that a week before the episode in question, Zelanik had sent grievant home for being out of his work area. The matter was promptly grieved, and General Foreman Vermejan decided that Zelanik had erred in finding that grievant had acted improperly. The grievance was sustained, and the Company paid grievant for the time he had lost. It is, of course, possible that this prior affair was rankling in the minds of both men on the occasion here in issue. Grievant may have been angry at Zelanik for twice in two weeks sending him home for being out of the area. Zelanik may have been smarting over the implied rebuke in having his prior discipline overturned, although Vermejan testified that Zelanik was not "angry" but "accepted it . . . realized that he had made a mistake and over-reacted a little bit."

The Company advances certain arguments in support of its contention that the Arbitrator should credit Zelanik's written statement rather than grievant's sworn testimony. The Company suggests that grievant has more to gain than Zelanik by fabricating his version of the events. The Company cites Arbitrator Cole's decision in No. 612, which referred to the absence in that case of any basis for the foreman to endanger an employee's job whereas the employee in that case had "a propensity to be defiant and threatening, and, if necessary to take liberty with the facts." No such propensity was shown in the instant case. The Company contends that grievant's credibility is suspect because he has "offered three contradictory explanations for his being out of his work area." The first of these, that grievant said he was looking for the foreman to report a lime spill, is found only in Zelanik's statement. Grievant's testimony is that he had spoken earlier to Zelanik about the lime spill, and it may well be that Zelanik in his report confused or consolidated the two episodes. The Company also suggests that grievant said he was going to get gasoline. Grievant did not so testify; he testified that he had earlier gone to get gasoline. The Company also suggests that grievant changed his explanation at the hearing, first stating that he went to escape fumes and smoke, and later that he went to talk to a friend. As the Arbitrator reads the record, grievant freely admitted talking to another employee but nowhere testified that he went to the ground floor for that purpose. The quoted statement on page 80 of the transcript, "The real reason I went was to talk to a co-worker," is found only in the summary argument of the Company representative. The apparent source for that "quotation" is the Third Step grievance at which grievant "admitted . . . that he went to talk to another hi-lift driver." Whether this "admission" was intended as a statement of what he did, or of the purpose for which he came to the floor, is not clear.

Finally, as to grievant's past record, he was guilty of "horseplay and fighting" in August 1979 and an entry to that effect was made in his personnel file. This is "the lower end of the ladder as far as discipline is concerned." In November 1980 he was sent home for sleeping in the plant, and the next day he was reprimanded for absenteeism. Nothing in his records suggests any propensity on grievant's part either to fabricate testimony or to threaten anyone with bodily harm.

The Arbitrator has carefully searched the record, but can find no sound basis for crediting Zelanik's written statement rather than grievant's sworn testimony. Under these circumstances the Arbitrator must conclude that the Company has failed to sustain its burden of proof. The grievance is therefore sustained, and grievant should be reinstated with back pay.

AWARD

Grievance No. 4-P-18

Award No. 713

The Company did not have just cause for the discharge of the grievant. The grievance is sustained, and grievant should be reinstated with back pay.

/s/ Seymour Strongin

Seymour Strongin

Arbitrator

Dated: May 19, 1982