

Award No. 723
In the Matter of the Arbitration Between
INLAND STEEL COMPANY
AND
UNITED STEELWORKERS OF AMERICA
AND ITS LOCAL UNION 1010

Grievance No. 20-P-64

Appeal No. 1325

Arbitrator: Bert L. Luskin

September 3, 1982

INTRODUCTION

An arbitration hearing between the parties was held in Harvey, Illinois, on July 20, 1982. Pre-hearing briefs were submitted on behalf of the respective parties and exchanged between them.

APPEARANCES

For the Company:

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

Mr. P. A. Arsenault, Superintendent, Central Mechanical Maintenance

Mr. J. Santini, Assistant Superintendent, Central Mechanical Maintenance

Mr. R. Archie, General Foreman, Machine Shop, Central Mechanical Maintenance

Mr. R. Vela, Administrative Assistant, Labor Relations

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

Mr. J. Bean, Clinic Counselor, Medical

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

For the Union:

Mr. Thomas L. Barrett, Staff Representative

Mr. Don Lutes, Secretary, Grievance Committee

Mr. William Murphy, Chairman, Alcohol and Drug Abuse Committee

Mr. Mike Mezo, Griever

Mr. Louis Lear, Grievant

BACKGROUND

Louis Lear was employed by the Company on February 28, 1965. He served as an apprentice machinist for approximately four years and thereafter worked as a standard machinist for approximately ten years. He then became an air tool and torch and gauge repairman.

On December 3, 1981, Lear received a record review conducted by a departmental assistant superintendent from the department where Lear was employed. The subject matter of that record review was Lear's continuing record of absenteeism and tardiness and his record of repeatedly failing to report off on those days when he did not report for work. When asked whether he had a drinking or a drug problem, Lear answered in the negative. Lear at that time stated that he at one time had a drinking problem for which he had received treatment under the Union's and the Company's alcohol and drug abuse program. He insisted that his drinking problem was under control and drinking was not a direct cause for the poor attendance record which he had developed. He attributed the major reasons for his record of poor attendance to physical problems resulting from back surgery, several injuries sustained outside of the plant, and insulin treatments which he had been receiving for diabetes. In that record review (which was attended by the Union representatives) Lear was informed that he was receiving a final warning and that a continuance of incidents of absenteeism would result in his suspension preliminary to discharge from employment.

Lear's attendance record did not improve and on February 25, 1982, Lear received a certified letter bearing date of February 24, 1982, informing him that he was being suspended for five calendar days effective March 1, 1982, and that he would be subject to discharge at the end of that period of time. He was informed that the action was being taken because of his record of absenteeism.

Lear requested and received a hearing that was held on February 26, 1982. The hearing was attended by Lear, the Acting Secretary of the Union's Grievance Committee, and by the Chairman of the Union's Alcoholic Committee, as well as by appropriate Company officials. On March 8, 1982, Lear was informed that the hearing had failed to disclose any circumstances that would justify an alteration of the decision made by the Department Superintendent, and Lear was informed that the suspension "must conclude with discharge."

A grievance was filed protesting the action taken by the Company. The grievance contended in part that just cause did not exist for Lear's termination from employment. It further contended that the action taken by the Company was in violation of the provisions of Article 14, Section 8, 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 provision of the Agreement cited by the parties as applicable in the instant dispute is hereinafter set forth as follows:

"ARTICLE 14

"SAFETY AND HEALTH

"Section 8. Alcoholism and drug abuse are recognized by the parties to be treatable conditions. Without detracting from the existing rights and obligations of the parties recognized in the other provisions of this Agreement, the Company and the Union agree to cooperate at the plant level in encouraging employees afflicted with alcoholism or drug abuse to undergo a coordinated program directed to the objective of their rehabilitation."

There are no significant fact disputes. In the period between June, 1977, and December, 1981, Lear had been reprimanded on one occasion and suspended from employment for varying periods of time on five different occasions, all because of his poor attendance record. On December 3, 1981, Lear received a record review with an assistant superintendent. That review was attended by Lear and by two Union representatives. Lear was informed at that time that unless his attendance record improved substantially, he would be terminated from employment. He was informed at that time that he was receiving his "final warning." In that same record review Lear was asked whether his absences could in any way be attributable to his propensity for consumption of significant amounts of alcohol. Lear denied that his attendance problem was occasioned by liquor. He insisted that the primary causes for his poor attendance were his frequent bouts with back problems, diabetes and injuries. He was informed in that record review that he had been absent for a total of 417 turns in the period between 1977 and 1981. His absenteeism amounted to in excess of 25 percent of all of his scheduled turns in that period of time.

It would appear that the December, 1981, record review did not impress upon Lear the fact that he was approaching the point where the Company would have to terminate him from employment. In the relatively short period of time between December 3, 1981, and February 23, 1982, Lear was absent on fifteen different occasions. In a substantial number of those cases Lear either failed to report off or was late in reporting his impending absences from work. The Company correctly concluded that there came a point in time when it could no longer tolerate Lear's attendance irregularities and his seventeen years of service with the Company could not result in providing Lear with immunity from the imposition of severe disciplinary measures consistent with the degree of the committed offenses.

Lear's absentee record had been made the subject of warnings, reprimands, discussions and threats of impending termination from employment on numerous occasions. The Union was made aware of the fact that Lear was facing termination from employment if his attendance record did not improve.

Both the Union and the Company had urged Lear to enter an alcoholism rehabilitation program. In February, 1980, Lear entered the Koala Center's Alcoholism Rehabilitation Program. He attended numerous sessions under the Company's alcoholism program through the month of July, 1980. Despite Lear's participation (for a relatively short period of time) in the Company's program, and despite the fact that the Union had time and again urged Lear to enter a rehabilitation program, Lear's attendance record throughout that entire period of time showed no significant improvement. It becomes evident that Lear did not sincerely believe that he was an alcoholic and he refused to accept the fact that his addiction to alcohol may have been the primary cause for his inability to carry out his attendance obligations.

Lear testified that on February 24, 1982, he was arrested and jailed in Hobart, Indiana. He was charged with trespassing and public intoxication. Lear was released from jail after making bond on February 24, 1982. On the following day (February 25, 1982) he came to the Union Hall and asked for help in entering a hospital rehabilitation program. Union officials immediately made efforts to have Lear admitted to Lake Shore Hospital. He was immediately scheduled for admission to that hospital. On the afternoon of February 25, 1982, Lear received a certified letter from the Company notifying him of his suspension. He informed his Union representative of the receipt of that letter, and he was told to report to the Union Hall on February 26, 1982. Lear decided to ask for a suspension hearing before entering the hospital. Arrangements were made for an immediate hearing that was held on February 26, 1982, after which Lear entered the hospital and remained in the hospital for the entire 28-day rehabilitation program.

Lear returned to the Union Hall on March 26, 1982, and informed the Union of his release from the hospital, after which he began to attend Alcoholics Anonymous meetings. Lear testified that in the first 90-day period following his release from the hospital he attended 87 AA meetings. Lear testified that part of his problem could be attributed to the insulin he was taking for his diabetic condition and the treatment he had been receiving for chronic bronchitis. Lear testified that he knew as early as February 21, 1980, when he entered the Koala Program, that he had an alcohol problem. He conceded that he had denied any addiction to alcohol until he had received his notice of suspension and was arrested and jailed. He then asked the Union for help on the same day that he was suspended from employment. He conceded that when asked in the December, 1981, record review whether he had an alcohol problem, he denied that his poor attendance had been caused by any an addiction to alcohol.

It is evident that Inland Steel and the United Steelworkers of America do "cooperate at the plant level in encouraging employees afflicted with alcoholism . . . to undergo a coordinated program directed to the objective of their rehabilitation." The Union did everything it could be reasonably expected to do to induce Lear to enter rehabilitation programs, to admit his addiction to alcoholism and to accept treatment for that condition. When the Company became aware of the fact that Lear may have had a problem with alcoholism, it urged him to enter the Company's alcohol program. Lear did, in fact, enter that program and continued to receive treatment during the period between February, 1980, and July, 1980.

There can be no question but that the Company did, in fact, fully and completely comply with any obligation it may have had pursuant to the terms and provisions of Article 14, Section 8, of the Collective Bargaining Agreement. The Company cannot be expected to forceably make Lear enter a rehabilitation program. It fully and completely carried out its obligation to the employee when it became aware of the possibility that Lear might be an alcoholic, by urging Lear to enter a sophisticated program. He was again offered help at the December, 1981, record review, and he denied any need for assistance.

Article 14, Section 8, is clear and unambiguous. It has been interpreted on numerous occasions by umpires serving various steel companies and this same International Union where the identical language appears in the collective bargaining agreements. This arbitrator and other arbitrators have consistently held that the Company has retained all of its rights to impose discipline pursuant to the applicable provisions of the Collective Bargaining Agreement, and Article 14, Section 8, does not deny to the Company the right to impose discipline for proper cause. The Company carried out all of its contractual obligations to Lear. It did provide Lear with the opportunity to enter a sophisticated alcoholism program and it acted at all times (in concert with the Union) in attempting to induce Lear to do something about his alcoholism problem.

A similar issue became the subject matter of an award by this arbitrator in Inland Award No. 641. In that case this arbitrator stated that nothing contained in Article 14, Section 8, would require the Company to treat or to offer treatment to an employee who is an alcoholic as a condition precedent to his termination from employment. The issue in this case must turn on the facts and circumstances that existed at the time that the Company decided to terminate Lear from employment. The fact that Lear thereafter made a sincere attempt to rehabilitate himself would not be grounds for setting aside the Company's decision to terminate Lear. Lear's effort to rehabilitate himself after his termination, would not constitute grounds for setting aside the action taken by the Company.

Lear had a horrendous absentee record. Lear thereby subjected himself to the imposition of disciplinary measures consistent with the degree of the offense. The only issue for determination in this case is whether the discharge action taken by the Company was based upon "proper cause." In considering the matter of proper cause, the arbitrator will view the record as it existed at the time Lear was terminated.

Lear's discipline record is, for the most part, limited to penalties imposed for his poor attendance record. In all other respects the arbitrator must, therefore, assume that Lear was otherwise considered to be a satisfactory employee. The number of suspensions imposed against Lear and the degree of those suspensions must be considered in the light of his overall work record and his period of employment with the Company. Lear's seventeen years of service with the Company must be taken into consideration. While that would not in any way provide him with immunity from termination from employment, it is one factor which must be considered in the light of the entire record in this case.

From an analysis of all of the evidence in the record, it is the conclusion of this arbitrator that, although Lear was provided with a record review in December, 1981, at which time he was informed that he was receiving a final warning because of his poor attendance record, a number of additional absences in the next three months should not result in automatic termination. It is the opinion of this arbitrator that on the basis of Lear's record, a period of prolonged suspension from employment should have been imposed against Lear instead of termination from employment. Lear should be provided with one more opportunity

to demonstrate that he can maintain an attendance record comparable with that expected of any other employee. His failure to maintain a satisfactory attendance record would thereafter subject Lear to the imposition of the penalty of termination from employment based upon the application of the principles of progressive and corrective discipline.

The arbitrator must emphasize once more that the decision in this case is based upon the facts and circumstances as they existed at the time of Lear's termination from employment. He must further emphasize the fact that the Company fully and completely complied with any obligation imposed upon the Company by virtue of the language in Article 14, Section 8, of the Collective Bargaining Agreement. The arbitrator will make a specific finding denying the Union's contention in this case that the Company failed to comply with the provisions of Article 14, Section 8, of the Collective Bargaining Agreement.

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

AWARD NO. 723

Grievance No. 20-P-64

Louis Lear should be restored to employment with the Company, with seniority rights, but without any back pay from the date of his suspension and termination from employment and the effective date of his restoration thereto. The intervening period shall be considered to constitute a period of disciplinary suspension from employment.

/s/ Bert L. Luskin

ARBITRATOR

September 3, 1982