

Award No. 724  
In the Matter of the Arbitration Between  
INLAND STEEL COMPANY  
AND  
UNITED STEELWORKERS OF AMERICA  
AND ITS LOCAL UNION 1010  
Grievance No. 6-P-32  
Appeal No. 1328  
Discharge of Robert Gray  
Arbitrator: Bert L. Luskin  
November 2, 1982  
INTRODUCTION

An arbitration hearing between the parties was held in Harvey, Illinois, on September 14, 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. T. J. Mulligan, Superintendent, Power and Fuels (retired)  
Mr. D. Sharp, Plant Captain, Safety, Occupational Hygiene & Plant Protection  
Mr. R. Matusz, Sergeant, Safety, Occupational Hygiene & Plant Protection  
Mr. J. Tarr, Plant Paramedic  
Mr. M. M. Roglich, Coordinator, Labor Relations

For the Union:

Mr. Thomas L. Barrett, Staff Representative  
Mr. Joseph Gyurko, Chairman, Grievance Committee  
Mr. Don Lutes, Secretary, Grievance Committee  
Mr. Randy Vasilak, Griever  
Mr. Robert Gray, Grievant

#### BACKGROUND

Robert Gray was employed by the Company on March 9, 1977. On November 26, 1981, Gray was working as a Fan Oiler in the No. 2 A. C. Station Boiler House. On that day Gray was scheduled to be relieved by an employee named Carl Worix. In the normal course of events Gray should have been relieved by Worix at approximately 2:30 P.M. Worix arrived at the work station at approximately 2:55 P.M. An incident occurred thereafter resulting in a charge by Worix that Gray had directed a stream of profane language toward Worix while they were in the water treatment shanty area, after which Worix charged that Gray had physically assaulted him (Worix) by striking him with his fist, kicking him in the groin, and breaking a finger nail on Worix' hand. Worix also charged Gray with having thrown a heavy steel acetylene tank cap in Worix' direction. Worix allegedly proceeded to an engineer's shanty and informed the boiler house operator that he had been assaulted by Gray. Worix then proceeded to an operator's shanty where he telephoned plant protection and reported that he had been assaulted by Gray. A member of plant protection arrived in the area and interviewed Worix and Gray. When he ascertained from Gray that Gray had not suffered any injuries, the sergeant of plant protection directed Worix to go to the clinic for treatment for a bruised lip and for an alleged injury to Worix' groin. Worix proceeded to the clinic, repeated his complaints of physical injury, and was examined and released by the clinic. Worix then left word that he could not work that shift and he left the plant. Shortly after the incident in question, Gray left the plant.

A departmental investigation was held on November 27 and 28, 1981. Statements were received from Worix and Gray and from several persons who had been in the area. The interviews were conducted in the presence of Union representatives and a member of the Company's Labor Relations Department. The Company thereafter concluded that Worix had, in fact, been physically assaulted by Gray and had been made the target of abusive and profane language. The Company concluded that Gray had violated Rules 127-a and 127-p of the General Rules for Safety and Personal Conduct. After a review of Gray's record the Company then suspended Gray from employment on November 30, 1981.

Gray requested and was granted a suspension hearing pursuant to the provisions of Article 8, Section 1, of the Collective Bargaining Agreement. That hearing was held on December 4, 1981. During the course of that hearing Gray admitted that he had been angry and had directed some vile and profane language toward Worix. He denied, however, having either struck, kicked or thrown any object at Worix. The Company

thereafter concluded that the conduct engaged in by Gray, when viewed together with his record of discipline, justified the imposition of the penalty of termination from employment.

On December 16, 1981, Gray was informed that he had been terminated from employment. On December 18, 1981, Gray filed a grievance protesting his termination. That 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

The Company charged Gray with a violation of Rules No. 127-a and No. 127-p of General Rules for Safety and Personal Conduct. Those rules are hereinafter set forth as follows:

"127. The following offenses are among those which may be cause for discipline, up to and including suspension preliminary to discharge:

"a. Fighting with, or attempting bodily injury to another employee or nonemployee on Company property.

"p. Use of profane, abusive, or threatening language towards subordinates or other employees or officials of the Company, or any non-Inland personnel."

On November 26, 1981, Worix was driven to Michigan City by a friend in order that Worix could pick up his car keys which were in the possession of Worix' girlfriend. The testimony of Worix and his friend (an Inland employee) would indicate that they arrived in Michigan City on the morning of November 26, 1981, at approximately 10:30 A.M. and Worix was unable to locate his girlfriend. They then proceeded to the homes of two sisters of the lady whom Worix was looking for. They eventually were able to locate Worix' girlfriend at 1:45 P.M. Worix picked up his keys, after which he and his friend drove to a restaurant where they had lunch between 2:00 and 2:30 P.M. Worix was aware of the fact that he was scheduled to relieve an employee at sometime between 2:00 and 2:30 P.M. He was aware of the fact that if he reached the plant at 3:00 P.M. or later he would be more than half an hour late and would lose his shift of work.

All of the competent evidence in the record would indicate that Worix entered his working place at approximately 2:55 P.M., where he was met by Gray who was furious with Worix since Worix was at least half an hour late. Angry words were exchanged, and Gray called Worix a m- f-. Gray continued to yell and to curse at Worix, and Worix turned and left the area. As he left the area, he heard a metal object strike the floor or strike another metal object.

Worix testified that before he ran out of the area he was attacked by Gray and was struck by at least four punches and was kicked in the groin by Gray. After reporting the matter to Plant Protection, Worix was taken to the Company's Medical Department where a paramedic noted that Worix had a swollen lip and the tip of a fingernail was broken. There were no other signs of bruises, contusions or cuts about Worix' face or body.

Worix related a number of versions of the alleged attack. On one occasion he testified that he was struck by Gray's fists numerous times; on another occasion he complained of having been struck twice by Gray's fists. Gray denied striking Worix. Gray conceded that he had called Worix a m- f-, and he conceded that he had been furious and had shouted at Worix, and that he may have flailed his arms; but he firmly denied striking Worix. Gray admitted that he had taken a metal object and thrown it on the floor in order to frighten Worix, but he denied that he had thrown the metal object at Worix or in Worix' direction.

Medical evidence in the record does not indicate that Worix suffered any bruises or contusions to his groin, and the paramedic who examined Worix could not testify with any degree of certainty at what period of time Worix had sustained the injury to his lip. There were no other visible evidences of bruises and contusions, and there was no medical treatment given to Worix.

The testimony offered by Worix is replete with inconsistencies and contradictions. Worix admittedly has had exchanges of words and exchanges of swear words with other employees (black and white) in the department. Worix conceded that he had been habitually late in providing relief for employees, and he conceded that a number of employees were angry with him and had threatened him because of his tendency toward tardiness in meeting his relief commitments. Worix has had verbal confrontations with a number of other employees in the department, and on one occasion he was allegedly assaulted by Gray's brother. He at one time informed a fellow employee that he (Worix) intended to make certain that Robert Gray would be discharged from employment.

The only explanation offered by Worix for his failure to immediately return to the plant after obtaining his keys at approximately 2:00 P.M. was that he had not eaten lunch and he thought he ought to stop for lunch before coming to work. He offered no explanation as to why he and his friend (Mack) did not stop for food while they were cruising around Michigan City looking for Worix' girlfriend. Worix knew that he was

going to be late and he knew that Gray had been angered on a number of occasions because of Worix' known propensity for being late in relieving employees.

A number of employees in the department had complained to members of management concerning Worix' late relief habits. When a female employee registered a complaint, she was advised by a member of supervision to "stay out of Worix' way."

During Worix' cross-examination he testified that he had been hit by two punches, and he testified that the term "m- f-" is an expression that is commonly used in and out of the department by a substantial number of employees. He testified that there is a difference in the seriousness of the term depending upon whether it is said in jest or is meant to be a hostile expression.

Worix conceded that he had told a fellow employee that he intended to take steps to see that Gray would be fired. He conceded that he has had personality problems with a substantial number of black employees, as well as a substantial number of white employees. He demonstrated a persecution complex when he said that he believed that "a lot of people had had things going on him." He accused people in the department of sabotaging his equipment, and he conceded that other employees in the department had been angered because he had, on a number of occasions, been late in providing those employees with relief.

From an analysis of all of the evidence in the record concerning the alleged assault on Worix by Robert Gray, the arbitrator must conclude that the inconsistencies and contradictions in Worix' testimony would lead to a conclusion that the evidence would not support a finding that Gray had committed a physical assault upon Worix. The medical evidence is inconclusive in that respect, and the testimony of Worix is so contradictory in nature as to require a finding that the evidence would not support a conclusion that Gray had, in fact, committed a physical assault upon Worix.

Gray, however, unquestionably attempted to strike Worix. He unquestionably threw an object in Worix' direction. He unquestionably directed profane, abusive and threatening language toward Worix. That action constituted a violation of General Rule 127-p and would justify the imposition of disciplinary measures against Gray consistent with the degree of the committed offense.

Since the Company has relied in part upon Gray's prior disciplinary record, that record should be reviewed. Since Gray's employment in 1977 he had accumulated what can only be characterized as an abominable record. There are thirteen recorded violations of Company rules and regulations resulting in five suspensions from employment and one discharge from employment. That discharge resulted from a violation of General Safety Rules in 1977. Gray was returned to work and was warned that further conduct of that nature would result in termination. In addition to those acts of discipline, Gray was suspended in September, 1978, preliminary to discharge for excessive absenteeism. He was again restored to work on that occasion with a final warning. In February, 1981, he had a record review with the Assistant Superintendent concerning his overall work record, at which time he was informed that a continued course of unsatisfactory conduct would result in his termination from employment.

Between the date of the February 20, 1981, record review with the Assistant Superintendent and the date of the incident in question on or about November 26, 1981, no discipline had been imposed against Gray during that nine-month period. It is evident from a review of this record that the Company has gone a long way with Gray. It has been eminently fair with Gray in imposing corrective and progressive discipline. If the evidence would have supported the Company's contention that Gray did commit an assault upon Worix, then and in that event the penalty of termination would have been completely justified.

The fact remains, however, that Worix is not completely blameless. He knew that he was in trouble with a number of fellow employees because of his continued failure to relieve those employees in accordance with the accepted relief procedures. He knew that Gray would become angry and upset if he reported for work late on November 26, 1981. He had threatened to get Gray discharged from employment. His conduct can only be characterized as provocative in an effort to induce Gray to commit an offense that would result in Gray's termination from employment.

Those facts, however, do not and cannot constitute an excuse for Gray's conduct. Rule 127-a and Rule 127-p appear in the General Rules for Safety and Personal Conduct for the purpose of the protection and safety of all Inland employees. If Gray was of the opinion that Worix was attempting to provoke him into a fight, then and in that event it was incumbent upon Gray to register a complaint and insist that members of supervision take whatever steps would be necessary to make certain that Worix made his reliefs on time in the same manner expected of all other employees similarly situated.

In view of the unusual nature of the background of events, the arbitrator does not believe that Gray should have been terminated from employment. His good record for a period of nine months preceding the incident, when coupled with Worix' obviously provocative action, should be considered when measuring

the degree of discipline to be imposed upon Gray. The arbitrator will, therefore, find that Gray should be provided one further opportunity to demonstrate that he can live within the rules laid down for employees' conduct. He should be restored to employment, with seniority rights, but without any back pay for the period between the date of his termination from employment and the effective date of his restoration thereto.

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

AWARD NO. 724

Grievance No. 6-P-32

1. Just cause did not exist for the termination of Robert Gray from employment.
2. Robert Gray shall be restored to employment with the Company, with seniority rights, but without any back pay for the period between the date of his termination from employment and the effective date of his restoration thereto.
3. The intervening period shall be considered to constitute a period of disciplinary suspension from employment.

/s/ Bert L. Luskin

ARBITRATOR

November 2, 1982