

Inland Steel Award No. 727

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DISCIPLINE

GRIEVANCE NO. 4-P-30

APPEAL NO. 1331

AWARD NO. 727

SUMMARY: Discharge of grievant for violation of a Company rule against reporting for work under the influence of drugs not prescribed by a physician, possession or use of drugs on Company property is set aside. The evidence was not sufficient to support a conclusion that grievant was under the influence of a controlled drug (marijuana) on the day in question, or that he was in possession of marijuana. Grievant's refusal to take a drug screening test did not raise any presumption of guilt. Taking of such a test was not mandatory.

COMPANY: INLAND STEEL CO.

PLANT: EAST CHICAGO, IND.

DISTRICT: 31

ARBITRATOR: BERT L. LUSKIN

DATE OF DECISION: DECEMBER 23, 1982

BACKGROUND

Douglas Guzorek was employed by the Company on August 31, 1978. He continued in employment thereafter until an incident occurred on the 11 p.m. to 7 a.m. turn on January 9, 1982, that ultimately resulted in his termination from employment on February 5, 1982. Guzorek was charged with a violation of Rule No. 127-b of the Company's General Rules for Safety and Personal Conduct together with his "overall unsatisfactory work record."

The reference to Guzorek's "unsatisfactory work record" was based upon three incidents of discipline imposed against Guzorek. The first incident occurred on September 14, 1979, when Guzorek was reprimanded for his absentee record. The second incident occurred on January 22, 1980, when Guzorek was disciplined for one turn because of his absentee record. The third incident concerned itself with a three-turn suspension imposed on February 5, 1981, for absenteeism.

Most of the essential and basic facts that led to Guzorek's termination from employment are not in dispute. Guzorek reposed for work on the 11-7 turn on January 9, 1982, at which time he was scheduled to work as a Tractor Operator in the Mobile Equipment Sequence of the No. 4 B.O.F. Department. Shortly after the start of the turn Guzorek was instructed to move up (temporarily) to the occupation of Mobile Leader. The work assignment required him to pick up a specialized piece of equipment known as the 966 Traxcavator Caterpillar. That unit, commonly referred to as "Cat," is a large piece of equipment used as a front-end loader. Guzorek's assigned task was to move that piece of equipment to the scrap yard and to push scrap boxes. At approximately 12:15 a.m. the Foreman (Rumery) was informed by a bargaining unit employee that Guzorek had not as yet arrived at the scrap yard. Foreman Rumery proceeded toward the scrap yard. Upon arriving in that area he observed Guzorek driving the Cat down the north end of the roadway in the direction of the scrap yard. Guzorek abruptly stopped the Cat, whereupon Foreman Rumery walked to the Cat in order to determine whether Guzorek was encountering any operating problems. He approached the cab of the Cat and noticed Guzorek staring straight ahead. The Foreman knocked on the cab door, attracted Guzorek's attention and asked him to get out of the Cat. Guzorek complied with that direction, whereupon the Foreman asked Guzorek if he was all right.

The Foreman then questioned Guzorek concerning Guzorek's possible use of alcohol or drugs. Guzorek insisted that he felt all right, and denied that he was under the influence of alcohol or drugs. Guzorek informed the Foreman that he was upset because he had had a "fight" with his wife before coming to work, and that he had had very little sleep the night before. The Foreman accepted that statement as an explanation for what appeared to the Foreman to be Guzorek's erratic form of driving the Cat. Guzorek then proceeded to carry out his assignment.

Approximately 30 minutes later (12:45 a.m.) Foreman Rumery received a call from a bargaining unit employee who was working with Guzorek as a safety- man. Foreman Rumery was informed that the grievant (Guzorek) was operating the Cat in an erratic manner and had struck the building columns three times while attempting to drive the Cat into the scrap yard.

Foreman Rumery returned to the scrap yard, whereupon he directed Guzorek to dismount from the machine. Foreman Rumery looked at Guzorek and noted that Guzorek appeared to be "glassy eyed" and that he seemed to be "in his own world." Foreman Rumery's view of Guzorek (together with the information he had received from the bargaining unit employee concerning Guzorek's erratic operation of the Cat) led the Foreman to conclude that something was wrong with Guzorek and that it was best that Guzorek be escorted to the Inland Clinic by a Plant Protection officer in order that he could be tested to determine whether he was under the influence of alcohol or drugs.

Guzorek proceeded to the Clinic. A paramedic interviewed Guzorek. There is some conflict in the evidence concerning the statement attributed to the paramedic. Guzorek contended that the paramedic informed him that taking a breathalyzer test was a mandatory procedure, whereas the taking of a urinalysis to determine any possible drug content in Guzorek's body was a purely voluntary function. The paramedic testified that he informed Guzorek that both the breathalyzer and the urine test were voluntary functions and did not have to be performed if Guzorek objected to taking either or both of the tests. When Guzorek asked the paramedic what purpose would be served by taking the drug test, he was informed that a test of that type would disclose the presence of any drugs in his system. The breathalyzer test was taken and proved to be negative for alcohol consumption. Guzorek refused to take the urine test and stated, "What I do on my time is my business."

Guzorek's locker was checked, and did not disclose the presence of any controlled substance. At a later time Guzorek informed the Company that he had smoked marijuana cigarettes when he was not at work, but he insisted that he had not smoked any marijuana on the day in question. He insisted that he was not under the influence of marijuana or any other controlled substance at the time that he reported for work on the day in question.

After Guzorek had taken the breathalyzer test, the paramedic conducted a clinical examination. He subsequently reported that the examination disclosed what he considered to be three abnormalities. He detected (1) slurred speech, (2) Guzorek's pupils were "sluggish to react," and (3) Guzorek, in his speech, demonstrated what the paramedic considered to be a "confused flow of thoughts."

Guzorek was sent home. He returned to work on the following day and was thereafter removed from his schedule. He was suspended on January 26, 1982. Guzorek requested and was granted a suspension hearing (Article 8, Section 1). That hearing was held on January 28, 1982. Guzorek at that time informed the Company that he was an occasional marijuana user, but he denied smoking marijuana on January 9, 1982, and he insisted that the only foreign substance which he had ingested on that date was a prescription drug called Norgesic, which had been prescribed for him by a doctor as a result of a back injury which Guzorek had sustained shortly prior thereto.

Guzorek was thereafter terminated from employment on February 5, 1982. A grievance was filed and was processed through the preliminary steps of the grievance procedure. The issue arising therefrom became the subject matter of this arbitration proceeding.

DISCUSSION

The Company contended that Guzorek was required to take a drug screening test in order to determine with any degree of certainty whether his appearance and the erratic operation of the vehicle that he was driving were due to the use of controlled and illegal drugs. The Company contended that when Guzorek refused to take such a test, a reasonable inference could be drawn that he was, in fact, under the influence of an illegal drug and that his erratic behavior and his peculiar appearance were drug related.

The Company contended that many Arbitrators have sustained the discharge of employees based upon evidence that would lead to a reasonable conclusion that such a person or persons was under the influence of an intoxicant. The Company contended that all of the competent evidence in the record would lead to a conclusion that Guzorek's condition could not be attributed to a prescription drug (Norgesic) which he contended he was taking and which had been prescribed for him by a doctor. The Company contended that all of the competent evidence in the record would lead to a reasonable conclusion that any possible aftereffects induced by "Norgesic" would have worn off many hours before Guzorek was observed driving a large and heavy piece of equipment in an erratic manner. The Company contended that that fact, together with his slurred speech and the unusual condition of the pupils of his eyes, as well as his obvious and evident "confused flow of thoughts," would support a conclusion that Guzorek was under the influence of a controlled drug.

The Company contended that consideration should be given to the fact that Guzorek has admitted using marijuana, and the Company contended that it would be reasonable to conclude that Guzorek's condition was directly attributable to the use of marijuana. The Company contended that Guzorek's conduct

constituted a clear and evident violation of Rule 127-b of the Company's General Rules for Safety and Personal Conduct. The Company contended that Guzorek's unsatisfactory work record should be taken into consideration in a determination with respect to whether just and proper cause existed for Guzorek's termination from employment.

The Union contended that Guzorek was informed that he was not mandatorily required to take a drug screening test and his refusal to take such a test could not constitute just or proper cause for his termination from employment. The Union contended that no inference can or should be drawn from the fact that Guzorek refused to take a drug screening test. The Union contended that Guzorek believed (and he had every right to believe) that a drug screening test might have disclosed the fact that he had smoked marijuana while away from the Plant during periods of time when the use of marijuana could not have possibly affected his conduct or his conduct or his work performance. The Union contended that Guzorek was concerned that a drug screening test might disclose evidence of the use of marijuana and might result in the imposition of disciplinary measures even though the marijuana was used on "Guzorek's own time" and during a period of time when it would have had no effect or impact upon Guzorek when he subsequently reported for work.

The Union contended that the Company on numerous occasions has withheld or revoked the imposition of disciplinary measures where the Company either merely suspected an employee of using marijuana or in instances where marijuana was used while the employee was away from work and "on his own time." The Union contended that the Company in a number of instances had not imposed any form of discipline upon employees where the Company could not establish by competent evidence that marijuana was used on Company property.

The Union contended that there is competent medical evidence in the record that would indicate that the prescription drug being used by Guzorek could cause a reaction similar to or identical with the condition observed by the Company's paramedic who interviewed and examined Guzorek after Guzorek was brought to the Company clinic. The Union contended that Guzorek was informed by the paramedic that taking a drug screening test was voluntary, and Guzorek had every right, under those circumstances, to assume that no penalty would be imposed against him because he had refused to take the drug screening test.

The Union contended that the evidence in this case will not support a conclusion or finding that Guzorek was under the influence of marijuana on the evening in question; nor will the evidence support a conclusion that Guzorek had used marijuana on Company property or during working hours on the night in question.

Rule 127-b of the General Rules for Safety and Personal Conduct reads as follows:

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

"b. Reporting for work under the influence of drugs not prescribed by a licensed physician for personal use while at work; being in possession of, or use of, such drugs while on company property, or bringing such drugs onto company property."

There is no published rule or regulation that makes it mandatory for an employee to submit to a drug screening test. In the absence of any such published rule or regulation the Arbitrator cannot find from the evidence in this record that the refusal to take the test would have constituted cause for the imposition of disciplinary measures.

The Arbitrator cannot infer from Guzorek's refusal to take the test that Guzorek was at that time under the influence of a controlled drug or that he had been smoking marijuana. The record is clear. Guzorek was led to believe during the course of his discussion with the paramedic at the clinic that taking the drug screening test was not a mandatory procedure. Guzorek did take the alcohol test. The result was negative. He refused to take the drug screening test because of his concern that it might disclose the presence of marijuana in his system. Marijuana was not found on Guzorek's person. He was never seen smoking a marijuana cigarette and there is no testimony in this record that would indicate that anyone ever detected the distinct odor of marijuana when they were in close proximity to Guzorek.

The only direct evidence in this record concerning Guzorek's use of marijuana on Company premises was the testimony of a Supervisor. That witness testified that Guzorek was having trouble driving the "cat" and he testified that he observed Guzorek "staring straight ahead." When questioned concerning his condition, Guzorek informed the Foreman that he had had very little sleep the night before and that he was emotionally upset because he had had a fight with his wife before coming to work. The Foreman accepted Guzorek's explanation and permitted him to return to the cab of the "cat" and to proceed to drive to his assignment. The Foreman changed his mind only after he had received a telephone call from a bargaining unit employee 30 minutes later informing him that Guzorek was having trouble operating the "cat" and had

struck building columns while attempting to drive the "cat" into the scrap yard. Although the Foreman testified that when he saw Guzorek the second time Guzorek appeared to be "glassy eyed" and he seemed to be "in his own world," the fact remains that the Foreman had not drawn any such conclusion concerning Guzorek's condition when he had seen him some 30 minutes earlier.

The Company offered what it contended was corroborating evidence from the paramedic who examined Guzorek in the clinic and who observed what he considered to be three abnormalities. The paramedic referred to Guzorek's slurred speech, the condition of the pupils of his eyes, and his opinion that Guzorek demonstrated a "confused flow of thoughts." It should be noted, however, that Guzorek was able to ask questions concerning the drug screening test, and the mandatory or voluntary nature of the tests. He was sufficiently alert enough to decide that he did not want to take the test because he knew that he had previously smoked marijuana and he was concerned that the test would disclose the presence of marijuana in his system.

Many Arbitrators have accepted testimony of witnesses who have expressed opinions relating to a person's sobriety or intoxication. Some of that evidence was based upon odor of alcohol emanating from an individual, a stumbling gait, incoherent speech, glassy or red eyes, and other physical manifestations of a state of intoxication or of being under the influence of an intoxicant. In the instant case, however, the clinical evidence was not so clear and convincing in nature as to permit this Arbitrator to reach a conclusion that Guzorek was, in fact, under the influence of a controlled drug in violation of Rule 127-b. From an analysis of all the evidence in the record the Arbitrator does not believe that Guzorek's described condition was a result of ingestion of a prescription drug (Norgesic) that Guzorek had been taking because of back pains. The medical testimony offered by witnesses for the Company and the Union would lead the Arbitrator to believe that the drug Norgesic could under certain circumstances cause an employee to react in the manner described by the Foreman and by the paramedic. Guzorek, however, had taken the prescription drug (Norgesic) hours before he came to work, and any possible conceivable reaction to the drug would have worn off prior to the time that Guzorek reported for work. The Arbitrator will not, therefore, accept the grievant's contention that his condition had been caused by a reaction to a prescribed drug.

The fact that Guzorek had received a written warning and two prior suspensions because of absenteeism would not have any bearing on the issue in this case unless the evidence would have supported a conclusion and finding that Guzorek had in fact violated Rule 127-b of the General Rules for Safety and Personal Conduct.

In substance, the Arbitrator must find that the evidence in this case will not support a conclusion or finding that Guzorek had smoked marijuana while at work or that he had come to work under the influence of marijuana. Rule 127-b is clear and unambiguous, and a violation of that rule would, without question, constitute a basis for the termination from employment of an employee if, in fact, an employee was in possession of an illegal drug on Company premises or was under the influence of an illegal drug while on Company premises.

The Arbitrator cannot find from the evidence in this record that Guzorek had violated Rule 12-b. He cannot find from the evidence in this record that Guzorek had marijuana in his possession while on Company premises; nor can he find that Guzorek was under the influence of marijuana while he was on Company premises. The Arbitrator cannot find that Guzorek's refusal to take the drug screening test would raise a presumption of guilt. The Arbitrator must, therefore, find that the evidence will not support a conclusion or finding that Guzorek had, in fact, violated Rule 127-b, and the grievance must be sustained.

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

AWARD NO. 727

Grievance No. 4-P-30

The Company did not have just and proper cause for terminating Douglas Guzorek from employment. The grievant should be restored to employment, with seniority rights, and with back pay for time lost from work computed in accordance with the contractual formula.