

Award No. 728
In the Matter of the Arbitration Between
INLAND STEEL COMPANY
AND
UNITED STEELWORKERS OF AMERICA
AND ITS LOCAL UNION 1010
Grievance No. 25-P-41
Appeal No. 1340
Arbitrator: Bert L. Luskin
January 25, 1983

INTRODUCTION

An arbitration hearing between the parties was held in Harvey, Illinois, on January 17, 1983. Pre-hearing briefs were filed on behalf of the respective parties and exchanged between them.

APPEARANCES

For the Company:

Mr. R. T. Larson, Arbitration Coordinator, Labor Relations
Mr. W. D. Bozeman, Assistant Superintendent, 80" Hot Strip Mill
Mr. R. Vela, Assistant Superintendent, Labor Relations
Mr. R. Kosakowski, General Foreman, 80" Hot Strip
Mr. K. Dawson, Foreman, 80" Hot Strip
Mr. M. Oliver, Senior Representative, Labor Relations

For the Union:

Mr. Thomas L. Barrett, Staff Representative
Mr. Joseph Gyurko, Chairman, Grievance Committee
Mr. Don Lutes, Secretary, Grievance Committee
Mr. Araldo Manzo, Griever
Mr. James Zamko, Grievant

BACKGROUND

James Zamko was employed by the Company on March 16, 1972. He continued in employment thereafter until he was suspended and then terminated from employment on April 13, 1982. At the time of Zamko's termination he was employed as a laborer.

Zamko reported for work on March 29, 1982. Shortly before the start of the shift he informed his supervisor that he was sick and that he wanted to go home. The supervisor granted his request, and Zamko left the plant. When the matter was reported to the General Foreman, Zamko's record was examined. The record disclosed that Zamko had had a record review on September 21, 1977, and was warned at that time that unless his attendance improved he would be subject to disciplinary measures including termination from employment. Zamko had had a second record review with the Assistant Superintendent on May 27, 1981, concerning his attendance record and other problems relating to his employment with the Company. He was warned at that time that unless his attendance improved he would be terminated from employment. Upon reviewing Zamko's attendance record for the period between 1977 and March 29, 1982, the Assistant Superintendent concluded that Zamko would have to be suspended from employment. The entire matter was reviewed by other members of management and it was concluded that Zamko's record of absenteeism had reached a point where the Company could no longer rely upon Zamko to report for work with any degree of regularity. Zamko was thereupon terminated from employment.

Zamko filed a grievance protesting his termination. That grievance was processed through the grievance procedure and the issue arising therefrom became the subject matter of this arbitration hearing proceeding.

DISCUSSION

Zamko's disciplinary record for the first-year period immediately preceding his termination from employment is hereinafter set forth as follows:

| Date | Infraction | Action |
|---------|---------------|---|
| 9-21-77 | Entire Record | Record Review with Assistant Superintendent |
| 12-1-80 | Absenteeism | Reprimand |
| 2-25-81 | Absenteeism | Discipline - 1 turn |
| 5-5-81 | Absenteeism | Discipline - 3 turns |

| | | |
|---------|---------------|---|
| 5-27-81 | Entire Record | Record Review with Assistant Superintendent |
|---------|---------------|---|

The Company contended that in the five-year period preceding his termination Zamko had developed an absenteeism record that made it evident that he could no longer be relied upon to report for work as scheduled or to maintain an attendance record consistent with that required of any other employee. In support of that contention the Company introduced records indicating the extent and degree of his absences from work in the period between March 29, 1977, and March 29, 1982. The record introduced into evidence was admittedly accurate. That record is hereinafter set forth as follows:

1977 <FN 1> (since 3-29-77) - 7 turns (6 sick, 1 other)

1978 <FN 2> 19 turns (14 sick, 3 transportation, 2 unknown)

1979 19 turns (15 sick, 2 transportation, 1 personal, 1 other)

1980 <FN 3> 19 turns (16 sick, 2 transportation, 1 other)

1981 26 turns (19 sick, 2 transportation, 5 home early)

1982 (until 3-39-82) - 4 turns (4 sick)

The Company contended that in view of the absentee record developed by Zamko, the reasons for his continued absences had become immaterial and, under those circumstances, the Company could no longer be required to maintain Zamko in employment on the basis of an irregularity of attendance that could not be tolerated.

The Company contended that its position in that respect was supported by Inland Award No. 252 (Arbitrator Peter M. Seitz) and by the decision of Permanent Arbitrator David L. Cole in Inland Award No. 628. The Company contended that this arbitrator (serving as the Company's current umpire) in Inland Award 666 held as follows:

". . . There comes a point, however, when chronic illnesses and a continuing series of absences because of various illnesses over extended periods of time, makes it evident that an employee cannot work in an industrial atmosphere and such an employee must be separated from active employment."

The Company contended that its position was further supported by other umpires in the steel industry (Arbitrators Mittenhal, Seward and Kerrison), all of whom have held that the termination of the services of a chronically absent employee need not necessarily be viewed as a disciplinary matter, but would be based upon a demonstrated lack of ability on the part of an employee to carry out his basic obligation of reporting for work as scheduled with the same reasonable degree of attendance required of all labor employees.

The Company contended that in the instant case supervision had been extremely patient with Zamko and had made every effort to assist him in correcting unreliable attendance. The Company contended that many of his absences (in addition to illnesses) were occasioned by transportation problems, personal business and various other reasons, including his failure to report on certain days when he simply decided not to go to work although he was admittedly under no form of disability.

The Company contended that it had imposed progressive discipline on Zamko and it had provided him with two record reviews, each of which were in effect final steps prior to discharge. The Company contended that in each of those final review sessions Zamko was informed that he was being given a final warning that he would have to improve his attendance or be terminated from employment. The Company contended that, although Zamko had illustrated an improved attendance record for a period of approximately one year after his 1977 record review, his attendance again deteriorated and reached a point which could no longer be tolerated.

The Company contended that it had been eminently fair and considerate of Zamko's physical problems. The Company contended that when the Company's Medical Department was informed of Zamko's series of illnesses as a result of reports received from his doctors, the Company's Medical Department concurred in the recommendation of Zamko's doctors, and Zamko was placed on a medical restriction in 1977. As a result thereof, Zamko was not permitted to work at heights and he was placed in positions that did not involve stress or pressure of any kind. His work assignments were thereafter limited to performance of laboring functions which included maintenance of washrooms, cleaning floor areas, and the occasional shoveling of slag. The Company contended that, although Zamko had asked for the opportunity to be promoted into a position that would have afforded him more meaningful types of assignments, the Company had accepted the psychiatric evaluations of Zamko's doctors and avoided placing Zamko in any position that would have subjected him to pressure or tension.

The Company strongly objected to a reference made by the Union concerning the alleged application of Article 14, Section 8, of the Collective Bargaining Agreement. The Company pointed to the fact that the

language of that provision deals strictly with alcoholism and drug abuse and does not and has never been extended to include psychiatric problems or problems associated with mental illnesses.

The Company contended that Zamko's ten years of service with the Company does not provide him with immunity from the penalty of termination where the record of absenteeism has reached a point that would leave the Company no reasonable alternative other than to terminate Zamko from employment.

The Union contended that the major periods of absences were caused by various forms of illnesses that afflicted Zamko. The Union contended that for a substantial period of time after the record review of 1977 Zamko had improved his attendance. The Union contended that Zamko could not be held responsible for absences occasioned by ear infections, treatment for schizophrenia, and an absence occasioned by a liver disorder.

The Union contended that the Company should not have acted to impose discipline against Zamko when he asked permission to go home on March 29, 1982, prior to the start of his shift of work, because he was not feeling well. The Union contended that when the Company granted Zamko permission to go home, it, in effect, consented to his absence on that day and accepted his statement that he was sick and unable to continue at work.

The Union contended that it was not placing reliance upon the language of Article 14, Section 8, as a defense in this case. The Union contended that the major portions of Zamko's absences were caused by documented periods of illness or injury.

The Union contended that in 1981 Zamko was required to give testimony in a third step hearing when he had allegedly witnessed a fight between bargaining unit employees in the Company's parking lot. The Union contended that it had urged the Company not to require Zamko to testify in that case since the Union was concerned with the possibility that the anxiety evidenced by Zamko would cause him to suffer a mental breakdown. The Union contended that Zamko was forced to testify in that case and that the pressure of being subjected to intense examination resulted in an extended absence in 1982 occasioned by a recurrence of the psychiatric problems for which he had been treated.

The Union contended that in all respects (with the exception of the attendance problem) Zamko had been an excellent employee and had never been subjected to any form of discipline other than for attendance problems. The Union contends that consideration must and should be given to the fact that Zamko had been employed with the Company for approximately ten years and that a restoration to employment would be fully justified on the basis of the admitted record in this case.

The arbitrator must note that he fully and completely subscribes to the opinions expressed by Arbitrator Seitz and by former Umpire Cole in Inland Awards No. 252 and No. 628. Mr. Cole pointed to the fact that, since the Company had an obligation to schedule and regulate its operations as an essential part of its management functions, it had a right to expect regular and timely attendance of its employees. That is a basic and fundamental statement of position which has been stated and restated time and again by every umpire serving under basic steel agreements. A statement of position expressed by Arbitrator Seward sets forth a fundamental principle when he stated in Bethlehem Steel Company decision No. 772 "a point must eventually be reached where the reason for the absences becomes immaterial and the question becomes simply whether the Company can properly be required to retain on its payroll an employee who cannot reasonably be relied on to come to work. . . ."

Article 14, Section 8, is not applicable in the instant case. That provision concerns itself with matters involving alcoholism and/or drug abuse and would have no application to problems involving chronic absences occasioned by physical illnesses of the type suffered by Zamko.

Zamko had documented medical support for a substantial number of his absences from work. He suffered from a variety of illnesses, some of which were organic and some psychiatric in nature. The Company has been eminently fair with Zamko. It has demonstrated a willingness to make extraordinary arrangements so as to permit Zamko to continue in employment for a period of almost five years after he had been placed under medical restrictions based upon recommendations received from Zamko's doctors. The Company's ability to utilize Zamko's services were restricted by virtue of the need to assign Zamko duties which would reduce his exposure to working at heights or in positions that would not place him under stress or strain. Although many of Zamko's absences were of a type and nature which he could not control because of his illnesses, it is evident that Zamko has made a sincere effort to report for work on all occasions when he was scheduled to work and when he was physically able to work. In the period between 1977 and 1982 he was absent on nine occasions because of alleged transportation problems. Zamko testified that he owned an automobile that was in good operating condition. In that same period of time he was absent from work on six occasions for personal or for "unknown" reasons. In that same five-year period Zamko lost 18 weeks

from work for reasons identified as "anxiety," and he lost 14 weeks of work for medical reasons identified as "anxiety and liver disorder." In that same period of time he lost 11 weeks of work for medical reasons identified as "schizophrenia" and "inner ear caustal myosistitis." In addition to those periods of absences, he was away from work on 74 turns for various and varying types of illnesses.

Zamko was absent for a total of 304 turns in the five-year period. An absentee record that averaged 60 turns of work per year becomes a record that can only be deemed as intolerable irrespective of the justification for those absences.

The arbitrator, however, is not convinced from the record in this case that the Company had exhausted its efforts to correct the absentee record of Zamko by means of progressive and corrective discipline. The record review of September, 1977, occurred almost five years preceding his termination from employment. The discipline imposed thereafter consisted of one reprimand, a suspension of one turn, and a suspension of three turns. There is no further record of discipline for a period of approximately one year preceding his termination from employment.

The arbitrator is mindful of the fact that in some types of absentee problems, discipline by suspension serves no useful purpose, especially where the employee has been unable to control his absenteeism because of chronic or continuing forms of illnesses. The fact remains, however, that the record in this case should have justified one further attempt on the part of the Company to induce Zamko to improve his attendance record, at least on those occasions when it would have been physically possible for him to do so. The application of the principles of just and proper cause would, in this case, require that Zamko be provided with one further opportunity to demonstrate that he can and will report for work on a regular basis consistent with what is expected and required of all other employees. If Zamko is unwilling to make a reasonable and sincere effort to report to work on a regular basis, or if the record indicates that he is unable because of continuing chronic illnesses to maintain a reasonable record of regularity in attendance, the Company would have no alternative except to thereafter terminate Zamko from employment.

Zamko should be restored to employment, with seniority rights. He is not entitled to any back pay. The period between the date of his termination from employment and the date of his restoration thereto should be considered to constitute a period of disciplinary suspension from employment.

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

AWARD NO. 728

Grievance No. 25-P-41

James Zamko shall be restored to employment, with seniority rights, but without any back pay for the period between the date of his suspension and subsequent 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

January 25, 1983

<FN 1>excludes eighteen (18) weeks of extended absence for anxiety

<FN 2>excludes fourteen (14) weeks of extended absence for a liver disorder and anxiety

<FN 3>excludes eleven (11) weeks of extended absence for inner caustal myosistitis of the right ear and schizophrenia