

Inland Steel Award No. 736

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DISCIPLINE

GRIEVANCE NO. 28-P-44

APPEAL NO. 1349

AWARD NO. 736

SUMMARY: Three-day suspension imposed on grievant, a Grievance Committeeman, for "insubordination" and "use of profane, abusive, or threatening language" toward an Acting General Foreman was not for proper cause and is set aside. While grievant had used profane language in objecting to the Foreman's refusal to advance the time of a meeting, the offensive language was not directed toward the Foreman in a personal vein or in a manner designed to personally demean or orally abuse the Foreman, nor did grievant threaten or intimidate the Foreman in any way. The evidence did not show that grievant had physically restrained or attempted to restrain the Foreman from leaving his office.

COMPANY: INLAND STEEL CO.

PLANT: INDIANA HARBOR WORKS

DISTRICT: 31

ARBITRATOR: BERT L. LUSKIN

DATE OF DECISION: AUGUST 17, 1983

BACKGROUND

Rudy Schneider was employed by the Company on September 13, 1972. He is currently employed as a Motor Inspector in the electrical sequence at the No. 3 Cold Strip East Department. Schneider has served as an elected Grievance Committeeman for the Local Union.

An employee named James Douglas had been suspended from employment for several days for the violation of a Company rule. Douglas indicated a desire to submit an oral grievance. In accordance with the contractual procedure, a grievance of that type would have been submitted to his General Foreman. The General Foreman who had issued the suspension to Douglas was away from the Plant and was being temporarily replaced by W. Valavanis, who was serving as the Acting General Foreman of the pickle line-tandem mill.

On July 28, 1981, Grievance Committeeman Schneider called Valavanis and informed him that he wanted to meet with Valavanis for the purpose of submitting an oral grievance on behalf of Douglas. There is some question concerning some statements attributed to Valavanis. The parties are in agreement, however, that a meeting was scheduled for July 29, 1981, in Valavanis' office at 8:00 a.m. Schneider and Douglas were working the midnight turn and their respective shifts of work would have ended at 6:30 a.m. Valavanis had informed Schneider that he could not meet with Schneider earlier than 8:00 a.m., and they agreed to meet at that time.

At approximately 6:50 a.m. on July 29, 1981, Schneider encountered Valavanis on the mill floor. Schneider indicated some surprise and he reminded Valavanis that Valavanis had informed Schneider that he would not be arriving at work until 7:45 a.m. Valavanis responded to that statement by informing Schneider that he had not told Schneider when he would be expected to arrive at work, but had told Schneider only that he could not meet with Schneider and Douglas until 8:00 a.m.

At approximately 7:00 a.m., Schneider and Douglas entered the General Foreman's office where Valavanis was seated at a desk preparing reports on production for the three preceding shifts of work for submission to the Assistant Superintendent. Those reports were generally submitted to the Assistant Superintendent by approximately 7:30 a.m.

Schneider requested that Valavanis conduct the Step 1 oral complaint discussion immediately. Schneider informed Valavanis that both he and Douglas had worked the midnight shift and that if the oral hearing was held immediately the meeting could probably be concluded within a few minutes. Schneider stated that he anticipated that the Acting General Foreman would undoubtedly sustain the disciplinary suspension imposed against Douglas since the discipline had been imposed by the General Foreman. Valavanis refused to hold the meeting at 7:00 a.m., stating that it was imperative that the production reports be completed for presentation to the Assistant Superintendent and that the reports had to be ready when the Assistant

Superintendent called and asked for the submission of those reports. Valavanis informed Schneider that the grievance meeting had been scheduled for 8:00 a.m. and that he would be prepared to hold the meeting at the scheduled time. Schneider insisted that the meeting be moved up from 8:00 a.m. to 7:00 a.m., and when Valavanis refused (after pointing out that the reports had to be concluded before he could engage in a discussion on the Douglas grievance), Schneider became angry and continued to argue with Valavanis. Schneider used profanity and kept insisting that the meeting should be held then and there. Schneider took the position that the contractual language required that Valavanis grant Schneider the right to hold the oral hearing at the time and place convenient to the Grievance Committeeman. Schneider insisted that there was no reason for inconveniencing Schneider and Douglas by keeping them in the plant until 8:00 a.m. when the oral hearing could in all probability be held and concluded in less than 10 minutes.

It was the Company's position that when Valavanis refused Schneider's request for an immediate oral hearing, Schneider became belligerent, directed profane language toward Valavanis and refused to leave the office after having been asked to do so by the Acting General Foreman. It was the Company's position that Schneider continued his harangue and refused to leave even after Valavanis informed Schneider that if he did not leave the office, plant protection would be called to escort him from the Mill. It was the Company's position that Schneider thereafter directed Douglas to be seated and that Schneider thereafter removed some papers from an envelope in preparation to commence the meeting which Valavanis could not grant at that time. Valavanis thereafter called plant protection and informed them that he wanted Schneider escorted from the Mill. It was the Company's contention that Schneider, at that point in time, closed the door to the office, whereupon Valavanis picked up his work papers, walked to the door, and began to open the door, at which time Schneider arose from his chair, put his hand on the door, pushed the door shut and stated, "Where the hell are you going?" It was the Company's position that Valavanis thereupon stepped back and stated to Schneider, "Don't get physical." It was the Company's position that Valavanis thereupon opened the door, walked out into the outer office where he seated himself at a Foreman's desk and continued to work on his reports. It was the Company's position that Schneider and Douglas thereafter walked out of the General Foreman's office and then walked out of the pickle-tandem office.

At approximately 7:50 a.m. Schneider called Valavanis and asked him whether or not the meeting could be held at the agreed-upon time of 8:00 a.m. Valavanis (who had completed his reports) then informed Schneider that he was prepared to hold the meeting at 8:00 a.m. Schneider and Douglas thereafter appeared in Valavanis' office. The meeting was held. Valavanis denied the oral grievance, and the meeting ended without further incident.

The Company thereafter issued a discipline letter to Schneider charging Schneider with a violation of General Rules for Safety and Personal Conduct 127-o and 127-p. The discipline letter contained a short synopsis of the events. Reference was made to the use of abusive language directed to Valavanis by Schneider; Schneider's refusal to leave the office when directed to do so; Schneider's refusal to wait for the Plant Protection Department after he was informed that he was to be escorted from the plant; and Schneider's action in physically holding the office door shut and refusing to allow Valavanis to leave his office. The discipline letter informed Schneider that future incidents of that type would not be tolerated and would be grounds for more severe disciplinary action up to and including suspension preliminary to discharge. Schneider was suspended from employment for three days with the dates to be selected "at the convenience of the Company."

Schneider filed a grievance contending that the discipline letter dated July 29, 1981, alleging violation of Safety Rules 127-o and 127-p, was without basis and a distortion of the events as they actually occurred. The grievance requested that the discipline letter be rescinded and all reference to the incident should be expunged from the record. The grievance requested that Schneider be paid for all time he was caused to lose from work, and the grievance contended that the Company had violated Article 3, Section 1, Article 4, Section 2, Article 6, Section 3, and Article 13, Section 2, of the Collective Bargaining Agreement as a result of the imposition of disciplinary measures against Schneider.

The grievance was thereafter denied and was processed through the preliminary steps of the grievance procedure. The issue arising therefrom became the subject matter of this grievance procedure.

DISCUSSION

The grievant was charged with violating Plant Rules 127-o and 127-p. 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:

"o. Insubordination (refusal or failure to perform work assigned or to comply with instruction of supervisory forces).

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

Most of the basic facts are not in dispute and have been set forth in background portion of this opinion and award. The grievant was under the impression that Foreman Valavanis had told him he would be arriving at the Plant at 7:45 a.m. and could not hold a First Step meeting with the grievant until 8:00 a.m. Valavanis, however, denied ever telling Schneider that he was arriving at 7:45 a.m. He contended that he informed Schneider that he could not meet with Schneider until 8:00 a.m. It is evident that Schneider resented having to wait for a period of one and one-half hours after his shift of work had ended before meeting with Valavanis. He entered the Foreman's office (accompanied by the employee whom he was representing) in an effort to move up the meeting by approximately one hour. It is also evident that Schneider was under the impression that, since the discipline against the employee (Douglas) had been imposed by the General Foreman, it was highly unlikely and improbable that Valavanis (who was serving as the Acting General Foreman in the absence of the General Foreman) would be inclined to do anything else other than to summarily deny the complaint in the oral step of the grievance procedure. He assumed, therefore, that the entire meeting would be perfunctory and could be ended in a few minutes, thereby allowing Schneider and the employee whom he was representing to leave the Plant some 30 minutes after the end of their scheduled shift of work.

Valavanis testified that he could not take the time to talk with Schneider and Douglas at 7:00 a.m. since it was imperative that he complete some production reports before they would be picked up some time prior to 7:40 a.m.

The Union contended that a literal reading of the language appearing in Article 6, Section 3, would require that a member of supervision conduct a Step 1 oral discussion at any time that such a discussion may be requested by an employee or by the employee accompanied by his Union representative. Article 6, Section 3, Step 1, reads as follows:

"ARTICLE 6

ADJUSTMENT OF COMPLAINTS AND GRIEVANCES

"SECTION 3. GRIEVANCE PROCEDURE.

"Step 1. Any employee who believes that he has a justifiable complaint or request may discuss it with his foreman, who has responsibility for resolving the complaint, with or without the Union representative for his plant area being present, as the employee may elect, in a serious effort to resolve the problem "

There is no set or fixed practice in this Plant with respect to the precise period of time when meetings of the type contemplated under the above cited Section of the Contract should take place. It is apparent, however, that the provision should be implemented in a manner which would permit the earliest and speediest resolution of a grievance in the initial Step 1 procedure. In most instances a meeting of that type can be arranged on short notice. The prevailing custom, practice and procedure in this Plant with respect to the holding of Step 1 meetings is that such a meeting is generally held at a period of time convenient to the respective parties. Asking a Grievance Committeeman to delay a meeting from 7:00 a.m. to 8:00 a.m. is not unreasonable, especially where the member of supervision has a compelling reason for refusing to hold a Step 1 meeting at a precise period of time that may be most convenient to a grievant or to his committeeman. It would follow, therefore, that the Company did not violate Article 6, Section 3, when Acting General Foreman Valavanis refused to hold a meeting with Schneider and a grievant named Douglas at 7:00 a.m. and insisted that the meeting be held at 8:00 a.m., the time when it had been originally scheduled to be held.

Schneider had every right to enter the office and to attempt to induce Valavanis to move the meeting up from 8:00 a.m. to 7:00 a.m. He had every right to urge Valavanis to accommodate him and the grievant in order that they could leave the Plant shortly after the end of their respective shifts of work. Schneider had every right to urge Valavanis to change his mind and to take a short period of time which Schneider believed would be necessary to conclude the meeting, after which the matter could be moved into the next step of the grievance procedure. Valavanis, however, was under no contractual obligation to grant Schneider's request, and Valavanis had the right to inform Schneider that he could not hold the meeting at that period of time.

The evidence would indicate that when Valavanis refused to move up the time of the meeting, and when Schneider was unable to convince Valavanis to change his mind, Schneider became angered and incensed at what he believed to be an unreasonable denial of a legitimate request. It was at that point in time that

Schneider began to use language which included profane expressions to indicate his displeasure. Schneider was charged with stating to Valavanis "I work all fucking midnight and I have to get this meeting over." When Valavanis refused to hold the meeting then and there, Schneider then stated, "According to the Contract, it's your fucking obligation to hold a meeting now." When Valavanis refused to grant Schneider's request, Schneider continued to argue with Valavanis and he continued to use the word "fuck" to demonstrate his anger and displeasure with the position adopted by Valavanis.

The evidence is clear, however, that Schneider never directed a profane expression toward Valavanis in a personal vein. He used the profane words as expletives and a demonstration of his displeasure, and he used them to punctuate his remarks. To that extent the words he used are admittedly used by a substantial number of persons as a part of mill vernacular. They were used as an expression of Schneider's anger with what he believed to be a lack of courtesy on the part of Valavanis. In no instance, however, did he use profanity directed toward Valavanis in a personal form nor were they directed toward Valavanis in a manner designed to personally demean or orally abuse Foreman Valavanis.

Valavanis did not at any time direct any profane remarks or expressions toward Schneider. He maintained a calm demeanor at all times. He conducted himself with dignity and decorum. In the opinion of the Arbitrator, the more serious charge directed against Schneider was the contention advanced by Valavanis that, when he arose from his desk and attempted to open the door to leave the office, Schneider allegedly pushed the door shut and prevented Valavanis from leaving his own office. The Company contended that at that point in time Valavanis stepped back, stated to Schneider "don't get physical," whereupon Valavanis opened the door without any further interference from Schneider and walked into the outer office.

There can be no question but that any attempt on the part of Schneider to physically restrain Valavanis from attempting to leave his office would have constituted just and proper cause for the imposition of severe disciplinary measures consistent with the degree of the committed offense. Schneider denied that he, at any time, physically restrained or attempted to restrain Valavanis from leaving his office. He denied pushing the door shut, and he denied that he had attempted to use physical force to keep Valavanis in his office in order that Schneider could continue the discussion which Valavanis had asked to be ended.

The Arbitrator cannot find from the evidence in this record that Schneider used force to restrain Valavanis from leaving his office. The evidence will not support a conclusion or finding that Schneider attempted to physically restrain Valavanis when Valavanis decided to end the discussion by walking out of his own office.

A Grievance Committeeman representing an employee in the grievance procedure is permitted a substantial degree of latitude in the performance of his representational activities. He cannot, however, become physically abusive and he cannot overstep what must be considered to be the reasonable forms of representational activities. This incident occurred in the Plant and in the Foreman's office. Valavanis had a right to end the discussion. If Valavanis was unreasonable, any alleged impropriety on his part could have been made the subject of a complaint and a grievance. That, however, is not the direct issue in this case. Schneider did not have absolute immunity in the performance of his functions as a Grievance Committeeman. He pressed his argument forcefully and, since the profanity which he used was never directed toward Valavanis in a personal vein, he did not violate Plant Rule 127-p. Schneider had not been directed to wait until a member of plant protection appeared for the purpose of escorting Schneider from the Plant. As a matter of fact, Valavanis obviously did not consider that to be a significant matter since he talked with Schneider some 45 minutes later and agreed to hold a meeting at 8:00 a.m. That meeting was held. If Schneider had, in fact, committed an act of insubordination, there would have been no real obligation on Valavanis' part to hold the meeting at the scheduled time of 8:00 a.m.

The Arbitrator cannot find from the evidence in this record that Schneider had committed an offense which would have constituted a violation of the Plant rules as charged. Schneider may have been rude when he followed the Foreman into the outer office and stood there while the Foreman was attempting to complete some paper work. It is evident that Schneider was thereby exhibiting his anger at what he believed to have been a lack of courtesy on the part of Valavanis. Schneider did not publicly demean Valavanis; nor did he attempt to threaten or intimidate him in any fashion, which would have justified the imposition of disciplinary measures.

The Arbitrator must, therefore, find that the evidence will not support a conclusion and finding that Schneider violated either Plant Rules 127-o or 127-p. Under those circumstances proper cause did not exist for the imposition of the three-day suspension from employment.

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

AWARD NO. 736

Grievance No. 28-P-44

The Company did not have proper cause for the imposition of a three-day disciplinary suspension against Rudy Schneider. The suspension shall be set aside and the grievant shall be compensated for the time he was caused to lose from work as a result thereof.