

Arbitration Award No. 752
IN THE MATTER OF ARBITRATION
Between
INLAND STEEL COMPANY
Indiana Harbor Works
and
UNITED STEELWORKERS OF AMERICA
Local Union No. 1010
Grievance No. 12-R-18
Arbitrator: Clare B. McDermott
Opinion and Award
October 22, 1984

Subject: Discharge--Punching and Threatening Another Employee.

Statement of the Grievance: "The aggrieved, Darlene Boyd, Payroll No. 15273, contends the action taken by the Company, when on December 16, 1983, her suspension culminated in discharge is unjust and unwarranted in light of the circumstances.

"Relief Sought - The Agg. requests that she be reinstated and paid all monies lost.

"Violation is Claimed of Article 3, Section 1, Article 8, Section 1 of the Collective Bargaining Agreement."

Agreement Provisions Involved: Article 3, Section 1 of the March 1, 1983 Agreement

Statement of the Award: The grievance is denied.

Chronology

Grievance Filed: December 22, 1983

Step 3 Hearing: January 10, 1984

Step 3 Minutes: January 26, 1984

Step 4 Appeal: February 3, 1984

Step 4 Hearing(s): February 9, 1984; March 29, 1984; April 5, 1984; May 3, 10, & 31, 1984

Step 4 Minutes: August 10, 1984

Appeal to Arbitration: August 13, 1984

Arbitration Hearing: August 22, 1984

Appearances

Company

John A. Nielsen -- Coordinator, Labor Relations

Robert B. Castle -- Arbitration Coordinator, Labor Relations

Victor R. Hoffman -- Superintendent, Plant No. 1 Gal. Dept.

Rene' Vela -- Assistant Superintendent, Labor Relations

James Mahlie -- General Foreman, Plant No. 1 Gal. Dept.

Raoul Lozano -- Senior Foreman, Plant No. 1 Gal. Dept.

Ray Ignas -- Sergeant, Plant Protection

John L. Decker -- Administrator Supervisor, Medical Dept.

Margaret E. Smith

J. J. Spear-- Labor Relations

Union

Tom Barrett -- Staff Representative

Joe Gyurko -- Chairman Grievance Committee

Don Lutes -- Secretary Grievance Committee

Joe Gutierrez -- Griever

Paul Litton -- Assistant Griever

Darlene Boyd -- Grievant

BACKGROUND

This grievance from the Galvanizing Department of Indiana Harbor Works claims that grievant's discharge for allegedly striking and threatening another employee was without cause, in violation of Article 3, Section 1, and Article 8, Section 1 of the March 1, 1983 Agreement.

Grievant began with the Company in April of 1977, and she was working as a Crane Operator in Galvanizing on the 7-3 turn of Saturday, December 3, 1983.

Employee Margaret Smith, in Plant No. 1 Galvanizing Department, testified that she went to the women's locker room at about 11:15 a.m. As she entered she saw a woman lying on a bench, with her head covered

by a jacket. She said she washed her hands and was reaching for a paper towel before leaving the locker room when grievant jumped up and punched her twice, once in the left eye and once in the mouth. The woman who had been lying on the bench with her head covered was grievant. Smith said grievant's attack was without any provocation and that she did not fight or strike back but only held up her hands defensively. Smith said grievant accused her of breaking into grievant's locker. Smith said grievant said, ". . . you was the only mother-fucking bitch there that could have broken into my locker," and that Smith said that she ". . . better get her mother-fucking ass out . . .," or she would hit her again. Smith says she left the locker room without saying anything to grievant, because she was frightened and felt threatened. Smith went to the Lab and saw employees Biddings and Ready. She told Biddings what had happened. Ready called for Foreman Lozano, and he came to the Lab right away. Smith told him that grievant had hit her in the eye. Biddings had brought ice and a paper towel, and Smith held them on her eye. Smith and Foreman Lozano went to the Line Foreman's office, and she again told Lozano what had happened, as described above.

Lozano summoned General Foreman Mahlie, and Smith repeated what had happened, but without mentioning the alleged threatening remarks by grievant. Mahlie left and returned with grievant. Smith was in one room and grievant in another, but within earshot of each other. Smith heard grievant deny any involvement in this incident, and Smith says that shocked her. Mahlie again asked her what happened, and she told him again, mentioning both the attack and the threat.

Plant Protection officers had been called. They took Smith and grievant to the Clinic, in separate vehicles. The Nurse asked Smith what had happened, and she said grievant had hit her in the eye.

Smith's injuries were treated also at St. Catherine's Hospital after her release from the Company Clinic, and she later went to an eye specialist because she had blots on her eye and her vision was blurred. The doctor held her off work for one month. She filed an insurance claim for that month, and it was paid.

Senior Production Foreman Lozano said he saw Smith at the beginning of the turn and later in the morning before 11:15 a.m. and that there were no visible signs of injury on her face then. He said when he got to the Lab, Smith was seated and had a wet paper towel over her left eye. Smith said she wanted to go to the Clerk's office to speak to Lozano, alone. She said she had been jumped by grievant. Lozano said there was a pinkish color around Smith's left eye and that was the only mark on her face. She was frightened, tearful, and her voice trembled.

Lozano said that, while General Foreman Mahlie went to get grievant, he talked with Smith again, and she said then that she had been hit on her lip, too. It was not bloody. Smith repeated her accusation against grievant after grievant denied it.

General Foreman Mahlie told Smith that she would have to testify, and she said she would.

Mahlie said when he got to the Line Foreman's office, Smith was seated, holding a wet paper towel on her left eye. When she removed the towel, he could see the beginning of a black eye. Mahlie had seen her earlier that day and she then showed no appearance of facial injury.

Mahlie questioned Smith and she repeated the account, as above. Mahlie then went to get grievant. He told grievant about Smith's accusation, and grievant said she was not involved and knew nothing about it. When Smith heard grievant deny the charge in the office, Smith said, "I don't believe it! She threatened to kill me."

Plant Protection Sergeant Ignas said he came to the Line Office that day and checked Smith's face. Her eye was swollen. He took Smith to the Clinic and, after Smith was treated, he questioned her, and she repeated the version stated above, and said that she had struck back in self-defense.

Plant No. 1 Galvanizing Superintendent Hoffman conducted the departmental investigation on December 6, at which Smith repeated the account as above. He said Smith had a visible injury in the tissue around her left eye, which was swollen, discolored, and was hemorrhaging in the white of the eye.

At that investigation grievant said she had no knowledge of any such event and had not seen Smith that day. She said she might have been at the entry end of No. 1 Line or at the Canteen at the time but was not definite. Mahlie and Hoffman said there was no job-related reason for grievant to be at the entry end.

Grievant said there was no bad feeling between Smith and her and, upon being asked why Smith would fabricate such a story about her, grievant said maybe Smith was messing around with someone's husband or boy friend.

Assistant Superintendent of Labor Relations Vella conducted the pre-discharge hearing. He said that, in response to the question of what reason grievant could think of for Smith to make up this story about her, grievant gave a series of disconnected statements, to the effect that things were taken from her locker (house keys), she knew who was working then, she did not make a fuss, but she could take only so much,

and that Smith might have been messing with someone's boy friend. Vella asked for clarification of the comment about a boy friend, and grievant said that was just a smart comment she had made and it had no basis. Grievant then gave a disjointed statement, as above, plus comments about ". . . as long as they don't come on my turf, I don't bother them."

Grievant was suspended on December 6 and discharged on December 16, and this grievance followed. The Administrative Supervisor of the Medical Department reported from Smith's record that she was examined on December 3 and that she reported that the problems were a black eye, cut lip, and blurred vision. The Clinic found a large ecchymosis (meaning, here, a black eye) and a swollen lip. A cold pack was applied to the left eye, diagnosis was deferred, and Smith was referred to St. Catherine's Hospital. Smith said her injuries were caused by grievant's striking her. Smith later was cleared for return to work as of January 3, 1984.

Grievant consented at the arbitration hearing to disclosure from her medical record from the Company Clinic of information about her appearance there that day. The record said that grievant was not examined then because she claimed she was not injured.

Grievant testified that she took no part in this attack on Smith. She was not very busy that day and, therefore, felt free to move around. That was not unusual.

The Union contends the Company has not met its burden of proof, since grievant denied the charge, denied that she was in the women's locker room at the time, and denied she had seen grievant before being brought to the Line Foreman's office that day. The Union notes there were no eye witnesses, other than Smith and whoever it was who attacked her.

The Union claims grievant's testimony has been consistent, but that Smith had changed from one version to another. The Union alleged in Step 3 that Smith told Plant Protection on December 3 that the attack happened outside the locker room and that she had struck grievant in self defense, but at Step 3 Smith said the attack happened inside the locker room and that she did not strike grievant. It is noted also Smith did not mention the alleged threatening language by grievant until the second or third time she told her story and, moreover, that the precise, vulgar words never were stated until the arbitration hearing. Smith said that was because she respected the Foreman and General Foreman and did not want to use that vulgar language to them. She told that to the Company arbitration spokesman later.

At the arbitration hearing the Union pointed out that Smith ordinarily wore glasses but did not have them on at the time of this attack. She had just taken them off. The Union stresses that some of Smith's reports say she came in the locker room and saw "grievant" lying on the bench but later admitted that the woman's head had been covered with a jacket, so that she did not know then who was lying there. It is said that Smith claimed she was hit while reaching for a paper towel and at another time that she was hit while leaving the locker room.

At the arbitration hearing Smith said three or four minutes had elapsed between grievant's first blow and the second, and that she (Smith) had said nothing during that time. She agreed she tried to defend herself by raising her hands but says she did not fight back.

The Union notes that Smith was suspended for absenteeism once while at Plant 2. It emphasizes also that apparently in late 1981 Smith and another woman had accused a male employee of trying to follow grievant into the women's locker room. A warning was put in that employee's Personnel Record file, and he filed a grievance.

There were issues as to proper representation of the grievant in that grievance but, in addition, although Smith had positively identified that employee as the man who tried to enter the women's locker room, at the Step 2 Meeting she admitted she had mis-stated her basis for doing so, saying only that she knew it was him. Because of that, Management granted the grievance. The Union stresses that mis-identification by grievant and argues that this case represents another such mistaken identification by grievant.

The Union points out it asked to see Smith's personnel file at the suspension hearing but that the Company would not allow that.

Solely as reflecting adversely on Smith's credibility, the Union notes that Smith appeared and testified here voluntarily, and the parties agreed to that. It stresses that she said, however, she had not called Grievance Committeeman Gutierrez about that before the hearing. Gutierrez testified that she did call him on that subject a few days before the arbitration hearing.

The Union notes various Company statements to the effect that grievant had not proved where she was at 11:15 a.m. on December 3, 1983. It stresses that grievant need not prove her innocence but that the Company must prove her guilt. It says there is no such proof here.

FINDINGS

The first obvious fact encountered in analysis of this credibility dispute is that something very physical happened to Smith. She testified it happened in the women's locker room, and there is no reason to question that. At one point it was conjectured that Smith might have fallen and hurt herself, but that was baseless. Smith says she was punched, and there is no solid reason to question that, either. There were physical signs appearing on her face that had not been there earlier and that were seen by Biddings, Ready, and Foreman Lozano in the Lab, by General Foreman Mahlie and Sergeant Ignas in the Line Foreman's office, and by the people at the Clinic who recorded that she suffered an ecchymosis (meaning, in this situation, a black eye) and treated her in some degree for that. She was treated also at St. Catherine's Hospital and by a specialist, who held her off work for a month, for which she was paid sickness and accident benefits.

Accordingly, the physical signs on Smith's face and eye, seen by at least seven different people with no motive to shade their evidence, fairly shout that she had been punched. She said she was, and all the nonverbal evidence from everyone who saw her then and shortly thereafter is consistent with, and supportive of, her statement.

Consequently, the only issue open here is to determine by whom she was punched. That gives rise to a stark credibility dispute. Smith says grievant punched her, and grievant denies that.

This problem is different from the ordinary credibility issue in arbitration, however, in that here the conflicting accounts are stated by two bargaining unit employees and not one account by supervisors and the other by bargaining unit employees. Thus, the possible play of institutional bias is not operative here. There is not much in their backgrounds to use in suggesting that either Smith or grievant have especially good or poor reputations for veracity. Nothing is suggested from that source one way or the other about grievant. The Union does argue that the 1981 situation in which Smith and another employee identified a man, possibly incorrectly, as trying to enter the women's locker room, should bear against Smith here. And to some minor extent perhaps it should, but the granting of that grievance was related also in some confusing way to issues of the grievant in that case not having proper Union representation during processing of that grievance. Accordingly, although there may be some slight basis for questioning Smith's identification testimony there, it is not particularly significant here.

The Union hits hard at what it characterizes as inconsistencies in Smith's version of this event.

It says Smith said that when she entered the locker room she saw "grievant" lying on a bench and also that the person she saw lying there had a jacket over her head, so that she could not identify who it was. The Union wonders how Smith could identify "grievant" through a jacket.

She could not have and did not say she did. It is clear that what she meant in the two expressions was that the person she saw lying on the bench with a jacket over her head, whom she could not then identify and as yet had no interest in identifying, turned out to be grievant, as she learned a few minutes later. She never mentioned any other person as being in the locker room then. There really is no conflict in those two manners of expression.

The Union says Smith first said the attack occurred outside the locker room and then that it was inside.

But there is no statement by grievant in this record that she was attacked outside the locker room. All of her many tellings and retellings put the attack inside the locker room.

It is said next that she said at one time that the attack took place as she was leaving the locker room and then that she said it happened as she reached for a paper towel to dry her hands after washing them. But, even assuming she made both those statements, there is not the fatal inconsistency between them that the Union suggests. No one questioned Smith in such a detailed and precise way as to demand that she atomize her account in that fashion. To say that it happened as she was leaving the locker room and as she reached for a towel are not necessarily conflicting. Smith's locker room activities clearly were coming to their end, whether the precise instant of attack was as she reached for a towel or as she was leaving. The former is part of leaving.

The same must be said of the claimed inconsistency between Smith's putting up her hands defensively and instinctively striking back defensively. They amount to practically the same thing and are not the kind of conflicts that would shake Smith's account in any fundamental way.

The Union notes that Smith said first that she was hit in the eye and not until later did she say she was hit also in the mouth. But it was not so much later as to require or even to allow the inference that the second claim was a fabricated afterthought.

The Union next notes that Smith first told Biddings, Ready, Foreman Lozano, and General Foreman Mahlie that she was hit by grievant, and that it was not until both Smith and grievant were in the office, with Lozano and Mahlie, after grievant denied the attack, that Smith said also that grievant had threatened to kill her.

That was a delay of perhaps thirty or thirty-five minutes, but Mahlie and Lozano explained it as a surprised reaction to grievant's denial, since, upon hearing that denial, Smith blurted out, "I don't believe it! She threatened to kill me." This might be thought of as significant, as the Union thinks of it, but that appears to assume that all human beings who are punched without apparent provocation, must recount the event within a relatively few minutes thereafter in an ordered and precisely logical sequence. That is less than realistic. The delayed mentioning of the threatening language is in no way fatal to belief in Smith's account. Moreover, Smith explained that she did not mention initially the vulgar language by grievant because her respect for the supervisors made her reluctant and hesitant to say those words. The Union is perhaps right in saying that that language is routinely used and heard as shop talk, but some women do not so regard even hearing it and surely do not relish having to say it. That may explain also Smith's request to speak to Foreman Lozano alone.

The Union stresses that at the arbitration hearing Smith said she had not telephoned Grievance Committeeman Gutierrez prior to the hearing about her appearing there to testify against grievant, and that Gutierrez testified that she had called him on the Friday before this Wednesday arbitration hearing about her apprehension in appearing to testify against grievant.

That is an error or mis-statement of some significance resolving this credibility dispute, but it is on a collateral matter and is not directly relevant to what happened in the locker room. It surely is not irrelevant, but neither does it make Smith out to be so untrustworthy as seriously to undercut her account here.

An inexplicable statement by Smith on cross-examination was her saying that three or four minutes elapsed between grievant's first blow, to her eye, and the second, to her lip. That makes so little sense as to suggest misunderstanding of the question to which Smith was responding or a total inability to judge passage of time. That might be explicable if Smith had said that during or immediately after the attack, when she would have been excited and nervous, but it was said at the arbitration hearing, long after the excitement should have worn off. It presents a difficulty in assessing Smith's testimony.

The Union argued that it had a right to see Smith's Personnel File, but that is not convincing. It knew who had accused grievant and thus was well equipped to question those who worked with her to test what her reputation was for veracity. It did not need her Personnel File for that and did not make out a case for needing it on any other specific grounds. This is not to say that the Union never would be entitled to examine the Personnel File of the accusing employee, but only that good cause was not shown for its seeing it in these circumstances.

It was noted that grievant ordinarily wears glasses and that she did not have them on during this attack. But the problem never was that Smith did not get a good look at grievant or did not know that it was grievant as opposed to someone else who had attacked her. Smith had worked with grievant and knew her without question, with or without glasses.

Finally, and in general, the Union says grievant need not prove she was some place else at the time and that it is Management's burden to prove her guilty and not her obligation to prove herself innocent. In the Company's attempting to do so, the Union suggests it somehow is unfair for the Company to argue, and for the trier to rely on the argument, since both grievant and Smith agree there was no bad feeling between them, that there is no motivation for Smith falsely to accuse grievant of attacking her, so that Smith's accusation, without motive other than truth, should carry somewhat more weight than grievant's denial, possibly motivated only by an understandable desire to keep her job.

But there is no unfairness in that. The Arbitrator does not know either Smith or grievant and, therefore, has no personal basis for believing one rather than the other. Both testified in reasonably persuasive manner, and the Arbitrator has no secret system for peering into their hearts and minds to detect which one is telling the truth. All he can do is determine, on the record and reasonable inferences and arguments from it, which version appears to be more convincing. In doing so, it is quite reasonable and practically inevitable for the parties and the trier to ask, what the witnesses have to gain in advancing their accounts? If there are no bad feelings between Smith and grievant, as both agree, it then becomes difficult to understand why Smith, apparently a rational person without any feelings of anger or resentment against grievant, would accuse grievant falsely of punching her. Thus, a significant measure of extra persuasiveness is added to Smith's account.

It should not be thought, however, that only Smith's version need be analyzed or that grievant's is entirely free of questionable elements. It is not. Grievant's attempt to explain why Smith would have fabricated such a story about her was that maybe Smith was messing around with someone's boy friend, which really explains nothing, as grievant admitted.

Accordingly, neither singly nor together do the claimed inconsistencies provide reasonable grounds for discrediting Smith's statement. Thus, although the matter is not entirely free of doubt, it must be concluded on the basis of the evidence as a whole that grievant did punch and threaten Smith, and that was cause for her discharge. Accordingly, the grievance will be denied.

AWARD

The grievance is denied.

/s/ Clare B. McDermott

Clare B. McDermott

Arbitrator