

Arbitration Award No. 754
IN THE MATTER OF ARBITRATION
Between
INLAND STEEL COMPANY
Indiana Harbor Works
and
UNITED STEELWORKERS OF AMERICA
Local Union No. 1010
Grievance No. 25-R-24
Arbitrator: Clare B. McDermott
Opinion and Award
April 18, 1985
Subject: Discharge--Insubordination--Failure to Perform Directed Duties
Statement of the Grievance: "The aggrieved, Maria Espinosa, Payroll No. 28088, contends the action taken by the Company, when on February 22, 1984, her suspension culminated in discharge, is unjust and unwarranted in light of the circumstances involved.
"Relief Sought - The aggrieved 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 of the March 1, 1983 Agreement.
Statement of the Award: The grievance is denied.
CHRONOLOGY
Filed: 2-22-84
Step 3 Hearing: 3-6-84
Step 3 Minutes: 4-18-84
Step 4 Appeal: 4-24-84
Step 4 Hearings 8-16-84, 9-6-84
Step 4 Minutes: 10-12-84
Appeal to Arbitration: 10-15-84
Arbitration Hearing: 1-14-85
Plant Visit: 1-15-85
Transcript Received: 3-2-85
Appearances
Company
Robert B. Castle -- Arbitration Coordinator, Labor Relations
Michael O. Oliver -- Coordinator, Labor Relations
Vincent Soto -- Senior Representative, Labor Relations
Wright D. Bozeman -- Asst. Superintendent, Galvanizing Dept.
Robert Kosakowski -- General Foreman, 80" Hot Strip Mill Dept.
Joseph Sucec -- Foreman, 80" Hot Strip Mill Department
Union
Tom Barrett -- Staff Representative
Joe Gyurko -- Chairman, Grievance Committee
Don Lutes -- Secretary, Grievance Committee
Araldo Manzo -- Griever
Loreto Gonzalez -- Steward
Maria Espinosa -- Grievant
BACKGROUND
This grievance from the 80" Strip Mill Department of Indiana Harbor Works protests grievant's suspension and discharge for alleged insubordination as imposed without just cause, in violation of Articles 3 and 8, Section 1 of the March 1, 1983 Agreement.
Grievant began with the Company in 1973. She was scheduled as a Power Trucker on the 11-7 turn of February 4, 1984. At the beginning of the turn, however, she was directed by Labor Foreman Sucec to work the Janitor job. She was paid at the higher, Power Trucker rate, and none of that is disputed here. When grievant was lined up at about 11:10 p.m. Sucec directed her to clean the washrooms in Area 1. Area 1 includes the three washrooms in the hot mill electrical area, the washroom by No. 5 scale pit, the washrooms by the finishing mill, coiler, and expeditor pulpits, the three in the mechanical-office area, the

three in the coil-handling area, and the three in the shipping area. This assignment includes restocking toilet-paper and paper-towel dispensers, refilling powdered, hand-soap containers, cleaning and disinfecting washbasins, waste baskets, urinals, toilet bowls, and toilet seats. Additionally, the metal partitions and walls are to be wiped down and the floor swept and mopped as necessary. A cart is used to transport supplies necessary for performance of this assignment, including paper towels, toilet paper, soap, mop, plunger, and such. The sixteen washrooms in Area 1 have a total of twenty-three paper-towel dispensers, twenty-six toilet-paper dispensers, fourteen urinals, twenty-six toilet bowls, twenty wash basins, and twenty-two soap dispensers to service and clean. Additionally, the location of the cart as the employee goes along the route aids Supervision in monitoring the progress of the job and determining the whereabouts of the Janitor.

Sometime ago, the 80" washrooms were divided into an Area 1 and an Area 2, so that each set could be cleaned every other turn.

Foreman Sucec was the only Labor Foreman on duty on this turn, supervising the Labor Pool and move-up people, the furnace area, and the crane and mobile-equipment sequences, which would include about sixty employees, over all. The Hot Strip Mill area covers approximately fifty acres. It is about two thousand feet from the Labor Office where the supply cart was kept and where grievant was to begin her work to the last three washrooms at the coil-handling office.

Sucec explained that the Janitor assigned to the washroom detail starts at the Labor Office by stocking the cart with all necessary supplies, such as rolls of toilet paper and paper towels, powdered soap, floor cleaner, toilet-bowl cleaner, johnny mops, and the large mop and bucket. Those supplies are kept in a locker about twenty feet from where the cart ordinarily is parked. The cart is then taken from washroom to washroom, as the employee services the paper and soap dispensers, washes toilet bowls, seats, and urinals, washes grease spots off walls, and sweeps and mops floors.

Sucec said the washroom detail was not considered to be a demanding assignment but was very important from the standpoint of hygiene and that employees want clean and serviced washrooms and complain quickly if they do not get them.

Sucec lined up grievant on the Area 1 washroom detail at about 11:10 p.m. and told her to check the cart to see what supplies she would need. Sucec said grievant had no questions at that time, and did not appear to be, and did not say that she was, in any discomfort.

Sucec then went to his duties at the furnace area and, when he came back to the Labor office at about 11:40 p.m., he noticed that the supply cart still was sitting there. He did some paper work in the office and then began to check the washrooms in Area 1 to see where grievant was and what she had done. With the cart still in place, he was suspicious about the work's not being done since he could not see how it could be done without use of the cart to carry the necessary supplies.

Sucec left the Labor Office and checked the washrooms in order as he walked north, examining those at the hot mill office, the one at No. 5 scale pit, those at the finishing pulpit, the mechanical office, toiler pulpit, expeditor pulpit, and those at coil handling. He did not check the three washrooms at the shipping office. He had Hourly Foreman Trainee Vega with him. They went into each washroom. Sucec said none of them had been cleaned or serviced, as shown by soap dispensers that were not filled, paper towel dispensers that were empty, and newspapers on the floor. He said also that Operators at the finishing pulpit area stopped him and asked him where his washroom detail was, stating that there were no paper towels there. At the coiler pulpit the employees complained that they had no toilet paper.

Sucec says he got to the coil handling area, where the last set of washrooms are, at about 12:30. He had not seen grievant yet. As he approached the coil handling office, he ran into Foreman Morrison and asked him if he had seen the washroom-detail person, and Morrison said she was upstairs, since he had heard her talking on the radio to carrier drivers. There are no washrooms on the second floor. Sucec went upstairs and saw grievant in the coil-handling pulpit, drinking coffee and talking to carrier drivers.

Sucec asked grievant what she was doing there, and she said she was having a cup of coffee. Sucec asked why she had not taken the washroom cart on her tour and why the washrooms she had passed were not cleaned. Grievant said she had cleaned one washroom at the hot mill and one at the mechanical office, and Sucec replied he just had checked them and that they had not been cleaned, that one had no paper towels and one no soap, and that there were newspapers on the floor. Sucec said grievant did not respond to that. Sucec said that the number of employees on the 11-7 turn was not large enough to have subjected the washrooms to such heavy usage in the short time after grievant might have cleaned them and before he inspected them, to support the conclusion that she had cleaned them but that they had been dirtied in the meantime.

Sucec told grievant he knew she had not cleaned or supplied the washrooms, and he directed her to go back to the Labor Office, get the cart, and begin her cleaning and servicing duties, to clean the bowls, fill all dispensers, wipe walls if necessary, and sweep and mop floors. He says grievant said, "All right. All right." Grievant had no questions and did not say she was not feeling well.

Sucec then went to other duties. At about 2:00 a.m. he returned to the Labor Office and again saw the washroom cart sitting in the same place. He became more suspicious and went over the same route again and checked 13 washrooms, and said that, with one partial exception, none had been cleaned. Vega accompanied him on this inspection trip, too. Sucec said he knows the washrooms had not been cleaned or serviced because he checked them, and the same ones were out of paper towels, the dispensers were empty, bowls were not cleaned, floors were not swept, and the same refuse was in the same places.

As Sucec and Vega approached the coil-handling office (two or three steps above ground level), Sucec noticed that the lights were out in the office, which he thought unusual. Sucec went up the two or three steps and looked in through the window. There was sufficient light from the vestibule to enable him to see grievant sitting at a desk in the office, with her elbows on the desk and her head propped in the palms of her hands. Sucec went in, turned on the lights, and asked grievant what she was doing in the office. She said she was using the telephone to try to reach him to tell him that a basin in the coil-handling office was clogged. She said she had been calling Sucec for one half-hour but could not get an answer. Sucec said the telephone was on another desk and not on the desk at which grievant was seated. Sucec asked grievant why she had not cleaned the washrooms, and grievant said she had cleaned them. Sucec replied she had not, since he just had checked them, and saw they had not been cleaned.

Sucec then directed grievant to return to the Labor Office. He called Plant Protection and had grievant escorted out of the plant for insubordination. Sucec said he was not then aware of grievant's past disciplinary record or that she then was working under a last-chance agreement. Sucec then wrote a memo of the above events. He had no part in later decisions to suspend or to discharge grievant.

Sucec says he made it quite clear to grievant that she should use the cart in carrying out her duties. He disagrees with grievant's later explanation that the cart is difficult to push, saying that no other employee ever complained about that. He insists also that, considering the relatively great distance involved, it is virtually impossible to clean and service all Area 1 washrooms without using the cart, since the volume of needed supplies requires use of the cart. The cart is about 3' by 2-1/2' and has four wheels, with the back wheels swiveling. It is similar to, though perhaps no so high as, carts used by maids in hotel corridors. The trip from the first to the last washroom is about two thousand feet, and the surface is made of blacktop on the outside and concrete inside buildings. After grievant left the plant, Sucec and Vega went to the supply cart and Sucec moved it, to see if it was difficult to push, as grievant claimed, and found that it was not.

As to grievant's claim that she had been calling him for thirty minutes but could not reach him, Sucec said he had been in the Labor Office for about fifteen or twenty of those minutes and that no such calls had come in. Sucec says also that a clogged sink should not have caused grievant to call him, in any event. She should have used the plunger off the cart to try to unclog it herself. If that did not succeed, she should report it at the end of the turn and should not have stopped working for thirty minutes of calling because of one clogged sink. Sucec said he used the plunger to unclog the sink later that morning without any difficulty.

Grievant's account is different. She says she was feeling a little sick before going to work that night. She took some medication. She had chest pains and, thus, walked slowly on the long walk to the Labor Office so as not to force herself.

She was assigned to the washroom detail in Area 1. She had not worked it since about 1974. She asked Foreman Sucec where Area 1 was, and he told her from the hot-mill office to coil handling but did not tell her where the bathrooms were. She went out to the cart and put all necessary supplies on the cart, including paper towels, toilet paper, industrial cleaning solutions, soap, and little mops. She pulled the cart out of its parking space and decided she would not be able to push it through her whole tour. She said nothing to anyone about not feeling well or about chest pains because, she says, she was afraid she might be sent to the Clinic if she did, and once before, some years ago, she had gone to the Clinic and had been told she had such high blood pressure that she was not allowed to return to work. She ultimately went to the hospital then, but while there was discharged for excessive absenteeism. She says she did not want that to happen again.

Since she felt she could not push or pull the loaded supply cart, she decided she would carry some of the necessary supplies in her arms, intending to use them to supply those washrooms needing them. Thus, she says she picked up four rolls of toilet paper, and four rolls of paper towels; she put a bottle of toilet bowl

cleaner, two little mops, three small deodorant tablets, and powdered hand soap, in a three-pound coffee can. So armed, she says she began walking her route. She came to the washroom at the hot mill office. She says she washed toilets with a mop already there and, therefore, did not have to wet hers, and washed the sink with paper towels. She says she left the liquid toilet cleaner in the toilet, not knowing then that such liquid is acidic and is not supposed to be left in the bowls. She says, since these washrooms are inside an office area, the floor was clean and needed no attention. She says she did not have to mop the floors of washrooms that are inside office areas. She says she filled only one toilet-paper dispenser in the first washroom, the other dispensers being full, with two additional packages there already. She put one package of paper towels in the second bathroom. No additional toilet paper was needed. By this time she says it was about 11:30 p.m.

Grievant admits she did not clean or service the washroom at the electrical area, saying she just forgot it was there. She insists, therefore, that she cleaned two of the three washrooms at the hot mill office. She says she did not mop any floors as she went along the route but intended to come back to the cart after lunch, get the big bucket and mop, and mop the floors on a second trip.

Grievant picked up her armful of supplies and walked to the next washrooms at the mechanical office. She says she cleaned and serviced two of the three there and just forgot one of them. She says she picked up her supplies again and went to the shipping area. She says there are two washrooms there. The Company says there are three. Grievant says she cleaned the small, women's bathroom and the large, men's bathroom. She cleaned the toilets and the urinals with a little mop, and that the women's side needed toilet paper. She used a mop-broom kept on top of a heater there and cleaned that bathroom. The men's bathroom had papers all over the floor, one toilet was clogged, and one toilet paper container was broken. She says there already were supplies of soap, cleaner, toilet paper, paper towels, a mop and bucket in a utility room there. Grievant says she did not clean the floor there but did pick up papers and tried, unsuccessfully, to unclog the stopped-up toilet, and cleaned the sink tops. She filled paper-towel and toilet-paper dispensers.

Grievant says she then went to the coil-handling area at about 1:00 a.m. She left the supplies she still was carrying downstairs at the women's bathroom and went upstairs and got a cup of coffee. She says she called on the radio to a driver named Garcia to ask if he would give her a ride in the morning.

Grievant insists she went back downstairs and was in the act of walking down the steps and was not in the office, when Sucec came to her and asked where the cart was. She told him she did not bring the cart and had what she needed with her. Sucec said there was no way the bathrooms could be cleaned and serviced without use of the cart. Grievant repeated that she did not need it but needed only the equipment. Sucec told her to go and clean the bathrooms. She said she was cleaning them. Sucec said she was not. Grievant said "Okay." Sucec said that he wanted the floors mopped. Grievant said she was going to mop them after lunch. Sucec said he wanted grievant to go back to the Labor Office, get the cart, and clean the bathrooms. Grievant said that when she would finish cleaning in coil handling she would go there, get the mop and bucket, and mop the floors which she had not done yet. Grievant stresses that the big bucket has wheels on it and is pushed or pulled and need not be carried.

Grievant did not tell Sucec then about the toilet that had been clogged in the shipping area. Sucec left, and grievant began cleaning the bathroom in coil handling. An employee named Lula (Dispatcher) came in and was looking in a computer for some coils. Grievant went to the other bathroom, and a toilet was clogged there, too. Grievant cleaned those two bathrooms and went to the office, where the light was off when she entered. She sat down at a table, with the telephone beside her. She said she called Sucec four or five times to tell him that two toilets were clogged. She could not reach Sucec.

Grievant says she was sitting there with her arms crossed and did not have her head propped in her hands when Sucec and Vega walked in at about 2:00 a.m. Sucec asked grievant what she was doing there, and she said she was waiting, trying to call him to tell him about the clogged toilets and to ask whether he wanted her to leave them clogged or to call somebody to unclog them, but Sucec would not listen. He said he knew grievant was not doing anything and that she should go to the office. Sucec and Vega left, and grievant walked to the office.

At the office Sucec said he was sending grievant home because she was not doing as she had been told. She said she was doing the job, and Sucec said he was not and that he had just checked the bathrooms and they were not cleaned. She repeated she had cleaned them but had not mopped yet, but intended to do that after lunch. Plant Protection personnel came and asked the charge, and Sucec said it was insubordination.

Sucec told grievant to return on her next scheduled turn, but grievant claims she was called at home the next morning and was told she had been suspended.

An investigation was conducted by the department on February 7, and the Company says after that investigation grievant was suspended preliminary to discharge. The suspension was converted to discharge on February 22, 1984, and this grievance followed.

Grievant agrees she said nothing to Supervision that night about experiencing chest pains. She said she told an employee named Blonski that she was having such pains. They were walking to work together and she felt a real sharp pain in her chest and put her hand to her chest and stopped, and Blonski asked what was wrong. Grievant took a deep breath and said it was just a chest pain. Blonski said she should take it easy. Grievant says she was taking several medications then and that she showed them to the Company at the investigation hearing. She testified that she told the Company that and that it checked with Blonski and found that he said she had mentioned it to him that night.

Even though the lights were out in the office, grievant says there was sufficient light there for her to see to dial the telephone. She stresses that Sucec, after saying she had not cleaned the washrooms and after hearing her say she had, did not take her to any of them to show her what he was talking about. Nor did he tell her to do the work or be sent home. Grievant says she did not refuse to do her work. Grievant says she still had about four hours left on the turn, which would have been ample time to finish cleaning the bathrooms.

Grievant's relevant prior disciplinary record is as follows:

Date	Infraction	Action
6/15/79	Attendance	V.O.D.G.
9/8/79	General Rules for Safety & Personal Conduct 127-j and p (malicious conduct and threatening language)	Discipline - 5 turns
4/1/81	Attendance	Record Review with Assistant Superintendent
5/24/81	Unsafe crane operation	Discipline - 1 turn
6/16/81	Absenteeism and overall record	Suspension preliminary to discharge
7/1/81		Discharge
4/15/82		Reinstated - Final chance all time lost as discipline (I.A. 710)
5/4/82	Entire record	Record Review with Assistant Superintendent - Final Warning
7/8/82	General Rules for Safety & Personal Conduct 127-o (insubordination) and overall record	Suspension preliminary to discharge
7/21/82		Discharge
11/29/82		Reinstated - Final Chance - All time lost as discipline
12/6/82	Entire Record	Record Review with Superintendent - Final Warning
9/30/83	Department Rule 123	Safety warning"

Grievant says she was well aware, because of Company warnings upon her most recent reinstatement, that she had to keep free of any problems. She says she did not miss even one scheduled day of work in the fourteen months since her December-1982 reinstatement. She says she sometimes was sick but came to work anyhow because she had to avoid any difficulty.

The Company notes grievant's statement that she was having trouble even while walking slowly to the Labor Office at the beginning of the turn. It wonders, if that were true, why she would have left the supply cart and walked, carrying a large armful of supplies, over the entire, approximately one-half mile (one way) route once, intending to retrace her steps and walk it again, with the mop and bucket, for a two mile walk, rather than taking the cart and covering the route only once, for only a one-mile walk. Grievant said she was prepared, if she had exhausted the supplies she was carrying at her first or any later stop, to walk back to the supply cart and get a fresh batch of materials, and so on, through the night, if necessary. She did not have to do that, however.

Grievant agrees she had done the washroom detail for about two weeks, but that was a long time ago. Even so, however, she admits she knew what was to be done, so that she did not have to ask Sucec any questions about what to do when he assigned her to the work.

Grievant says that in some bathrooms she did not have to use the supplies she was carrying, since those places had stocks of all that was needed.

Grievant agreed that at their first meeting in coil handling at about 12:30 Sucec told her to go back to the Labor Office and get the cart and use it on her rounds. She did not do so because she felt she could not push the cart and that she did not need it, in any event. She did not tell Sucec that.

Grievant says that she found two toilets clogged and not sinks. Management notes that the Step 3 Minutes of the Union position and all other discussions in the grievance proceedings say that sinks were clogged. It points out also that those same sources say that grievant was in the office and not coming down the steps when Sucec confronted her the first time.

The Company stresses that both Foreman Sucec in the grievance proceedings and at the hearing and Hourly Trainee Foreman Vega in the investigative meeting on February 7, said they had examined the washrooms and that they had not been cleaned.

At this arbitration hearing grievant testified that Vega told her later that he had been forced to sign a statement and to testify at the investigative meeting that he saw the bathrooms and they had not been cleaned. Grievant said that Vega told her after the event that he had told General Foreman Kosakowski not to make him do anything like that again, and that he (Vega) was going to come to the arbitration hearing and support grievant. He did not appear, and grievant said she had told him where the hearing was going to be held and she thought he probably got lost. Grievant says she called his home on the morning of the hearing, and his wife told her that Vega had just left, apparently meaning that he had just left to come to the hearing.

The Union represented that it had made every effort to have Vega at the hearing. The Union then said it did not think it was necessary to have Vega at the hearing, suggesting that his saying what he did at the investigative meeting, telling grievant what she said he had said, and then not appearing at the hearing, meant that not much stock could be put in his credibility.

The Company notes that grievant's family and Vega's are on friendly, good terms, and that grievant called Vega a couple of times about these events.

At the time of these events on February 4, 1984, Vega was an Hourly Trainee Foreman from the bargaining unit. At hearing time he was in the bargaining unit but laid off.

Grievant says Sucec did not tell her at either of the meetings that night that other employees had complained to him that the washrooms had not been serviced.

The Union notes that the washroom doors are not locked after the rooms have been cleaned, so that it is possible that grievant could have cleaned the bathrooms and that employees then came in later and used the supplies and dirtied the rooms after she had done her work and before Sucec made his inspection.

General Foreman Kosakowski testified that Vega told him he had seen the washrooms with Sucec, and that they had not been cleaned, and that he had written and signed a statement to that effect. He said no inducements were offered to get Vega to make his statement.

Sucec was recalled and said grievant was in the office, standing by a table holding a cup of coffee when he saw her in the coil-handling office at about 12:30 a.m. and that she was not coming down the stairs. Sucec said he did not pressure Vega into making his statement. He said that, if grievant could have cleaned and serviced the washrooms, as she claims, there was no way on a midnight turn for them to become soiled and out of supplies in the fifteen minutes or so before he made his inspection at about 11:40 or 11:45 p.m.

The Company concedes that grievant's alleged insubordination, standing alone, ordinarily would not justify the ultimate industrial penalty of discharge. But it insists that, in light of grievant's bad past disciplinary record, including two prior discharges (one of which was changed to an eight-month suspension in arbitration) and the fact that she was working under a last-chance agreement at the time, discharge was fully warranted in this case.

The Company urges, on the credibility dispute about whether or not grievant actually had cleaned the washrooms, that Foreman Sucec has been a Supervisor for over twenty years, and that he wrote down notes of what happened that morning, when they were still fresh in his mind. It is pointed out that at their first meeting in coil handling at about 12:30 a.m., Sucec told grievant to go back to the Labor Office and get the cart and use it on her rounds. Grievant agreed that Sucec said that, but she said she did not need the cart and, therefore, did not get it. She was aware she did not intend to do as Sucec said, but she nevertheless said "All right. All right."

Management said it is not difficult to determine whether washrooms had been cleaned and supplies put in them, and that Sucec went along the route that grievant should have followed and checked them and was certain they had not been cleaned or serviced. That is confirmed by the complaints of other employees

along the way that there were no supplies of paper towels or toilet paper in some of them. The Company notes that no other employees have come forward to say they saw grievant cleaning washrooms. On Sucec's second inspection tour, he found the same washrooms dirty and unsupplied.

Management notes that there is no suggestion of any prior bad feeling between Sucec and grievant that would lead him to want to get grievant. Moreover, Sucec merely sent grievant home that morning. He had nothing to do with the later decision to suspend and then to discharge her. He said grievant had worked in another area and he was not aware of her prior disciplinary problems.

The Company notes that grievant later claimed that she was ill with chest pains, but that she said nothing about that to Sucec. It says the cart was not difficult to push and that, if grievant had problems, the cart would have reduced and not worsened them. If walking gave grievant difficulty, the Company says her way would have doubled her walking.

Management scouts grievant's claim that she was in the office trying to get Sucec on the telephone. Firstly, it says there was no need for that. It allegedly was her obligation to unclog the sink, as Sucec did later, and he unclogged the sink and not a toilet. The Step 3 Minutes speak entirely of clogged sinks and not toilets. Secondly, Sucec says he was in his office for much of the time grievant says she was calling him, and yet he got no such call. Thirdly, grievant says she had found the clogged facility before seeing Sucec the first time, and yet she said nothing to him about that at about 12:30 a.m., indicating that conveying that information really was not so important as grievant would have had it later, upon being found in the dark office. Fourthly, it is contended that grievant's sitting in a dark office with her head in her hands showed that telephoning was not on her mind. Fifthly, the Company notes Sucec's testimony that the telephone was at least one desk away from grievant. The Company thus charges that grievant chose an inconspicuous place to rest while evading her duties.

On credibility, the Company says Sucec's testimony on what he saw and his testimony of what Vega said he had seen form a more consistent and believable version than does grievant's, which, it says, has wavered. The Company notes that grievant said she could not push the cart, and yet she said she picked up much of the cart's contents and carried them. Moreover, the Company says grievant's insubordination was not dissimilar to her prior insubordination that caused her discharge in the past, in that she simply chose to ignore the Foreman's directions. Management sees grievant's record as supporting the view that she is incorrigible. She was working then under a last-chance agreement, which should be given full credit here. The Company notes the Union's argument that grievant had not been absent for even one day since her last reinstatement in December of 1982, and it replies that was only a short term improvement in attendance and could do no more than place her in the position of a short-service employee who had not been discharged. It argues that a good attendance record for fourteen months is not sufficient to overcome the specific language of the second last-chance agreement.

The Union replied that grievant explained why she did not tell anyone in Supervision of her chest pains and that it was because she was afraid doing so might lead to her going to the Clinic and not being allowed to work, which would risk her being terminated again for excessive absenteeism.

The Union cites Inland Award No. 377 for the proposition that an employee must first be given a direct order, with notice that failure to heed it will be seen as refusal to obey, before insubordination can be established. Here, grievant never did refuse any orders of Sucec's.

As to the Company charge that grievant did no work, the Union notes the statement in the Step 3 Minutes that, with one exception, the washrooms had not been cleaned. That "exception" is said to be a Company admission that grievant did some work.

The Union says grievant really was suspended before the investigative hearing, as allegedly confirmed by the testimony of General Foreman Kosakowski.

Finally, the Union says grievant was very well aware of her delicate status under the last-chance agreement and thus was being very careful and would not have been so stupid as to jeopardize her job either by refusing her Supervisor's directions or even simply by not performing her assigned work.

The Company replies that Sucec had no obligation to take grievant to the washrooms and show her they had not been cleaned or supplied. It says he had told her at 12:30 a.m. that she had not done her work and that he did not have to show her those conditions again the second time at 2:00 a.m. He allegedly was under time constraints to get the washrooms cleaned, at a time nearly halfway through the turn.

The Company says the Union argument from the Step 3 Minutes that grievant did do some work is practically an admission of total noncompliance, since it applies to only some work in one washroom. The Company insists grievant was not suspended prior to the investigation.

The Arbitrator gained helpful insights into the physical conditions and distances on a plant visit following the hearing.

FINDINGS

As the Company concedes, none of the offenses charged here would amount to cause for discharge under Article 3 if committed by an employee with a good or perhaps even a mediocre disciplinary record. But grievant has neither. Her relevant (five-year) disciplinary record includes two warnings (attendance and safety), three record reviews with Supervision, two suspensions, once for malicious conduct (five days) and once for unsafe crane operation (one day), and two discharges, one for excessive absenteeism and one for insubordination. The first discharge was in June of 1981 for absenteeism. Grievant then was reinstated in April of 1982 by Arbitration Award No. 710 but without back pay for the ten months she had been discharged. After that reinstatement there was a record review in which Management made it clear that grievant was being given a final warning and that, should her absenteeism continue, she would be suspended preliminary to discharge. In July of 1982 grievant was suspended and discharged for insubordination. In the grievance proceedings of November, 1982, the parties' Step 4 representatives agreed to reinstate grievant to allow her to have one final chance. Four conditions were expressed in the written reinstatement, including a provision that all time lost from early July was to be without back pay and would constitute disciplinary time off, and a fourth condition, as follows:

"1. All time lost, including loss of unworked holiday pay, until she is returned to the working schedules shall constitute a period of disciplinary time off.

"2. Prior to resuming work, the employee will meet with her department superintendent or his designated representative, at which time her record will be reviewed and her duties and obligations as an employee of Inland Steel again outlined.

"3. The employee will forfeit all group insurance coverage and benefits which she or her dependents would otherwise have been entitled to for claims arising during the period of her suspension and discharge, and no coverage will be reinstated until she returns to work.

"4. Failure to meet the conditions set forth above or any repetition of the conduct which led to this suspension-discharge action or violation of other Company rules or regulations will be cause for the grievant's immediate suspension preliminary to discharge."

A December-1982 record review followed, to make clear to grievant that she was on her last chance. There was a safety warning in September of 1983, with no Management action taken.

With that relevant disciplinary record and in light of the fact that at the time of these events in February of 1984 grievant still was working under the November-1982 last-chance agreement, it is clear enough that, if grievant did nothing or nearly nothing from 11:00 p.m. on February 4 to 12:30 and 2:00 a.m. on February 5, 1984, there would be cause for discharge. Thus, the governing issue is solely factual. Did grievant clean and service no or only one washroom from 11:10 p.m. to 2:00 a.m.? And the answer to that question turns entirely on a credibility dispute between Foreman Sucec and grievant, with each stating a version of events that might represent an accurate account of what happened. The problem thus is to determine by the usual standards for testing credibility which version is the more convincing because the more reasonable report of events. As the Union stresses, it must be taken into account in this analysis of credibility, that this is a discharge case in which the Company bears the burden of proof.

Sucec said he and Vega examined all but three of the washrooms and that, with one exception, none had been cleaned or serviced, and that Vega agreed. He said that was true on each of his two inspection trips, with Vega.

Grievant insisted that, aside from the two or three washrooms she had missed and the ones she had not yet done in coil handling, she had cleaned and serviced all of them except for mopping.

Each party advances some general arguments to support its view of which of the competing versions should be credited. The Company notes Sucec's long supervisory experience and points out that there is no suggestion in the record that he would have had any reason in his past associations with grievant to want to wreak vengeance on her or to harm her in any way. It is clear that he decided only to send her home for the balance of the turn in question and that he did not know anything about grievant's poor disciplinary record. He did not take any part in the later decision to suspend or discharge her.

All that is accurate and necessarily carries weight in this analysis.

Tending in the other direction, the Union stresses that grievant was well aware of how thin the ice was on which she stood, following her discharge for insubordination and her last-chance reinstatement agreement. The Union urges that, in light of her awareness of all that was hanging over her head, she knew she had to stay out of trouble and, therefore, would not have jeopardized her job by malingering for almost three

hours. The Union says grievant's concern for her job in this regard is shown by the fact that in the period of about fourteen months from her last reinstatement, she had not missed a single day of scheduled work, even though she alleges there were times when she felt she should not report because of her physical condition. That, too, carries weight in the other direction.

But, when those generalities and the several particulars are considered, it must be concluded that Sucec's account is the more convincing one, sufficiently so to require the finding that grievant, indeed, did no or hardly any work in the three-hour period, contrary to her Supervisor's directions, and that constitutes insubordination.

The first significant generality is that Sucec had no motive to make up a story out of the air to the effect that grievant had not cleaned or serviced the washrooms, in order to get her into trouble. That analysis is based on the quite reasonable assumption that normal human beings do not make charges such as these unless they are motivated by abnormality, malice, or truth. With nothing to suggest neurotic abnormality of the witness or presence of malice, a reasonably strong suspicion of truth arises.

Grievant says in response that she knew she was subject to the last-chance agreement and that any refusal or failure to carry out her Supervisor's directions would bring discharge. It is argued that she therefore would not so fail.

But the difference between the two arguments is that Sucec's version brings him no personal gain, while grievant's does. Absent malice, Sucec has no apparent reason for testifying as he did except to tell what happened. Grievant has two possible reasons: Desire to tell the truth or to save her job. And one who was not present to see and hear what happened and was said, does not know either witness, and thus has no basis for accepting one account over the other, ordinarily is persuaded more by the account of the witness who has nothing to gain.

Furthermore, grievant agreed there were several elements of work she did not do. She admitted she skipped two or three washrooms on her route, one or two she says she didn't know about and one or two she says she simply forgot about.

Moreover, and without persuasive explanation, she agrees she did not obey Sucec's direction to use the supply cart on her rounds. She agrees Sucec told her to do so at least twice. Her reason for not doing so does not create confidence in her account. She says she was not feeling well that evening even before coming to work, that she took medication, and was having chest pains as she walked slowly to the Labor Office. For those reasons she felt she could not push or pull the cart.

The Arbitrator's pushing and pulling the cart on the plant visit did not support grievant's claim that it was difficult to move. By far most of the route is smoothly paved, and all of it is relatively smooth, for all purposes relevant to moving this cart. The cart moves easily. Grievant says that moving the cart over the whole route would have been too much for her. The trouble with accepting that explanation lies in the fact that, if simply moving the cart would have been too much, the alternative she chose--carrying an armload of supplies and the possible necessity to return and carry several additional armloads--would have been more difficult. It would have increased the walking distance by at least twice the entire route, from perhaps one mile to two or more if repeated returns to the cart had been necessary, and grievant then could not have known for certain that she would not have to do that. In addition, grievant's way would not have been simple walking, but walking with at least an awkward armload of four separate rolls of toilet paper, four separate rolls of paper twoels, a three-pound coffee can with soap, a bottle of cleanser, deodorant tablets, and little mops. Whether or not such an armload of separate things would be heavy, it surely would have been cumbersome.

Moreover, as grievant agrees, her "easier" way left her without the large, wheeled bucket and the big mop, so that she could not mop the floors on the first trip. One of the floors that had to be mopped was at the far end, at coil handling. Thus, her "easier" way subjected her not only to the necessity to carry an awkward armload of supplies perhaps over the whole two-thousand feet route and to the possibility that she might have to come back to the cart for more supplies, but also to the certainty that she go back to the cart for the big bucket and mop and then to retrace the entire route all the way to the end again with the big bucket and mop in order to mop one of the washrooms at coil handling. It is not easy to see how walking the same path twice, once carrying a cumbersome load and once pushing the big bucket and mop, and possibly a third time with fresh supplies, would be easier than walking it once with the cart.

In addition, there is cause for wonder in the fact that grievant's reason for not using the cart--her chest pains--was not even mentioned to Sucec when he was lining her up in the Labor Office at 11:10 p.m. or when he redirected her at coil handling at 12:30 a.m. or even at 2:00 a.m. In the natural course of events it

is to be expected that an employee with physical problems actually preventing her carrying out her Supervisor's directions would explain that to the Supervisor at the time. Grievant did not do so. She says she told another employee (or two) about her problems while walking to the Labor Office that evening. The odd element is her not telling Sucec. The explanation she gives for not doing so is her allegation that she feared, if she had told Sucec, she might be sent to the Clinic and not allowed to return to work, since the last time she had been sent there she was not allowed to return to work and shortly thereafter was discharged for excessive absenteeism. This allegation might have been adopted more readily if grievant clearly had told anyone of her claimed problem. She says she told an employee named Blonski, and in Step 3 named another employee, but neither appeared to say so in the grievance proceedings or at the arbitration hearing, although grievant said when she told the Company about this, at least before the Step 3 Meeting, it checked with the first-named employee and that he acknowledged that grievant had mentioned her chest pains to him, but that is far from clear on this record.

In any event, however, the clincher on this point is that it is difficult to accept grievant's account of chest pains in light of her then picking up and carrying over a long trek a large and awkward armload of supplies that would be at least as difficult for her to do as would have been pushing the cart, perhaps even more difficult.

The Company made much of grievant's insubordination in not using the cart, as Sucec twice directed her to do. It conceded also, however, that her failure or refusal to use the cart would have become only a minor matter if grievant indeed had cleaned and somehow serviced the washrooms. It agreed grievant's refusal to use the cart was important here only as indicative and confirmatory of her failure to carry out her other duties. It does insist, though, that it is virtually impossible to do a decent and sensible job of cleaning and servicing all the washrooms without the cart. Regardless of what grievant said after the event, her behavior during it showed that she agrees, for the cart carries a plunger, which, if she had taken the cart, she could have used to try to unclog the sink (as Sucec did later) or toilet, whichever was clogged. Without the cart, she could not do that. And without the cart, she would have had to walk the long route twice in order to do the mopping.

Grievant said that other employees performed the washroom detail without using the cart. But there was no persuasive evidence of that.

It is important to stress that what is in dispute here is whether or not the washrooms had been cleaned and serviced. That is not especially difficult to determine. If there were debris strewn around, bowls and sinks dirty, mirrors and walls dirty, and dispensers empty or nearly so, it would not be hard to see those conditions and from them to conclude that the washrooms had not been cleaned or serviced. Sucec was familiar with the detailed tasks to be done, and he said he went in all but the three washrooms at shipping on the first inspection trip and all of them on the second and that they had not been cleaned or serviced by 12:30 a.m. or one hour and twenty minutes after grievant set out on her tour, or even by 2:00 a.m., nearly three hours later. Sucec said that Vega agreed with him.

Grievant agrees she did not do two or three washrooms at all and that she had not mopped any of the at least four floors that had to be mopped. She said she intended to come back to the cart after lunch (after about 2:15 or 2:30 a.m.) and get the wheeled bucket and mop and push the bucket over the route a second time and mop the necessary floors then.

But Sucec said none of the washrooms he checked (all but three at shipping) had been cleaned or serviced. He said they were dirty, with refuse on the same floors and some dispensers out of paper. It is significant also that Sucec said that on his first inspection round, two groups of employees accosted him and asked where his washroom detail was, complaining that one washroom was out of toilet paper and another was out of paper towels. That is totally inconsistent with grievant's having cleaned and serviced the washrooms. Grievant was so uncertain about which washrooms she agrees she had not done as to make it impossible to conclude that the ones she agreed she missed were the same ones the employees complained about.

Grievant insists that it took no more than five minutes to clean most of the washrooms. If that were accurate, it is difficult to understand what she had been doing in the period of at least one hour while she claims she was working, between 12:30 and 2:00 a.m., even allowing one-half hour for telephoning. If grievant had spent that hour cleaning and servicing at five minutes per washroom, she would have finished (except mopping) perhaps eight more washrooms, and it is clear she did nothing like that.

She was found by Sucec and Vega the second time sitting at a desk in a darkened office. Her explanation was that she had been there from five to fifteen minutes trying to reach Sucec on the telephone to tell him that two toilets were clogged.

Sucec said he was in his office a good part, say fifteen or twenty minutes, of that time, which he claimed grievant said was one-half hour, and that he got no such calls. But let that pass. The essential difficulty with this explanation is that, even if there were two clogged toilets (or sinks), grievant was supposed to try to unclog them with the plunger off the cart, and two clogged toilets would not justify stopping work for five, fifteen, or thirty minutes just to tell Sucec about them. Grievant says she intended to go back to the cart and get the bucket and mop, and she could have told Sucec about the clogged toilets then. In any event, grievant's own behavior undercuts her later stated belief that it was important to call Sucec about this.

According to her version, she discovered one clogged toilet before she was approached by Sucec the first time at 12:30 a.m., and yet she said nothing to him about that then even though she was speaking to him face to face. It is not easy to see what happened between 12:30 and 2:00 to justify grievant's stopping for one-half hour to call Sucec about a second clogged toilet when she did not think it important to say anything about one clogged toilet when she spoke to him at 12:30.

Both versions agree that grievant was sitting in a darkened office. Even if there were sufficient light from the vestibule to enable her to see to use the telephone, her doing so in those circumstances is at least as consistent with her sitting in that darkened office, doing nothing. This is especially so, in light of the conclusion that she had not cleaned the washrooms in the period of nearly three hours since she had been directed to do that work.

Accordingly, since the preponderance of the evidence supports the conclusion that grievant did not clean or service the washrooms for almost three hours of the turn, as she had been directed to do, she was guilty of insubordination, and with her poor disciplinary record, was subject to discharge.

There was no contractual necessity for Sucec to march grievant back over the washrooms in order to prove to her that she had not cleaned or serviced them. Nor was it necessary in these circumstances that he expressly tell her to do the work or go home. She knew she had to do it, as she agrees, and her long failure to do so constitutes insubordination. Finally, grievant was not suspended prematurely in violation of anything in Article 8.

Perhaps it should be made clear that this analysis has not relied in any way on the written statement of Hourly Trainee Foreman Vega.

Consequently, the grievance must be denied.

AWARD

The grievance is denied.

/s/ Clare B. McDermott

Clare B. McDermott

Arbitrator