Award No. 791
OPINION AND AWARD
In the Matter of Arbitration Between
INLAND STEEL COMPANY
- and -
UNITED STEELWORKERS OF AMERICA,
LOCAL 1010
Gr. No. 16-S-46
Appeal No. 1402
Arbitrator: Herbert Fishgold
October 18, 1988
Appearances:
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For the Company
T. Kinach, Section Manager, Union Relations
E. Skuse, Manager, Nos. 1 & 2 Cold Mills/ C.P.
W. Thomas, Section Manager
I. Ayala, Supervisor
D. Listenberger, Supervisor
R. Castle, Section Manager, Union Relations
R. Scholes, Project Representative, Union Relations
A. Kolasa, Representative, Union Relations
For the Union
Mike Mezo, President
J. Robinson, Arbitration Coordinator
D. Lutes, Sec., Gr. Committee
D. Southern, Grievant
A. Robinson, Griever
W. Trella, Staff Representative
J. Colello
K. Ray
J. Gutierrez
B.J. Thompkins, Chair, Gr. Committee
Statement of the Grievance: The aggrieved Danye Southern, Check No. 16607 contends the action taken by the Company, when on March 14, 1988, his suspension culminated in discharge, is unjust and unwarranted in light of the circumstances.
Relief Sought: The aggrieved requests that he be reinstated and paid all monies lost.
Contract Provisions Cited: The Union cites the Company with alleged violations of Article 13, Section 1; Article 8, Section 1; and Article 14, Section 8 of the Collective Bargaining Agreement.
Statement of the Award: The Grievance is denied.
CHRONOLOGY
GRIEVANCE NO. 16-S-46
Grievance filed: March 17, 1988
Step 3 hearing: April 6, 1988
Step 3 minutes: May 20, 1988
Step 4 appeal: May 6, 1988
Step 4 hearing(s): June 23 & July 13, 1988
Step 4 minutes: September 16, 1988
Appeal to Arbitration: September 20, 1988
Arbitration hearing: September 29, 1988
Award issued: October 18, 1988
Background
Dan Southern was employed by the Company in the No. 1 & 2 Cold Strip and Coal Processing Department as a Mill Mechanic from March, 1968 until his suspension on March 2, 1988, and ultimate discharge on March 14, 1988. The suspension and discharge were based upon alleged violation of Rule 127(a) (attempting bodily injury to another employee), (d) (reporting unfit for duty), and (p) (use of profane,

abusive, or threatening language) of the General Rules for Safety and Personal Conduct, as well as on his overall unsatisfactory work record. The cited rules state:

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

"a. Fighting with, or attempting bodily injury to another employee or non-employee on company property.

"d. Reporting for work under the influence of intoxicating beverages; being in possession of, while on Plant property or bringing onto Plant property intoxicating beverages.

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

The Company's action was based on the events occurring on February 27, 1988. On that date, Southern reported for work at 6:30 a.m. for a double shift of 16 hours. Shortly after making the initial work assignments, Supervisors I. Ayala and D. Listenberger noticed Southern's unsteady gait and the smell of alcohol. Believing him to be unfit for duty, they instructed him to report to the supervisors' office to wait for an escort to the Company clinic for a breathalyzer test.

On the way to the office, as well as upon arriving at the office, Southern began yelling a stream of obscenities and threats at Ayala and Listenberger, calling them "a couple of fucking assholes," and saying, "I'll get you in the street. I'll fuck you both up." Once in the office, a call was made to Plant Protection to take Southern to the clinic. While wating for Plant Protection's arrival, Southern continued to be loud and verbally abusive, using obscenities and threatening to get Ayala and Listenberger outside.

At one point, Southern stood directly in front of Ayala, yelling and pointing his finger in Ayala's face while holding his left fist clenched at his side. Southern then turned his attention to Listenberger, who was sitting writing up notes on the incident, and contined yelling such things as, "I'll get you both outside." His left arm then shot up and knocked the hard hat off Listenberger's head. Southern maintains the blow was not intended, but occurred accidentally when he gestured at Listenberger. After seeing Listenberger writing, Southern yelled, "Take all the notes you want, I don't care," and swung his arm, knocking the pen out of Listenberger's hand. Southern denies any memory of this. During this time, the supervisor's responses were in the way of attempting to calm Southern down. When Plant Protection officers arrived, Southern quieted down immediately and accompanied them to the clinic, where he refused to take the breathalyzer test. He was then driven from the plant by one of the officers.

After being dropped off, Southern went into a local tavern. From there, he called Don Lutes, Secretary of the Grievance Committee, at the Union hall, and told him he'd been sent home. He then started drinking. Shortly thereafter, he apparently placed a call to the supervisors' office. Listenberger answered, and heard a voice threaten him, saying, "I will kill you. I will get you both, if it is the last thing I do." Listenberger had Ayala listen in and he heard the voice say, "I will get your ass if it's the last thing I do." Both supervisors identified the voice as that of Southern. Southern stated he had no memory of the call, but also did not recall telephoning Union Representative Lutes, who, realizing Southern's condition, went to pick him up and took him to a friend's to sleep. The Union concedes that Southern probably did make the call to Listenberger.

A departmental investigation took place on February 29, 1988, at which time the grievant admitted reporting to work unfit for duty, having spent the previous night drinking heavily, and the Union described his condition as being one of an "extreme state of intoxication." On March 2, 1988, the Company informed Southern that he was suspended subject to discharge for violation of Rule 127 (as specified above). A hearing was requested and held on March 7, 1988, where the events of February 27 were reviewed, as well as Southern's past record. The record of discipline reflects the following:

Date	Infraction	Action
10/19/83	Failure to report off	Discipline - 1 turn
02/07/84	Failure to report off	Discipline - 2 turns
08/22/84	Absenteeism	Reprimand
06/11/85	Absenteeism	Discipline - 1 turn
09/05/85	Absenteeism	Discipline - 2 turns
04/30/86	Failure to report off	Discipline - 1 turn
06/26/86	Failure to report off	Discipline - 2 turns
06/22/87	Failure to wear safety glasses	Safety Warning
08/14/87	Absenteeism	Discipline - 1 turn
12/14/87	Absenteeism	Discipline - 2 turns

During the course of presenting the grievance, the Union informed the Company that Southern had begun attending meetings of Alcoholics Anonymous, and had abstained from drinking alcohol since February 27. It was maintained that Southern acknowledged a drinking problem and believed that he had it under control, and that there was, therefore, no probability of a repeat of the incidents of February 27.

At the arbitration hearing, Southern testified that about nine or ten years ago, he approached the Company about a drinking problem and enrolled in the Inland program for alcohol abuse, but dropped out shortly thereafter. He said that he was asked in October, 1983 (on the occasion of a discipline for absence) whether he had a drug or alcohol problem, but at that time denied it. Nevertheless, at the arbitration, he admitted that his absenteeism and failures to report off, for which he was then and subsequently disciplined, were in fact attributable to the drinking problem. He testified that he again denied any such problem when asked by the supervisor in September, 1985 on yet another of those occasions of absenteeism. At some point during this time, he did admit to a problem with alcohol to the Union, which had filed grievances over two of the disciplinary actions, but in response to urgings from, among others, Don Lutes, to do something, including attending AA, he admittedly did not seek help. Only after the decision to discharge him came in March, 1988, did he take action toward dealing with the problem, by starting and continuing to attend AA meetings three times a week.

The grievance here charges violation of Article 3, section 1, and Article 8, section 1, which is essentially the argument that the discharge is not for "just cause." The Union also alleges that the Company has failed to follow the contractual procedures outlined in Article 14, section 8, which reads as follows:

"Section 8. Alcoholism and drug abuse are recognized by the parties to be treatable conditions. Without detracting from the existing rights and obligations of the parties recognized in the other provisions of this Agreement, the Company and the Union agree to cooperate at the plant level in encouraging employees afflicted with alcoholism or drug abuse to undergo a coordinated program directed to the objective of their rehabilitation.

Discussion

Turning first to the factual underpinning to the charges against Southern, it is uncontested that he came to work heavily intoxicated, verbally abused and threatened his supervisors in their office, and during that tirade, knocked the hard hat off Listenberger's head. As to the other events of that morning, the Arbitrator credits the testimony of the supervisors, as Southern's only rebuttal is that he cannot remember what happened, including the call to Lutes, who came to pick him up at the tavern. Thus, the Arbitrator concludes that Southern did swing his arm and hit the pen out of Listenberger's hand, and did call the two supervisors from the tavern and threaten them with physical harm. As to whether or not the knocking off of Listenberger's hat was intentional, in either case, Southern was acting in a physically menacing manner, swinging his arms around in a way to have that result. And it is hard to imagine that knocking a pen out of the hand of someone who is writing with it could occur accidentally. Despite his lapses of memory, Southern does recall, and admits to being very angry at, essentially, being caught in such poor condition. While it may very well be that his behavior in the office can be viewed as the "alcohol talking," resulting in temporary irrationality, it cannot go unnoted that sometime later, away from the plant, he called back to the office and threatened Ayala and Listenberger again.

Based on the above, the conclusion is inescapable that Southern did violate Rule 127 in the three respects charged, and the Company was justified in imposing discipline. This Arbitrator's view is consistent with that expressed in several Inland awards cited by the Company, that threats and abusive conduct toward a supervisor are good cause for serious discipline, given the obvious negative impact on the proper functioning of a plant. Rule 127 specifically states that, for the charges which the Arbitrator finds to be sustained, the penalty is discipline up to and including discharge.

As to the severity of the discipline called for, a review of the awards provided to the Arbitrator demonstrates that these types of charges are met with either suspension or discharge, depending upon the particular factual circumstances, with no set of facts being exactly duplicated here, as one would expect. However, what is plain is that verbally threatening and cursing a supervisor, particularly in anger, is viewed as a very serious offense, and that the fact of being under the influence of alcohol does not excuse conduct committed under that influence. Viewing all of the circumstances of this case, and particularly the nature of Southern's conduct and the telephoned threats, the Arbitrator must conclude that absent mitigating factors, the penalty of discharge is warranted on the basis of the charges proved.

While conceding that threatening a supervisor is serious misconduct, the Union argues for mitigation of the penalty and reinstatement, based upon Southern's long service with the Company (twenty years) and the absence of a prior record of similar conduct. The Union urges that absenteeism and failure to report off are

substantially different offenses and fail to establish a pattern of abusive behavior. Rather, it is argued, the incidents of February 27 were isolated events, caused by extreme intoxication.

While the Arbitrator agrees that these types of conduct are not the same, there is nevertheless a common thread, i.e., Southern's acknowledgement that all of this conduct was the result of alcohol abuse. Despite nine disciplinary actions since 1983, Southern did not raise the problem of alcoholism with the Company, and, in fact, denied the existence of such a problem when asked directly by his supervisor. Southern must be charged with understanding that his drinking problem posed a direct threat to his job and he must be held responsible for not seeking available help to eliminate that threat. He certainly knew that help was there, because he had earlier enrolled in the Company program and dropped out, and was also urged by the Union to go for assistance. Thus, the past record does not support mitigation. Instead, it demonstrates that Southern was on notice of the need to get assistance for his alcohol problem because of the negative impact of that problem on his conduct as an employee.

For the above reasons, the Arbitrator also specifically finds that, in the context of the record presented, Article 14, section 8 does not provide a basis for mitigation. That provision does not create an obligation on the part of the Company herein, since Southern did not disclose his drinking problem to the Company prior to engaging in conduct otherwise justifying discharge, and in fact denied having a problem when asked directly, even though his former attendance problems were a direct result of his alcohol abuse. There was no showing, and no argument, that the Company could or should have done more prior to February, 1988. Other Arbitral awards at Inland are to the effect that this provision does not necessarily immunize employees with drug or alcohol prolems from adverse actions based upon their conduct, and that the required "cooperation" in encouraging treatment presupposes both knowledge on the Company's part of the employee's condition, and the sincerity of the employee's efforts to obtain professional help. Indeed, this Arbitrator has set forth both the rationale and the criteria for applying this standard in a recent award (No. 788) involving the intent of Article 14, section 8. Thus, Southern must bear the responsibility for his decision not to seek help until it was too late, despite the warning flags presented by repeated disciplinary actions based on alcohol-induced absences.

In this regard, the Arbitrator is not unmindful of the extent to which Southern's behavior was alcohol-induced. However, on the record presented, the Arbitrator can find no justification for absolving the grievant from responsibility for his actions on that basis. As already indicated, Article 14, section 8 does not provide that justification in and of itself. Furthermore, for at least ten years, the grievant knew he had an alcohol abuse problem, but even when it began to impact directly on the job and lead to disciplinary actions, and even in the face of inquiries by management and urgings from the Union, he did not get help. The Arbitrator cannot shift from the employee to the Company the responsibility for that failure. In Award No. 636, even without this type of background, the termination of a long-term employee was sustained on the grounds of his having brought a loaded weapon into the plant, and the fact of his having been under the influence of alcohol did not serve to excuse the conduct or mitigate the penalty.

The Union has also urged mitigation on the grounds that the penalty of discharge is out of line with other cases of threatening a supervisor, and thus represents disparate treatment. In Award No. 721, the grievant was suspended for four weeks for threatening a supervisor, and, according to the Award, the Company, in reducing an original discharge to suspension, took into consideration the fact that the employee was under the influence of alcohol at the time. That case is not sufficiently similar to demonstrate unequal treatment. The threats in that case took place off plant premises, in a public tavern, there was no physical aggressiveness accompanying the threats, and the grievant had had no prior discipline of any kind. Further, there was nothing comparable to the follow-up threats made by Southern when he called the supervisors' office from the tavern.

The other three awards cited by the Union are not cases where the Company imposed less than discharge, but rather, where the Arbitrator reduced a discharge to a suspension. However, these, too, contain facts not duplicated here. In Award No. 653, although the Arbitrator found that the grievant made serious verbal threats of bodily harm against a supervisor, he weighted heavily the fact that the supervisor, to a significant degree, provoked the grievant, and that the circumstances were such that the grievant was very frustrated, and that his remarks were perceived by the arbitrator as reflecting only that frustration and not a desire to cause injury.

In Inland Award No. 280, reference is made to a past five day suspension for threatening bodily injury to a foreman, but no facts describing the incident are included. The Award actually concerned a different offense, and a discharge was reduced to a suspension because of what the Arbitrator found was improper

reliance by the Company on a past record, improper because of contractual time limits on the use of prior offenses, and a "personal transformation" that had occurred to the grievant prior to the last incident.
Award No. 313 is relied upon for the proposition that the culminating event must "stand on its own bottom," that is, "must be of such a character itself, which, when considered with the personnel record, justifies discharge." That is a proposition with which the Arbitrator agrees, but in that case the conlusion was that the precipitating event did not reflect deliberate behavior by the grievant, "self-indulgence," or a wanton disregard of the employer's rules (the grievant overslept under extenuating circumstances). In all fairness, the same cannot be said about the instant case. Southern's conduct on February 27, beginning with his decision to come to work in an intoxicated condition, continuing with abusive and belligerent confrontation of his supervisors, and ending with telephoned threats, cannot be viewed as other than serious violations of the personal conduct rules.
Finally, the Union argues that the Company's decision to terminate Southern appears to have been based, in part, on the fact that he was a Union Representative. With respect to Southern being an Assistant Grievance Committeeman, the Union maintains that, during the processing of the grievance, the Company took the position that as a Union Representative, Southern was expected to know Company rules and procedures, and was held to a higher standard of conduct. The Union argued that this represented another form of disparate treatment.
Ed Skuse, Manager of Cold Strip Mills Nos. 1 and 2, testifed that in determining that discharge was the appropriate discipline herein, he did not rely on the fact that Southern was a Union Representative. With respect to the question of mitigation, however, Skuse testified that he found it appropriate to consider Southern's Union position as creating a higher standard of expected conduct.
Thus, the arbitrator finds that the Company did not differentiate the scope of discipline on the basis of Southern's Union position. Rather, in considering whether there was any basis for mitigation of that penalty, the Company noted that someone in a Union position should lead by example, particularly in a situation involving application of plant rules and procedures.
AWARD
The grievance is denied.
/s/ Harold Fishgold
Herbert Fishgold, Arbitrator
Washington, D.C.
October 18, 1988