Award No. 798
IN THE MATTER OF THE ARBITRATION BETWEEN
INLAND STEEL COMPANY
and
UNITED STEELWORKERS OF AMERICA
LOCAL UNION 1010
Grievance No. 8-S-16
Appeal No. 1409
Terry A. Bethel, Arbitrator
March 6, 1989

INTRODUCTION

The arbitration hearing was held in Hammond, Indiana on February 8, 1989. Both sides filed, and exchanged, prehearing briefs. Grievant, James Armstead, was present throughout the hearing and testified in has own behalf. At the commencement of the hearing the parties stipulated that this award would be non precedent setting.

APPEARANCES

For the Company
Michael T. Roumell, Attorney
Robert B. Castle, Section Manager, Union Relations
Cheryl Sherwood, Personnel Clerk, Bar & Structural
Vincent Soto, Project Representative, Union Relations
Larry Brown, Section Mgr., 28" Mill-Shape Products

For the Union
Bill Trella, Staff Representative
Jim Robinson, Arbitration Coordinator
Steve Wagner, Griever
Don Lutes, Section Grievance Coordinator
James Armstead, Grievant
Walter Green, Witness and Past Griever

BACKGROUND

This case involves the discharge of the Grievant, James Armstead, for excessive absenteeism. Grievant is a long service employee, hired on September 25, 1984. He was suspended preliminary to discharge on March 28, 1988. As might be expected when an employee with 24 years service is discharged for violation of an absence policy, Grievant has a history of attendance problems. His history from his past 5 years of employment is summarized below:

3/29/84	Excessive Absenteeism	Reprimand
5/02/84	Excessive Absenteeism	Discipline - 1 Day
8/22/84	Excessive Absenteeism	Discipline - 2 Days
3/04/85	Excessive Absenteeism	Discipline - 3 Days
3/08/85	Excessive Absenteeism	Record Review - Final Warning with Assistant Superintendent
4/26/85	Excessive Absenteeism and overall unsatisfactory record	Suspension
5/09/85		Reinstatement on Final Chance Basis
5/14/85	Excessive Absenteeism	Record Review - Final Warning
1/08/86	Violation of Rule 127-1 (Leaving work area without proper relief)	Reprimand
4/29/86	Failure to work as scheduled	Discipline - 3 Days
5/06/86	Failure to work as scheduled	Record Review - Final Warning
11/13/86	Failure to work as scheduled and overall unsatisfactory work record	Suspension
11/25/86	Failure to work as scheduled and overall unsatisfactory work record	Discharge
2/12/87		Reinstated on "Last Chance" basis
10/22/87	Absenteeism	Record Review
3/28/88	Failure to work as scheduled and breach of	Suspension

	return to work conditions dated February 10, 1987	
4/11/88	Failure to work as scheduled and breach of return to work conditions	Discharge

Although a few of these entries relate to the same occurrences, that does little to minimize the seriousness of Grievant's attendance problems.

As noted in the above review, this is not the first time Grievant has been discharged for violation of the company's attendance policy. Similar action was taken against him on Nov. 25, 1986. Following meetings between the company and union, however, Grievant was reinstated pursuant to the terms of a document entitled "Last Chance Agreement." In pertinent part, that document reads as follows:

On November 25, 1986, James Armstead . . . was properly discharged for his failure to work as scheduled and his overall unsatisfactory work record.

Although all parties to this agreement recognize that cause existed for this discharge action, the company has decided to reinstate James Armstead on a last chance basis which will provide him with one final chance to prove he can become a responsible employee . . . This reinstatement is conditioned on the following terms:

1. All time lost . . . s hall be considered disciplinary time off.

4. The grievant has reached the point in his career where any occasion of lost work time due to any of the monitored absences under the Plant Attendance Program is unacceptable.

5. This arrangement represents a final chance at employment for the grievant. Failure to meet any of the conditions set forth above or any repetition of the conduct which led to this suspension-discharge action or violation of any other company rules or regulations will be cause for his suspension preliminary to discharge.

As can be seen from the review of his record, Grievant's attendance problems did not disappear following his reinstatement. Although most of the hearing was devoted to an examination of Grievant's attendance record following his reinstatement, that record is not the sole reason for his discharge. Indeed, it may well be that those incidents standing alone would not constitute proper cause. But they do not stand alone.

During the hearing there was significant discussion of the company's Attendance Improvement Program. That program itself is not at issue in this proceeding. Indeed, I have not seen a copy of it and cannot comment on most of its provisions. As I understand it, the plan monitors certain absences. Employees are evaluated on a rolling 90 day period. Action is first triggered when the absence rate reaches or exceeds 6%. Once progressive discipline reaches the 2 day suspension level, action is prompted by an absenteeism rate of 5% or greater. It was apparently violations of this program that triggered Grievant's 1986 discharge and the disciplinary action that preceded it.

Following his reinstatement, Grievant exceeded the 5% level on 4 different occasions before the culminating incident that led to his discharge. As the union points out, his absence rate was only marginally above 5% for at least some of the evaluation periods. However, given the terms of the last chance agreement, I am not certain that it was even necessary for Grievant's absence level to exceed 5%. That is, the agreement says expressly that "any occasion of lost work time under the plant attendance program is unacceptable" (emphasis added). In any event, there is no dispute about the number of absences nor, apparently, about the fact that Grievant's absence rate exceeded the 5% level on several occasions following his reinstatement.

During the hearing, significant time was devoted to an explanation of the company's monitoring procedures under the Attendance Improvement Program. It is not necessary to repeat all of that testimony in this award. It is enough to point out that, following Grievant's reinstatement, his attendance problems were brought to management's attention on a number of occasions. Company Table Exhibit 1 is a copy of the Absenteeism Interview Report generated through the company's program on March 25, 1988. As explained by witness Larry Brown, this document was prompted by the fact that Grievant's absence rate for the evaluation period exceeded 5%. It was this document, and the review it generated, that led to Grievant's discharge. It contains his attendance history for the 2 year period preceding his discharge, as well as the four incidents the company pointed to as precipitating the discharge.

During his testimony, Brown reviewed the Grievant's absences after the February 1987 last chance agreement. In July 1987, Grievant missed 5 days work as a result of an off-plant injury. The union pointed out that Grievant reported for work and was willing to work. However, he was ordered to report to the clinic for examination and was yellow carded. In September 1987, Grievant again suffered an off-plant

injury, resulting in an extended absence period of about 3 weeks. In October 1987 Grievant missed 2 days work because of the terminal illness of his mother-in-law.

Although I do not have a copy of the company's absence plan, each of these absences was apparently a monitored absence under that plan and, accordingly, was at least in technical violation of the last chance agreement. However, the company "passed" on each of these occurrences. That is, it elected not to impose any discipline.

This action prompted a dispute at the hearing concerning the nature of a pass. The company asserts that a pass does not mean the absence is simply forgotten. Indeed, the absence remains on the employee's record. The slate is not wiped clean. Instead, the company has deferred any discipline as a result of that occurrence. The union sees the practice differently. It apparently sees a pass as a recognition that the absence did not warrant discipline and, therefore, cannot be used to support a later disciplinary decision.

I think the company has the better part of the argument here. The absence does not disappear from an employee's record merely because the company has not imposed discipline. But the fact that there has been an absence followed by a pass does not necessarily mean that the company had the right to discipline the employee. That is, the absence followed by a pass is not the equivalent of prior disciplinary action. It is merely another entry on the employee's record. Since there was no discipline, the employee obviously did not have the opportunity to grieve the company's disposition. Thus, if the passed absence is used later as evidence of abuse of the attendance policy, the employee should not be precluded from defending the alleged violation of the plan.

Although none of the three passed absences prompted discipline, they did result in a record review, which occurred in October 1987. That review culminated in Company Exhibit 6, a letter to Grievant from P.E. Shattuck dated Oct. 22, 1987. As was the case in his last chance agreement some 8 months earlier, Grievant was informed that "you have reached the point where any occasion of lost work time due to any of the monitored absences . . . is unacceptable . . . . [Y]ou must work your scheduled turns or you [will] be suspended and discharged for your failure to comply with the last chance agreement . . . This letter is being issued to you as a final warning . . . ."

Approximately 5 months after this final warning, the attendance monitoring program generated Company Table Exhibit 1, detailing the Grievant's absence experience since his record review. As was the case before, Grievant's absence rate exceeded 5%. The report listed 4 incidents. On December 31, 1987, Grievant was tardy because of transportation problems. Grievant testified that his car would not start. He called the plant and was told to get to work. He arrived 2 or 3 hours late.

On February 11, 1988, Grievant had another transportation problem, this one causing him to miss work altogether. He testified that his ride forgot to pick him up, that he called his foreman to report the problem and that the foreman was appreciative of the notice. On March 14, 1988, Grievant reported off sick. And 8 days later, on March 22, 1988, Grievant did not work because of a personal problem. Grievant testified that he was required to go to court because of a problem involving back child support. However, he asserts that this absence should not count against him because he arranged for a replacement worker, a practice he claims is recognized within his department.

Following this incident, Brown testified that he made the decision to terminate Grievant based on his attendance record. He said he reviewed Grievant's experience, his warnings, the number of passes, and the nature of his most recent absences. He concluded that Grievant was not making a good faith effort to improve his problem.

Discussion

One does not approach the discharge of an employee who has almost 24 years service as a casual matter. However, as Arbitrator Fishgold pointed out in Inland Award 773, "when an employee continues to violate established limits for absenteeism, accumulated length of continuous service does not provide continuing immunity." I recognize that there are explanations for some of Grievant's more recent absences. Indeed, I think Mr. Trella did an admirable job of minimizing what can only be described as a terrible attendance record. But there comes a point when the company need no longer tolerate the repeated absences of even a long service employee and when even the skilled advocacy Grievant enjoyed from his union will no longer protect him.

No one claims that the three periods of absence which preceded Grievant's October 1987 record review were intentional. He did not cut his hand on purpose, he did not intentionally injure his knee, and his mother-in-law's illness was certainly not his fault. If he had not experienced significant previous problems, those occurrences might have passed by without notice. As it was, the company elected not to make an issue of them. But they cannot be ignored entirely. As other arbitrators have noted, there comes a point at

which the reason for the absence becomes immaterial. Although by the company's reckoning, Grievant had not yet reached that point by October of 1987, his record review and yet another final warning should have put him on notice that he was dangerously close to losing his job. But that effort seemingly had little effect on him.

What I find striking is the nature of some of Grievant's later occurrences. Within a period of 5 or 6 weeks, he had 2 occurrences because he did not have a way to get to work. I cannot judge Grievant's financial status. I do not know whether he could afford his own transportation. But there is hardly any job responsibility more basic than the need to get to work. I realize that Grievant tried to solve that problem by having another employee pick him up. And I am willing to believe that the other employee forgot. But I do not think that is an acceptable excuse. Grievant was not someone who could afford to be casual about getting to his job. He needed to understand that he had to be there. Whatever arrangements he had to make, or whatever financial sacrifices, someone with his employment history could not miss simply because he did not have a ride. And, especially, he could not expect to use that excuse twice in the space of 43 days.

The culminating incident of March 22 shows what I think is a similarly casual attitude about his job. I'm willing to believe that Grievant had been ordered to appear in court on the 22nd. But he did not receive that order on the 22nd. By his own testimony, he knew about the appearance at least as early as the previous Saturday, March 19. But he did not tell his supervisor. Indeed, he did not even manage to arrange for a replacement until the morning of the 22nd.

During the hearing there was significant dispute about the practice of exchanging turns in Grievant's department. Brown testified that no such practice existed, at least without supervisor approval, an assertion that is supported by the literal language of the contract. See Article 10, Section 6. But the union introduced contrary testimony from both Grievant and from Walter Green, a former griever who works in the department. Green's testimony was admitted over the strenuous objection of Mr. Roumell.

On review of the record, I think my decision to admit the testimony was proper. As I noted at the hearing, Green did not testify about new information. Moreover, the third step minutes do contain a statement quite similar to Green's testimony at the hearing and Green testified, credibly I thought, that he was the one who made the statement during the grievance meeting. It is true, as Mr. Roumell argues, that Green was at the third step meeting as an advocate. But he was also someone who had knowledge of the department practices. His status as an advocate goes only to the question of how much weight I should give his testimony.

Nevertheless, even though I am willing to consider Green's testimony, I did not find it helpful to Grievant. Although the practice Green testified to may very well exist, it simply does not apply to the facts at issue here. Green said that employees sometimes arrange trades without telling their supervisors in advance. However, he did not say that employees reasonably believe that permission is unnecessary. Rather, he said that the practice of exchanging without advance approval occurs because employees are sometimes unable to contact their supervisors before the start of the shift. That often occurs, he said, when the company changes the work schedule without much notice. What Green said was that if an employee cannot work but also cannot reach his supervisor, he has sometimes been allowed to exchange turns without previous approval. However, the employees understand that they must tell their supervisors of the trade as soon as possible, which sometimes is at the start of the shift.

This .testimony is of no help to Grievant. This was not a case in which a last minute schedule change or other development prevented Grievant from reaching his supervisor. He knew at least as early as Saturday that he had to be in court on the following Tuesday. I do not know what the company's reaction would have been if he had informed management of this fact. Perhaps they would have allowed him to exchange tours, perhaps not. But the important fact is that Grievant did not even attempt to work things out. Frankly, I find it hard to understand his actions. He had to know that his attendance problems had placed his job in serious jeopardy. The union wants me to view Grievant as an employee who knew he had a problem, but was making a conscientious effort to improve. Nothing in his action on the 22nd supports that position.

I think there is some truth to Mr. Trella's argument that Grievant's record had improved somewhat. In any event, his record at the time of his discharge was not as bad as it had been at some points in the past. But that isn't the point. A review of Grievant's history show that in the 8 years preceding his discharge, he had been suspended for attendance related problems six different times, not counting his 1986 discharge which was converted to a suspension. He had received 4 different record reviews. Counting the record reviews, Grievant had gotten 5 final warnings, one of them following implementation of the last chance agreement which was still in effect at the time of his discharge.

Discharge of an employee with 24 years service is not a matter to be undertaken lightly. But I fail to understand what else the company was to do in this case. It had exhausted progressive discipline. It had tried reprimands, suspensions, discharge and reinstatement on a last chance agreement, and numerous final warnings. Yet after all of that, Grievant still failed to show up for work claiming car trouble, missed rides and court appearances that he had said nothing about. I do not detect here an employee who is serious about remedying his problems. I'm sure that Grievant did not want to lose his job. I can even believe that he felt justified in all of his actions. But I think there comes a time when the company can say "enough."

In Inland Award 717, Arbitrator Seward discussed the nature of last chance agreements:

"Last chance" understandings . . . can be a highly important and valuable means of salvaging potentially good employees who are on the brink of discharge because of repeated instances of absenteeism or other similar lapses of responsible conduct. They can . . . be the capstone of progressive discipline -- a means of making a final effort. . . . If they are to serve this end, however, such "last chance" understandings must be respected and given effect.

There was a last chance agreement involved in this case that I think must be given effect. I am also influenced by the fact that the company dad not apply it woodenly. Despite the terms of the agreement, the company did not seize on the first opportunity to fire Grievant. To the contrary, it allowed him several chances to improve, even going so far as to give him yet another final warning. But he ignored the warnings and acted with apparent oblivion to his situation.

I have read the awards submitted to me by the union. I do not think they can overcome the facts of this case. Two of the them, Inland Awards 710 and 728, involved employees with bad attendance records who the arbitrator thought should be given one more chance. In those cases, neither of which involved a last chance agreement, perhaps the arbitrator found reason to think the employees could improve. But that is not the case here. Grievant has been given one more chance at least 5 times. He has not solved his problems and I see no reason to believe that he will. He has used up his chances, I hold that his discharge was for proper cause.

AWARD

The grievance is denied.

Respectfully Submitted,

/s/ Terry A. Bethel

Terry A. Bethel

Bloomington, IN, March 6, 1989