

Inland Steel Award No. 805

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DISCIPLINE AND RECOGNITION AND BARGAINING UNIT

GRIEVANCE NO. 28-S-75

AWARD NO. 805

SUMMARY: A Grievance Committeeman may not be disciplined for actions taken in his official capacity as a representative of the Union. Grievance Committeeman's five-day suspension for "insubordination" is set aside and grievant made whole for lost wages. Grievant's actions in insisting that Supervisor hold an immediate Step 1 meeting and his refusal to leave the Supervisor's office did not constitute insubordination. His use of the Supervisor's telephone, after being told not to, was ill-advised but did not constitute insubordination. While grievant may have effected some physical contact with the Supervisor, neither did that constitute insubordination.

COMPANY: INLAND STEEL CO.

PLANT: INDIANA HARBOR WORKS

DISTRICT: 31

ARBITRATOR: CLARE B. McDERMOTT

DATE OF DECISION: FEBRUARY 26, 1990

STATEMENT OF THE GRIEVANCE

"The Company violated the Contract when it issued Grievance Committeeman R. Schneider a discipline for an incident which occurred on 11/30/87. The discipline is unjustified and improper.

"Article & Section of Collective Bargaining Agreement Violated Articles 4, Section 5, 3, and 13, Section 2.

"Relief Sought The discipline in question be rescinded and the aggrieved be paid all money and/or benefits lost."

BACKGROUND

This grievance from the Maintenance Division of No. 3 Cold Strip East claims that Management's five-day suspension of a Grievance Committeeman for alleged insubordination was without cause, in violation of Articles 3, 4, Section 5, and 13, Section 2, of the August 1, 1986 Agreement.

Grievant began with the Company in 1972 and in 1987 was working as a Motor Inspector in the Electrical Sequence and was an elected Grievance Committeeman for the East Area of the Maintenance Section.

On October 29 or 30, 1987, an employee (Grubbs) in the East Area represented by grievant was issued a disciplinary reprimand, and he wanted to file a grievance against it. No Step 1 meeting had been scheduled right after the reprimand. Grubbs went on vacation during the week of November 10, and grievant in the following week. Grievant says he thus realized by the Thanksgiving week that consideration of the grievance might begin bumping up against time limitations. He says he tried to speak to an Electrical Supervisor on Thanksgiving but did not succeed. He did not call him on Friday but did on Saturday, when he reached the Foreman at about 9:00 a.m. He says he told the Foreman that he recognized that Turn Foreman ordinarily did not hold Step 1 meetings in this area, but he told him also that there was a time problem with this grievance and requested that that Foreman hear it and have Finishing Department Maintenance Section Manager Johnson review the answer later.

The Foreman was reluctant to hold a Step 1 meeting, saying he never had done so before. He was from the West Area. Grievant told the Foreman he was authorized by the Agreement to hold such meetings, but the latter wanted Section Manager Johnson's approval before he would do so.

Grievant tried to reach Johnson at his home on Saturday. He called and spoke to Johnson's daughter, who said Johnson could not come to the telephone. Grievant then tried, without success, to reach the Electrical Foreman again. Grievant called Johnson's home again, and his daughter said he still was unavailable.

Grievant knew that Grubbs would work the midnight shift on Sunday. He thus spoke to him on Saturday and arranged to meet him at 7:20 Monday morning so that they could go to Johnson's office to hold the Step 1 meeting.

Expediting Clerk Rodriguez, in Johnson's office, said she got a telephone call from grievant at 7:00 a.m. on Monday, asking to set up an appointment with Johnson for that Step 1 meeting. She told grievant Johnson was not in yet, but that she felt he would not have time for such a meeting because he would be preparing

for a meeting with a number of foreman regarding milldelay reports. Grievant denies that he called Rodriguez that morning.

Section Manager Johnson said he came in at 7:00 or 7:10 a.m. on Monday and began accumulating all the operational, mechanical, and electrical mill-delay reports and started studying them for his 8:00 a.m. meeting with foremen. He said it takes perhaps 20 minutes to summarize these reports for one day's turns, about 30 or 40 minutes for an ordinary weekend's operations, and up to an hour or more for a holiday weekend's activity. This review would have had to cover delays for the 15 turns of the period from the prior Wednesday because this was the Monday following the Thanksgiving holiday.

Johnson said about 7:30 a.m. grievant and Grubbs walked into his office and wanted to hold a Step I meeting right then. Johnson asked if they had an appointment, and grievant said they did not. Johnson said he had no time for such a meeting then because he was preparing for the 8:00 a.m. delay meeting with his foremen.

Grievant demanded a Step 1 meeting right then and was determined. Johnson said he would meet at 3:00 p.m. that day or 9:00 a.m. the next day. Grievant said, "No," they would hold the meeting then. Johnson said he could not do so, saying that three or four times.

Johnson says grievant became abrasive and demanded the meeting. Johnson asked grievant to leave his office, and grievant said he would not. The first time Johnson says he requested that grievant leave. Grievant refused and, therefore, Johnson twice directed him to leave. Then Johnson told grievant he would call Plant Protection.

Grievant said Johnson had to hold the Step 1 meeting then and that it would take less than five minutes. Johnson said they ultimately held this meeting at 9:00 a.m. the next day and that it took well over an hour. Johnson said he did not know what this grievance was about when grievant appeared on Monday morning. Grievant said this grievance was near the end of its time limits. Johnson said he was in the plant on Saturday and Sunday but was not contacted then by grievant.

Johnson called to Expediting Clerk Rodriguez in his outer office to have her call Plant Protection to come and escort grievant out of the plant.

Grievant took Grubbs to the outer office and returned alone and continued to demand that Johnson hold a meeting. Johnson again said he had no time to do so and offered the alternative times.

Grievant asked to use Johnson's telephone to call Labor Relations. Johnson said grievant could not use his but could use one of the four or five telephones in the outer office. Grievant walked around Johnson's desk, picked up the receiver, and began dialing. Johnson said not to use that telephone and reached around to depress the button, and grievant forcefully struck at Johnson's elbow with his open hand to keep him from depressing the telephone button. Rodriguez testified that she just happened to look in Johnson's office at that instant and saw grievant strike and push Johnson's arm away in order to stop Johnson from breaking off grievant's telephone call. Grubbs said he was in the outer office and saw the telephone incident and that there was no striking or pushing, but that grievant blocked the telephone from Johnson's reach with his body.

Johnson said he felt threatened and provoked. He walked to the outer office and told Rodriguez again to call for Plant Protection. He waited there a moment or two and returned to his office, and grievant was speaking to then Union Relations Section Manager Castle. Grievant handed the telephone toward Johnson, but he would not take it, saying he would call Castle later.

Grievant went to the outer office and took Grubbs out. Grievant returned to Johnson's office. The Guard arrived, and grievant was trying to agree on a time for a Step 1 meeting. Grievant or the Guard or both asked why grievant was being escorted out, and Johnson says he said for insubordination and for striking him. Grievant then was taken out.

Johnson said the whole affair in his office from grievant's entry to his being escorted out took about 20 minutes or less. He said he and grievant had held 20 or 30 Step 1 meetings in the past two years.

Grievant came in Monday, his day off, and met Grubbs at about 7:30 a.m., and they went to Johnson's office. Grievant says they walked into the office, and grievant said he would like to file a grievance for Grubbs. Johnson said in a very abrupt manner that he could not hold a Step 1 meeting then and that they could return at 3:00 p.m. Grievant said Grubbs had worked since midnight and could not return at 3:00 p.m. Grievant said he would come then but that it could not be expected that Grubbs would do so.

Johnson said he could not meet then and that he wanted them to leave his office. Grievant said he had business to take care of, that he had a legal obligation to represent Grubbs, and that Johnson had an obligation to hear this grievance.

Johnson said he wanted them to get out of his office or he would call a Guard. Grievant said Johnson had a responsibility to hear this grievance, that he had tried to have it heard on Saturday, and that he had heard from Electricians that Johnson had told the Electrical Foremen not to hear it. He told Johnson he ordinarily tries to schedule Step 1 hearings in advance, but that this one was up against the 30-day time limit, and the Company was required to hear it.

Johnson called out to Clerk Rodriguez to have her call Plant Protection to escort grievant out. Grievant told Grubbs to step outside so as not to be involved in this, until he could speak further with Johnson.

Grievant tried to persuade Johnson to hear this grievance then, saying it would take only five or 10 minutes. Johnson replied he had no time to do so and could not hear it then. Grievant asked if one of the other foremen could hear it, thinking of a Salaried Foreman (Roach), but Johnson refused.

Grievant says he proposed that they accept the view that he had tried to have the meeting on Saturday and that they extend the time limits by mutual agreement. Johnson refused and said the grievance would be dated when it was heard.

Johnson called again to Rodriguez, asking where Plant Protection was. Grievant realized Plant Protection was on its way and told Johnson there had been a decision in an earlier grievance in which the Company had said it would not escort Union representatives out of the plant unless the circumstances so dictated. Grievant asked Johnson to call then Union Relations Section Manager Castle, but he would not. Grievant asked if he could use Johnson's telephone, and Johnson refused, and grievant said he refused also grievant's request to use one of the telephones in the outer office.

Grievant says his being escorted from the plant by Plant Protection was touchy and embarrassing for him as a Union representative. He said that had happened to him four or five times before, always for his action as a Union representative.

Grievant says there was a telephone behind Johnson as he sat at his desk. Grievant walked around there and picked up the telephone and began to dial it. Johnson reached around with his hand to depress the button in order to prevent grievant's calling. Grievant says he simply moved his body around so as to be between Johnson and the telephone button. He blocked Johnson's arm with his body and continued dialing. He says he did not "strike" Johnson's arm.

Grievant contacted then Section Manager Castle in an effort to prevent his being escorted out by Plant Protection.

Grievant says he could not believe his ears when Johnson told the Guard he was being escorted out for insubordination and for striking Johnson.

Grievant was escorted out of the plant, and Rodriguez called him at his home that afternoon and told him not to report for his next scheduled turn because he was being suspended for three days. She told him that the Step 1 meeting on Grubbs's grievance that they had agreed to hold at 9:00 a.m. the next day would be held at the Labor Relations offices, rather than Johnson's office, because grievant was suspended and could not enter the plant. At the end of that meeting the next day, Johnson told grievant he was suspended for five, and not three, days. Grievant says he was told later that the suspension would be for four days.

On December 7, 1987, a Disciplinary Statement was issued, saying grievant was suspended for five scheduled turns for violation of Rule 127.o of the General Rules for Safety and Personal Conduct. It reads as follows:

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

* * *

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

The Company argues that grievant's abrasive and defiant behavior in refusing to leave Johnson's office upon his being ordered to do so several times, his using Johnson's telephone against Johnson's order not to do so, and his forcefully striking Johnson's arm, as corroborated by Rodriguez, constituted insubordination, in violation of Rule 127.o, justifying this suspension.

Management says grievant, as a Grievance Committeeman, should set a good example. The Company charges that grievant unreasonably waited to the last minute on this grievance and then would not agree at first even when Johnson offered the alternative times of 3:00 p.m. that day, which would not have worsened the time-limit problem, or 9:00 a.m. the following day, which ultimately was agreed upon. It says there is nothing to show that Management was less than cooperative or was attempting to impede operation of the grievance proceedings.

The Union answers that in Article 5 of the Agreement the Company recognizes the Union as the exclusive collective bargaining representative of the employees. That, says the Union, recognizes Union officers as such when acting on behalf of employees, and not as employees, even though at the plant and department level they ordinarily are "employees," at other times. It cites arbitration decisions upsetting discipline against grievance committeemen for behavior while representing employees, even though it would call for discipline if the person were acting solely in his "employee" status at the time.

The Union argues, therefore, that in handling grievances of employees, the Union and Company officials necessarily meet as equals, and there could be no insubordination because there is no superior and inferior status. The Union notes the definition of insubordination in Company Rule 127.o as "... refusal or failure to perform work or to comply with instructions of supervisory forces...." The Union argues that it is exactly that supervisor-employee relationship that is put aside when an employee sheds that status and begins acting as a Union official in representing other employees in handling grievances.

Since they meet as equals, the Union insists that Union officers must be free from the threat of disciplinary action, else they would be representing employees in a subservient role, which would be unequal and not consistent with their status as Union officials while representing employees. Thus, it is said they necessarily carry a form of special immunity while functioning in that Union-representational capacity. The immunity is not unlimited, but it allegedly must go well beyond the normal standards of permissible "employee" behavior. The Union urges adoption of a rule of reason for decision of questions such as this, contending that Union officers acting in this representational capacity for other employees legitimately could be subject to discipline only when their conduct would go so far as to interfere with plant operations.

The Union refers to past differences on this point at the plant, referring to a settled grievance and three arbitration awards, one involving this grievant and the other two Grievance Committeemen. Two grievances were sustained, and the third was sustained for the most part.

The Company cites arbitration awards from this and other collective bargaining relationships, sustaining discipline, including discharge, of Union officers and stating that they are not immune from discipline for insubordination in their conduct of grievance meetings.

The Company says grievant's disrespect and his persistent urging that the Step 1 meeting be held then, long after Johnson had made it clear that he could not meet then, really was the kind of employee self-help that ordinarily is condemned. It says once it became clear that Johnson could not meet then, grievant should have left and filed a grievance against Johnson's refusal to meet then if he thought that was a violation of the Agreement, rather than continuing to insist that there be a meeting. It suggests that the time already had run on the Grubbs grievance.

The Company says it is clear that Step 1 meetings in this area are to be held at a mutually convenient time. That has been the tradition, as grievant generally admitted, even though the Step 1 language of Article 6, Section 3 does not use those words, as the Step 2 language does.

FINDINGS

Several underlying matters must be settled at the beginning. Firstly, there is nothing to suggest that Johnson was attempting to impede decent operation of the grievance proceedings. Secondly, whatever arguments might rationally be made in other settings from the difference between the Agreement language about holding Step 1 discussions and that for Step 2 meetings, it is clear that discussions and that for Step 2 meetings, it is clear that over the years Step 1 meetings in this area have been held at times arranged in advance as satisfactory to each representative. Grievant practically agreed with that. Indeed, he had been the subject of the identical problem in an earlier grievance and arbitration proceeding in which, although the grievance was sustained, the Arbitrator stated that the habit here has been to have Step 1 meetings at mutually satisfactory times. Thus, grievant was fully aware that he had no right to insist, unarranged and unannounced, on an immediate Step 1 meeting, in the face of Johnson's persuasive reasons as to why he could not meet right then.

True, there have been some rather spur-of-the-moment Step 1 meetings, but only when that sudden arrangement also was convenient to both persons. Here, it was not. When grievant came to Johnson's office, Johnson had no idea what the problem of the Grubbs grievance was and would have had to do at least some minimum preparatory study in order to be in any position to discuss the matter intelligently. Grievant's sudden and unannounced appearance and insistent demand gave Johnson no opportunity to do that. Johnson had no time to do it for a second and better reason. His time until his 8:00 a.m. meeting reasonably would have been fully occupied in his planned reviewing of delay reports in order to be ready for that meeting with his foremen.

Accordingly, even though there was nothing wrong with grievant's coming to Johnson's office to see if he could persuade the latter to hold a Step 1 meeting then, once he was told in clear terms that that could not be done, he should have given up and left. If the time were as crucial as grievant was stating, he could have met on this matter at 3:00 p.m. that Monday, without the time problem's becoming any worse than it already was.

Thus, grievant was wrong in escalating this relatively ordinary matter into a major event, and he was wrong in refusing to leave Johnson's office. He had no right to, in a sense, commandeer perhaps 15 minutes of Johnson's time and office.

He was wrong also in using Johnson's telephone when told he could not do so, and, finally, in preventing Johnson from interrupting the call, either by striking Johnson's arm or simply by interposing his body between Johnson and the telephone.

In resisting all that, Management, acting through Johnson, was entitled to regain peaceful possession of his office, and having grievant escorted from the plant was not improper if that was the only way to reach that end.

All that behavior by grievant was done, however, off the clock and in his capacity as Grievance Committeeman for the Maintenance Section East in representing employee Grubbs's efforts to present and prosecute a grievance. In that capacity, his conduct was subject to reprimand and discipline by the Union, his organizational superior in that status. But, in that status, Johnson and Management were not his superiors.

In that capacity, grievant was not an employee, subordinate to, or subject to the disciplinary authority of Section Manager Johnson. He was doing, even if in-effectively, what he thought best to get Grubbs's grievance heard in Step 1 in timely fashion, and his doing so was not so disruptive of plant operations as to justify a holding that he had lost his Union-officer, representational capacity and had become again an employee subject to Johnson's disciplinary authority.

In arranging meetings and presenting grievances the Company and Union representatives must be equal in status and authority so as to be able to make the best case they can for their constituents. The existence and all provisions of Article 6 confirm that. Its title is Adjustment of Complaints and Grievances, and they could not be adjusted in any rational or fair fashion if one of the "adjusters" were subject to the disciplinary authority of the other while advocating the best adjustment he could get.

Effective grievance prosecution often requires firm, bold, aggressive, and even militant action and words, which sometimes might be in bad taste or verge on disrespect for the other spokesman. Healthy and realistic debate in adversary proceedings cannot exclude that. Since the spokesmen are equal, bad taste and disrespect are not insubordination.

Moreover, a Union representative, no more than any other, need not always be substantively correct in his positions, arguments, or actions, so long as he is acting in objective good faith. His Company counterpart need not, of course, bend to all such Union-representative arguments, but his belief that they are improper may not be given the teeth of an insubordination charge.

It appears also that these disputes often are confused, as this one might have been, by what might be called the proprietary interests of Management that creep into them. This meeting was, as most of its kind are, held in a building on land owned or controlled by the Company in its titleholder capacity. And that sense of dominant authority in the supervisor-employee relationship that slide without awareness from legitimate ideas of dominant authority in the supervisor-employee relationship to illusions of equal dominance in the sharply differing situation of essential equality in the Management representative-Union representative relationship. Moreover, ideas of comparative reasonableness creep in here, as well. But it does not lie in the judgment of one advocate to assess, and then to punish, the other because he might think the position taken to be unreasonable or less reasonable than his own. It well may be that Johnson was the more reasonable here, but that is not the test and is beside the point. Union and Management representatives' arguments and behavior often are seen as unreasonable in the eyes of the opposing advocate and even in the view of third-party neutrals, but that does not mean, of itself, that those representatives thereby have surrendered their status as legitimate representatives equal in organizational standing with their counterparts.

Thus, grievant's continued insistence that Johnson hold an immediate Step 1 meeting and his sustained presence in Johnson's office for perhaps 15 minutes more than he should have stayed, both against Johnson's directions, were not insubordination.

Grievant's use of Johnson's telephone, against the latter's direction, was of a slightly different order of event. It was use or abuse of a physical object, but it commandeered Johnson's telephone in only the same way as grievant's demanding presence had commandeered Johnson's office. It is closer, but grievant still

was acting in his capacity as Grievance Committeeman and, on balance, that was not sufficient to justify the charge of insubordination.

The only remaining matter is the physical contact--and some level of physical contact did occur--between grievant and Johnson's persons. Physical abuse of Company grievance representatives by Union grievance representatives, or vice versa, cannot be tolerated and surely are not within the representational capacity of either official. Grievance positions are not advanced by physical abuse of the spokesman for the other party.

There are two versions here of what was the extent of contact. Johnson testified and demonstrated a striking--a rather forceful one--by grievant's arm against Johnson's hand to keep him from depressing the telephone button to abort grievant's call. Expediting Clerk Rodriguez said she saw grievant do that. Grievant's and Grubbs's version is less forceful. They say there was no striking, but that grievant simply turned and moved his body against Johnson's arm so that he had the telephone blocked off.

Neither account includes an intent to harm Johnson. In some other context it might be necessary to resolve these testimonial differences. That is not necessary here, however, since the Company did not charge grievant with fighting, attempting bodily injury, or an assault or battery against Johnson. It charged only "insubordination," which is defined as refusal or failure to perform work assigned or to comply with instructions of supervisory forces. Whatever was the extent of physical contact between grievant and Johnson here, even taking Johnson's and Rodriguez's account as the more accurate one, was not in violation of anything prohibited by Rule 127-o's proscription of insubordination.

Nothing in grievant's behavior as a Grievance Committeeman representing employee Grubbs constituted insubordination because, as a Grievance Committeeman acting in his representational status as a Union officer, he was equal in authority for that purpose with Johnson and therefore not subject to the authority Johnson would have over him if they had been in the Supervisor-employee relationship. Since grievant was not insubordinate, there was no cause for his suspension, under Article 3.

Thus, the grievance will be sustained. The discipline will be rescinded and the applicable documents and notations removed from grievant's record, and he shall be made whole for all earnings and contractual benefits lost by reason of his improper suspension.

AWARD

The grievance is sustained to the extent stated in the last paragraph of the accompanying Opinion.