Arbitration Award No. 806
IN THE MATTER OF ARBITRATION
Between
INLAND STEEL COMPANY Indiana Harbor Works
and
UNITED STEELWORKERS OF AMERICA
Local Union No. 1010
Grievance No. 2-S-47
Arbitrator: Clare B. McDermott
Opinion and Award
October 3, 1989
Subject: Discharge--Reporting for Work Under the Influence of Alcohol After Earlier Last Chance Agreement.
Statement of the Grievance: "The aggrieved Harvey Scott, Check No. 6164 contends the action taken by the Company when on July 18, 1988 his suspension culminated in discharge is unjust and unwarranted in light of the circumstances.
"Relief Sought The aggrieved request that he be reinstated and paid all monies lost.
"Violation is Claimed of Article 3, Section 1, 8, Section 1, 14, Section 8."
Agreement Provisions Involved: Articles 3 and 14, Section 8 of the August 1, 1986 Agreement.
Statement of the Award: The grievance is denied.

Chronology	
Grievance Filed:	7-20-88
Step 3 Hearing:	8-23-88
Step 3 Minutes:	12-14-88
Step 4 Hearing:	1-20-89
	3-10-89
	4-10-89
Step 4 Disposition:	4-10-89
Arbitration Hearing:	4-20-89

Appearances
Company
M. Roumell -- Counsel, Murphey, Smith & Polk
T. Kinach -- Sect. Mgr. Union Relations
D. Dziewicki -- Paramedic, Medical Dept.
J. Hoyt -- Supervisor, No. 2 Coke Plant
R. Scholes -- Project Representative, Union Relations
C. Johnson -- Murphey, Smith & Polk
Union
Jim Robinson -- Arbitration Coordinator
Bobby Joe Thompkins -- Chairman Grievance Committee
Don Lutes -- Sect. Grievance Committee
Harvey Scott -- Grievant
Melvin Adams -- Griever
James Wiley -- Witness
Cliff Scott -- Insurance Rep.
Ernie Barrintez -- Steward
John Porter -- 1st. Vice Chairman
Joe Gutierrez -- Base Rate Chairman
BACKGROUND
This grievance from No. 2 Coke Plant of Indiana Harbor Works claims that grievant's suspension and discharge for violation of Plant Rules 127-b (reporting for work under the influence of intoxicating beverages) and -d (reporting for work under the influence of drugs), for failure to comply with a Last Chance Agreement, and for a poor overall work record were without cause, in violation of Articles 3, 8, Section 1, and 14, Section 8 of the August 1, 1986 Agreement.
Grievant began with the Company in 1963 and at the time of his discharge in July of 1988 was established as a Patcher Oven.

In March of 1987 grievant experienced a series of problems, which led to his suspension and discharge, but he continued at active work under the Justice and Dignity provisions of Appendix J-2.
It apparently was clear to the parties and to grievant then that his difficulties were caused in great part by his alcoholism.
Grievant was reinstated to active employment on May 27, 1987, under the following LAST CHANCE AGREEMENT
"On March 2, 1987, Harvey Scott, Payroll No. 6164, properly was discharged for violation of OSHA Regulation 1910.1029 (g)(3), Coke Production Safety Rule 57, and for 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 Harvey Scott on a last chance basis to provide him with a final chance to prove he can become a responsible employee of the Company. This reinstatement is conditioned upon strict observance of the following terms:
1. Mr. Scott's discharge from employment will be modified to a discipline of five turns off without pay. The discipline days will be May 20-22 and May 25-26, 1987. Consequently, the discipline will include the Memorial Day holiday or, if Mr. Scott would not have been scheduled for work on the Memorial Day holiday, loss of pay for a holiday not worked.
2. Upon return to work following the discipline period, Mr. Scott will contact his department manager to schedule a review of Mr. Scott's record and responsibilities as an Inland employee.
3. Also upon his return to work following the discipline period, Mr. Scott will contact Clinic Counselor J. Bean to schedule a review of Mr. Scott's participation in the Inland Program for Problem Drinkers. Mr. Scott will participate fully in this Program. Failure to comply with any course of treatment prescribed in connection with this Program will constitute cause for immediate suspension of Mr. Scott subject to discharge.
4. Any future incident of violation of an Occupational Safety and Health Act regulation or violation of any other Company rule or regulation will be cause for immediate suspension of Mr. Scott subject to discharge.
5. Mr. Scott will waive any right to the special Justice and Dignity Procedure outlined in the Collective Bargaining Agreement in the event of any subsequent suspension subject to discharge action taken against Mr. Scott for violation of an Occupational Safety and Health Act regulation within a period of five (5) years from the date of this agreement.
"By signing below, all signatories acknowledge full understanding and acceptance of the foregoing terms of reinstatement and continued employment."
Grievant did not contact the Clinic and did not participate in the Inland Program for Problem Drinkers, as required by paragraph 3 of his Last Chance Agreement, which said also in paragraph 4 that "Any future . . . violation of any other Company rule or regulation will be cause for immediate suspension of [grievant] subject to discharge." Apparently grievant did nothing at all about his drinking problem until after he was again suspended and discharged for offenses which led to this grievance, as follows.
On the day turn of May 5, 1988, grievant was working as a Patcher. Grievant's Supervisor, Hoyt, saw grievant on the Pusher Side at about 7:45 a.m. He asked grievant why he was not on the Coke Side, and grievant said he was waiting for materials. During that conversation, Hoyt noticed that grievant's eyes were bloodshot, his speech slurred, and Hoyt smelled alcohol on grievant's breath.
Hoyt had grievant go to the office and told him he was going to send him to the Clinic for evaluation of his fitness for work because he suspected he had been drinking. Hoyt says grievant asked him not to do that because, if he were to be evaluated, he would lose his job because he had had his last chance already. Hoyt replied that the safety risk was so significant that he had no choice but to have grievant evaluated.
Hoyt says, as a Patcher, grievant would be working on a 12' scaffold on the Coke Side, in the path of the 30-ton Door Machine, which might hit and kill him. Moreover, grievant could fall from the scaffold or drop things (sixty-pound can of mortar and tools) on employees below.
A Plant Security Officer came to the office and took grievant to the Clinic for a fitness evaluation. The evaluation was administered by Supervisor of Emergency Medical Services Dziewicki, who has conducted approximately 200 such evaluations. Dziewicki called Hoyt to discover his reasons for sending grievant for an evaluation and learned of Hoyt's hearing grievant's slurred speech and smelling alcohol on his breath.
Dziewicki administered a standard fitness evaluation to grievant, observing and checking three main aspects of grievant's being, Attitude, Thinking, and Physical Condition. An "abnormality" in any one of the three is sufficient, under the Company policy, to require a breathalyzer test for a blood alcohol level and to require that a urine specimen be submitted for a drug screen. Dziewicki found "abnormalities" in grievant's

behavior (slurred words) and in his physical examination (red eyes, heavy odor of ethanol, and instability on a heel-to-toe exercise). Thus, grievant was asked to submit to a breathalyzer test, and he did and registered .25 percent blood alcohol. That is five times over the Company's level of acceptability for work and two and one-half times over the level for driving an automobile in Indiana. Grievant thus was told he would not be allowed to work or to drive and that Plant Protection would see that he was driven to his home.

Grievant provided a urine specimen, and it was put through the chain-of-custody procedure for analysis by Laboratory Technicians at MetPath, a medical laboratory that has conducted such tests for the Company for three years. The result came back to the Company on May 11 and said that grievant's urine tested positive for, and contained, 723 micrograms per liter of cannabinoid (THC), the psychoactive agent in marijuana. The Company notes that a MetPath Reference Manual advises that a reading of over 50 micrograms per liter indicates recent or previous regular use of marijuana.

Dziewicki said he has taken and seen the results of over 200 urine specimens and that a reading of 723 micrograms per liter of THC is unusually high. He could not recall ever seeing such a high reading, and he said all the literature says that such a high concentration in May of 1988 could not result from a last use of marijuana early that year.

Dziewicki agreed also that all but one of the abnormalities he saw during grievant's evaluation could be explained by grievant's .25 percent blood alcohol level, alone, without any consideration of the effects of grievant's THC reading, but that the odor of ethanol on grievant's breath could not be attributed to the THC reading.

On May 9 grievant was suspended, preliminary to discharge, effective May 6, for reporting for work under the influence of intoxicating beverages (violation of Rule 127-d of the General Rules for Safety and Personal Conduct), for failure to comply with his Last Chance Agreement, and for an overall unsatisfactory work record.

Upon the Company's learning on May 11 of the high level of THC found in grievant's urine, his suspension was amended to include a violation of Rule 127-b, reporting for work under the influence of drugs not prescribed by a licensed physician for personal use at work.

Grievant went to the Marion Veterans' Administration Hospital on May 11 for inpatient treatment for alcoholism. The Union asked for, and the Company agreed, to additional time in which to request an Article 8, Section 1, suspension-period hearing. The parties' May 10 extension agreement said that grievant could request such a hearing within five calendar days from the date of his release from hospital.

Grievant was released from, or put out of, the Marion program on May 19, apparently because he was accused of drinking while there. Grievant denied he was drinking.

The Company stresses that neither grievant nor the Union requested a suspension-period hearing within five days of grievant's release from the Marion program.

On June 10 grievant entered the Hines Veterans' Administration Hospital, again for treatment for alcoholism. He was released from that program on July 1. No request for a suspension-period hearing was filed until July 8, more than five calendar days after grievant's release date of July 1.

The Company thus argues that this grievance is not properly in the proceedings because a suspension-period hearing, allegedly a condition precedent to a timely grievance, was not requested within the extended five-calendar-day period. It says it agreed to conduct a suspension-period hearing solely as a courtesy to the Union.

Grievant's five-year disciplinary record reads as follows:

"Date	Infraction	Action
1/4/88	Absenteeism	Discipline - 1 turn
12/30/87	Absenteeism	Reprimand
5/27/87		Reinstated - Last Chance Agreement
3/13/87	Sleeping, out of work area, insubordination	Discipline - Balance of turn plus 3 turns
3/2/87		Discharged - The grievant continued to work under Appendix J-2 of the August 1, 1986 Collective Bargaining Agreement
2/16/87	OSHA Regs/Safety violation	Suspended
1/20/87	OSHA Regs/Safety violation	Discipline - 2 turns
9/12/86	Reporting to work unfit - under the influence of alcohol	Discipline - 3 turns
5/5/86	Poor Work Performance	Reprimand

1/30/85		Record Review/Final Warning
1/28/85	Poor Work Performance	Discipline - 5 turns"

At the suspension-period hearing grievant said he recalled taking the breathalyzer test, but he denied that he had given a urine specimen. At the Step 3 Meeting he said he could not recall giving a urine specimen. Grievant said that the night before his May 5, 1988 problems, he had a housewarming party and had been drinking during that affair.

Grievant said he had used marijuana occasionally but was not a regular user, and that the last time he had used it was sometime before his suspension in May and really was in early 1988.

Grievant was discharged on July 18, 1988, and this grievance followed.

The Union agrees that grievant reported for work on May 5, 1988, under the influence of alcohol, but at Step 3 it denied, because grievant did, that he submitted a urine specimen then. He said also that he had not read the Last Chance Agreement that he and the parties signed in May of 1987 and thus that he did not know he was supposed to contact the Director of the Inland Program and to participate in it until released by its Director Bean.

The Union argued that Management was obliged by Article 14, Section 8, to continue to work with grievant on his alcohol-abuse problem. It said grievant had been drinking for thirty years and that his dependency developed slowly. The Union stated that grievant ultimately had taken steps toward recovery by committing himself to residential treatment programs and by participating in Alcoholics Anonymous meetings.

Without prejudice to its untimeliness argument, the Company said that, in light of grievant's prior unsatisfactory work record and his failing to carry out the commitments he made in his May-1987 Last Chance Agreement, his reporting for work under the influence of alcohol on May 5, 1988, standing alone, would have justified his discharge.

As to the parties' joint commitment in Section 8 of Article 14, the Company is sure that what it did in 1985 and in the Last Chance Agreement of 1987 was clearly sufficient to meet its obligation to encourage grievant to undergo a coordinated program directed to the objective of his rehabilitation. It says that grievant's failure to go through with any of those commitments, which he had made at Company and Union insistence, does not constitute failure by the Company to do its part.

The Company argues that the very high level of THC in grievant's system on May 5 shows, at least, that he did not testify truthfully either at the suspension-period hearing or at Step 3. He said he had not used marijuana since sometime early in 1988, whereas the high level of THC allegedly indicates either current or much more recent and regular use of the drug.

The Company says, finally, that grievant already had his last chance and that his obvious failure to comply with the conditions of that Last Chance Agreement mean that this grievance must be denied, citing Inland Awards. The Company urges that a last-chance agreement necessarily means just that--that it is one, final effort to induce an employee to correct his behavior. These last-chance devices, which can be very helpful tools for both parties in given cases, would not be effective and Management would become unwilling to join in employing them if their breach were ignored and yet another "last-last" chance were injected by an Arbitrator.

Grievant's sponsor in Alcoholics Anonymous, Wiley, engaged by grievant in 1988, testified at this hearing. He is a Company employee and is president of the Board of Directors of Serenity House, a half-way house for recovering alcoholics in Gary. He is himself a recovering alcoholic and has been sober for ten years. He said that by hearing time in 1989 grievant had come a long way from his condition when Wiley first saw him following grievant's discharge in July of 1988. He said grievant regularly attends Alcoholics Anonymous meetings and that he has been sober when Wiley has seen him several times a week and when he speaks to him on the telephone. He sees grievant only at the Serenity Club, and they do not see each other socially. Wiley thought that grievant had turned his life around. Wiley was not familiar with grievant's work record or whether he uses drugs.

Grievant said he had started drinking when he was thirteen years old. He was forty-six in May of 1988. He drank steadily and heavily when in college and in the service. He said drinking had been fun in the past. It later became unpleasant, but he was sick and simply had to continue drinking.

He said he was not a regular user of drugs but occasionally had used marijuana and that his last use of it had been sometime before his suspension in May of 1988.

Grievant said he was very sick in mid-June of 1988 and had to commit himself to the Hines Program. He said he had been in the Company's Program before his 1987 suspension and discharge, but he did not attend required meetings regularly and later he quit going to them altogether.

Grievant says his going to Alcoholics Anonymous meetings at the Serenity Club, and the teaching, literature, and fellowship there have put him on the road to admission of his problems, which he had not been willing to do before. He says he has attended Alcoholics Anonymous meetings regularly for a year before this hearing. He said he had his last drink just after his May 6, 1988 suspension and that, if he were returned to work, he could assure everyone that his problems were behind him.

Grievant says he began to realize his problem by May of 1987, when he signed that Last Chance Agreement. He knew that was it for him and, if he should fail again, he would have to suffer the consequences of suspension and termination.

He agrees he was supposed to contact and be in the Company Program, but he says he already was in it and had quit it before May of 1987, and he did not go back to it after that until mid-summer of 1988. He says that was caused by his thinking then that he did not need professional help.

FINDINGS

Grievant's carefree treatment of the rather solemn commitments he made in order to save his job in May of 1987 bear heavily against him here. That was, indeed, the second such attempt by the Company, at least, to save his job. It had tried to encourage grievant to enter its Program in 1985, and he entered it then, but later quit in 1986.

Both parties again stepped up to their Section 8, Article 14 obligations in May of 1987 and practically pushed grievant into steps that might have avoided all these problems, if he had shown even the slightest interest in them. But he did not, and that was his second failure to take advantage of whatever 14-8 rights he had then.

He committed himself in 1987 to contact the Inland Clinic in order to schedule a review of his participation in the Inland Program for Problem Drinkers, and he was to participate fully in that Program. He signed that Last Chance Agreement, and it said that his failure to comply with any course of treatment prescribed in that Program would constitute cause for his immediate suspension, subject to discharge.

But he performed none of those commitments.

The Last Chance Agreement he signed then made it abundantly clear also that any future violation of any Company rule or regulation would be cause for immediate suspension, subject to discharge.

Grievant then reported for work in May of 1988 under the influence of alcohol, which is not the same as spitting on the floor.

Accordingly, grievant's ignoring for the third time all efforts to encourage him into rehabilitation and his total disregard of all the commitments of his signed Last Chance Agreement, primarily his violation of the central one, that is, again reporting for work under the influence of alcohol, are sufficient, of themselves, to establish cause for his suspension and discharge.

It is unnecessary here to dilate upon the weight that may or may not be given to post-discharge rehabilitation efforts by an alcoholic employee. As applied to the facts of this case, that point would not be just post-one-discharge situation, it would be post-two-discharge situations. Grievant, it is clear, did nothing constructive about his problem in 1985, did nothing about his signed rehabilitation commitments after his 1987 discharge, and his positive effort here came only after his second discharge in 1988.

In short, there really are no compelling facts present here to warrant any further ignoring of violation of grievant's Last Chance Agreement.

The Union says violation of Rule 127-d is not cause for discharge, and that might be accurate as to some other employee with a different record, but it is not regarding this grievant under a live Last Chance Agreement that he ignored. Reporting for work under the influence of intoxicating beverages as a first offense may not be cause for discharge in this relationship in an ordinary case, if there be one, but for an employee then subject to the rigors of a valid Last Chance Agreement, it is clear cause for discharge.

The Union makes much, as it should, of grievant's twenty-five years of service, but that cannot help here. Even with such long service, some of it less than satisfactory, there comes a time when it becomes clear that Management has gone the last mile, and more, and that point was reached here when grievant reported for work drunk, in violation of Rule 127-d, but more importantly, in violation of his 1987 Last Chance Agreement.

The Last Chance Agreement is what separates this grievance from those cited and what makes it unnecessary here to deal with the serious arguments about the alleged violation of Rule 127-b and whether grievant's urine-drug-screen reading shows impairment, as equivalent to his being under the influence of drugs. That need not be decided, for the serious violation of the Last Chance Agreement demonstrates sufficient cause for grievant's discharge, standing alone.

Accordingly, in light of this resolution of the governing substantive issue, it will not be necessary to deal with the Company claim that the grievance was procedurally untimely.
Consequently, the grievance must be denied.
AWARD
The grievance is denied.
/s/ Clare B. McDermott
Clare B. McDermott
Arbitrator