

Award No. 820

ARBITRATION

In the Matter of the Arbitration between:

INLAND STEEL COMPANY

Indiana Harbor Works

and

UNITED STEELWORKERS OF AMERICA

Local Union No. 1010

Grievance No. 20-S-211

Appeal No. 1431

Arbitrator: John Paul Simkins

March 2, 1990

Appearances:

(January 11, 1990)

For the Company:

Ann C. Kolasa, Representative United Relations

For the Union:

Jim Robinson, Arbitration Coordinator

Subject: Discharge for Unexcused Absences and Overall Unsatisfactory Work Record; Evidence

Statement of the Grievance:

(February 16, 1989)

"The aggrieved . . . contends that action taken by the Company when on February 15, 1989 his suspension culminated in discharge is unjust and unwarranted in light of the circumstances."

Contractual Provisions Involved: Article 3, Section 1 and Article 8, Section 1 of the August 1, 1986

Agreement

Statement of the Award:

(March 2, 1990)

The grievance is denied.

Chronology:

Grievance Filed	February 16, 1989
Step 3 Hearing	March 9, 1989
Step 3 Minutes	April 13, 1989
Step 4 Appeal	April 21, 1989
Step 4 Hearing	January 9, 1990
Step 4 Minutes	January 9, 1990 *
Appeal to Arbitration	January 3, 1990
Arbitration Hearing	January 11, 1990
Award Issued	March 2, 1990

* Step 3 Minutes adopted in lieu of Step 4 Minutes

BACKGROUND

This matter concerns discipline imposed for unexcused absences and an overall unsatisfactory work record.

The circumstances which led to the grievant's suspension and discharge may be summarized as follows:

The Company's witness was Section Manager, Peter Rich, who was familiar with the circumstances surrounding Grievant's discharge. He stated that Grievant was absent and failed to report off Friday and Saturday, November 11 and November 12, 1988. This conduct was a violation of Company policy for which Grievant had received prior discipline. On his next scheduled work day, Monday, November 14, 1988, the grievant called off sick for an indefinite period.

The grievant's absence due to sickness continued to his scheduled vacation time, the weeks of January 1 and January 9, 1989. During this period he requested that a third week be added and he was approved for vacation during the week of January 15, 1989.

On January 23, 1989, Management expected the grievant to report to work. He did not. On Tuesday, January 24, 1989 sometime during the turn he was expected to be at work, the grievant reported to the clinic for approval to report to work. At the clinic the grievant produced a medical certificate which released him for return to work on December 5, 1988. He was not cleared to work but directed to report to the Manager's office.

As directed, the grievant reported to the Managers office where he was questioned about the doctor's release certificate which had not been disclosed earlier. Management wanted to know why he had not reported for work earlier; between December 5 and December 31, 1988; the period, immediately preceding his vacation. A pending suspension for three days for an absence in October 1988 was issued to the grievant at that time. He was instructed to return on January 30, 1989 with supporting documentation giving reasons for his absence from December 5 to and including December 31, 1989.

During the investigation of January 30, 1989 the grievant produced two documents, a medical note from Dr. Edward Broomes and prescription for Delantin, both dated January 28, 1989. The note stated that the grievant was disabled with influenza from December 5 to December 31, 1989. Explaining his November 11 and November 12 absences, the grievant stated that he requested his sister to call him off.

The grievant was scheduled to work Monday to Friday, 7:00 a.m. to 3:00 p.m. on January 23, 1989. At the investigation meeting he stated that he believed he was scheduled for the 3:00 p.m. to 11:00 p.m. turn on Tuesday, January 24, 1989 on reporting back from vacation and that this was Company policy. According to Rich, there is no policy like this. Management's continued dissatisfaction with the grievant's explanations resulted in scheduling another investigation meeting for February 2, 1989.

On February 2, 1989 the grievant offered several other documents to Management; namely, a statement from Northwest Indiana Neurological Associates billing Grievant \$75.00 for December 21, 1988; an undated letter from Frederic A. Gibbs, M.D., to Dr. Broomes which diagnosed a medical condition, and medical notes the grievant obtained from a nurse in Dr. Broomes' office which does not reflect a visit or treatment for the period questioned by Management. Grievant was asked if he visited Dr. Gibbs in December, 1988 and he informed Management that he had. A member of Management then stated that he had a dated copy of the same letter. When it was produced the date appearing on it was June 27, 1980. Grievant was asked but did not explain the December absences or the documentation discrepancy.

Following receipt of the grievant's documentation of his absences Management decided to suspend him for unexcused absences and a generally unsatisfactory work record.

On cross examination Rich stated that Management did not question the grievant's absence for November 14 to December 4, 1988 because he was under a doctor's care and applied for S&A benefits for the period. He agreed that the grievant's absence for November 11 and November 12, 1988 could possibly be related to the substantiated period of absence which followed but that did not excuse the grievant's failure to report off, Rich stated.

Rich continued by stating that a failure to report off is a single instance violation for which progressive discipline applies. The grievant failed to report off for two days. Rich also stated that the grievant was not disciplined for absences and that his disciplinary record was accurate.

Grievant, seniority date, June 19, 1974, was a Roll Grinder at the time of his discharge. In his testimony, Grievant stated that he did not work on November 11 and November 12, 1988 because of headaches. For him, this is a chronic problem. He was unsure as to whether he had seen a doctor for this problem which resulted from a fall when he was young. Grievant stated that he requested his sister to report him off; that she had done so previously and was asked to do it for him then.

Grievant stated that he visited Dr. Broomes' office on December 1, 1988. There was a substitute there and Dr. Broomes was not available. The release to return to work on December 5, 1988 was prepared by the doctor substituting for Dr. Broomes, but he was too ill to return to work on December 5, 1988. At the time he was bedridden with the flu, had a runny nose, chest pains, headaches and a temperature.

Testifying about the time he reported to the clinic on Tuesday, January 24, 1989, Grievant stated that he returned on that day because he believed he was scheduled Tuesday through Saturday, 3-11 turn returning off vacation. Returning on Tuesday was the practice in his area and this gave employees an additional day off. For the most part he worked the 3-11 turn during 1988 and assumed he would be on that turn returning from vacation.

Rebuttal testimony was presented by Rich. He produced evidence of the grievant's attendance record from March, 1987 to February, 1989 and stated that Grievant worked all three turns for the last half of 1988, that he did not work a straight 3-11 turn; that he failed to report off for the 3-11 turn on November 11, 1988 and he could have done so in sufficient time before 3:00 p.m., that Grievant was scheduled to work the 7-3 turn Monday to Friday January 23, to January 27, 1989; that he could have reported off as late as 7:30 a.m.; that he should have reported to the clinic for clearance on Friday, January 20, 1989 consistent with Company policy for employees returning from an illness and not vacation; that there is no department policy to schedule employees Tuesday to Saturday coming off vacation; that requests for Monday off following a

vacation are not considered unreasonable; and, that employees are expected to call the Company on Thursday to check their work schedule for the next week which would be posted.

The grievant's five year disciplinary record is as follows:

Date	Infraction	Action
04/02/84	Absenteeism	Reprimand
04/09/85	Failure to report off	Reprimand
05/01/85	Failure to report off	Discipline-1 turn
02/27/87	Absenteeism	Discipline-2 turns
06/05/87	Unacceptable conduct	Discipline-1 turn
10/21/88	Absenteeism	Discipline-3 turns

CONTENTIONS OF THE PARTIES

The Company

The Company contends that the grievant may properly be discharged for the reasons cited in his letter of termination; namely, his unexcused absences for November 11 and November 12, 1988; December 5 through December 31, 1988; January 23 and January 24, 1989; and his overall unsatisfactory work record. In the Company's opinion the grievant's testimony and explanations are incredible in contrast to the testimony and evidence presented in support of the personnel action. It argues that there are no mitigating circumstances to be found to favor the grievant who failed to meet a basic employment obligation. He failed to report off for November 11 and November 12, 1988, again in December after being released by his doctor to return to work on December 5, 1988 and lastly, he failed to report back after the conclusion of his vacation. These unexcused absences coupled with Grievant's overall record are justification and proper cause for his discharge, the Company argues.

The Union

In defense of Grievant the Union contends he was ill on November 11 and November 12, 1988 due to headaches which were subsequently treated. The Union argues that the letter of Dr. Gibbs was not offered to establish treatment during this period but rather to demonstrate that there was medical justification for the headaches the grievant was experiencing. In light of the uncontested period of absence following these dates the Union argues that they should be treated as part of the same illness and not regarded as a reason for discharge.

The Union further argues that there is no reason to disbelieve Grievant in relation to his having the flu between December 5 and December 31, 1988. While the Union acknowledges that Grievant's decision not to seek medical assistance was unwise, it does not give rise to grounds for discharge, in the Union's judgment.

Similarly, the Union maintains that Grievant's failure to confirm his work schedule and his return to work after vacation on January 24, 1989 was an error of judgement. Grievant admittedly should have called to determine his schedule but his failure to do so was based upon a good faith belief that he could report back from vacation on Tuesday on the 3-11 turn. This, in the Union's view, is an isolated instance of poor judgement and not a cause for discharge.

In commenting on the grievant's overall record, the Union contends that the grievant's discharge must stand on its own bottom; that there is nothing in the grievant's disciplinary record regarding unauthorized absences; that the discipline Grievant received for absences and failures to report are only back drops for the discharge and not so serious as to furnish grounds for the industrial capital punishment he received. In the Union's opinion the Company badly overreacted and the grievant is forced to pay the price.

FINDINGS

The Union correctly framed the issue for resolution here to be whether or not Grievant's discharge was for cause in that he was separated from the Company for "unexcused absences on: November 11 and 12, 1988; December 5 thru 31, 1988; January 23 and 24, 1989; and an overall unsatisfactory work record." The Union's belief is that the circumstances do not warrant discharge. A contrary view is held by the Company and on the basis of the explanation offered below, the arbitrator is of the opinion that good cause existed for the grievant's discipline and discharge.

The evidence is clear that Grievant was discharged for unexcused absences and not for failing to report off. Thus, the explanations he offered relative to efforts to inform Management of his November absences are not relevant. The question is whether the reason for his absence is excusable.

Grievant claims he was absent due to headaches. He sought no medical assistance for his condition and when confronted to produce documentation regarding his absence he offered an altered letter from Dr. Gibbs to Dr. Broomes. Producing the letter was not to show evidence of his propensity for headaches, as

the Union argues, but rather an attempt to misrepresent and mislead Management into believing he was actually treated by Dr. Gibbs during November 11 and November 12, 1988. When Management confronted him with a dated copy of the letter the grievant's intention was exposed and he had no further explanation. Accordingly, Management had a clear basis for not excusing the absence of November 11 and November 12, 1988. Even if it is true that Grievant suffered headaches he irreparably impaired his own credibility as to the truth of what he claims. This is so even though he received S&A benefits for a period of an indefinite absence which followed on November 14, 1988. The reasonableness of concluding that the November 11 and November 12, 1988 absences are related to the absences beginning on November 14 through December 4, 1988 is undetermined and refuted by his lack of veracity.

Another act of deception and dishonesty was the grievant's failure to disclose that he was released to report back to work on December 5, 1988. He claims to have been bedridden with the flu and even went so far as to misrepresent this illness by presenting a doctor's certificate and prescription for Delantin. The undisputed intent of these documents was for Management to believe he was indeed ill for the period between December 5 and December 31, 1988. Again, Grievant was caught in the middle of a falsehood which collided head-on with his credibility causing further damage to his reputation for truthfulness. Dr. Broomes gave Grievant the note in response to what he was informed by Grievant. When contacted by Management he would not confirm ever seeing Grievant during the period in question.

Accordingly, the evidence and the record demonstrates that the grievant offered no reliable justification for the absence of December 5 through December 31, 1988. Management did not excuse the grievant's absence for this period and no fault can be found with that.

The remaining unexcused days of absence are January 23 and January 24, 1989. Here again, the grievant's veracity became an issue as a result of his explanation for not working. He claims that there was a policy in his department which permitted employees returning from vacation to report on Tuesday and further that he assumed he was to report for the 3-11 turn since that was what he had been primarily working during the preceding year. The evidence on this score demonstrates that Management may grant an employee an extra day off and permit a return from vacation on a Tuesday, but there is no policy which gives employees the right to take such a liberty. All occasions where this has occurred have been granted after first being specifically requested.

The evidence further demonstrates that employees are expected to contact the Company to ascertain their work schedule upon returning from vacation or an extended absence. Grievant's failure to do so is evidence of his lack of concern and obvious intention to take more time off. His explanation is, therefore, rejected in the absence of evidence that he was unfamiliar with the policy of calling the Company on Thursdays to find out his work schedule for the next week. Management was again justified in refusing to excuse the grievant's absence for January 23 and January 24, 1989.

The final basis for the grievant's discharge is his prior record. He has been progressively disciplined for attendance-related problems and otherwise. His discipline is at the level where the next progressive step is discharge. The Company argues that there are no mitigating circumstances working in his favor to influence the arbitrator to set aside Grievant's discharge. Grievant's credibility and attempted deception confirm the Company's assessment of the circumstances. Moreover, this is not as suggested by the Union, a situation where substantiated illness or a series of illnesses or sicknesses can operate to excuse Grievant from reporting to work on the days in question.

Accordingly, no fault can be found with the Company's charges against the grievant and they have been firmly established. Likewise, no fault can be found with the decision to discipline and discharge on the strength of the evidence of the charges. The grievance must, therefore, be denied.

AWARD

Grievance No. 20-S-211 is denied.

/s/ John Paul Simkins

JOHN PAUL SIMKINS

Arbitrator

March 2, 1990