

Award No. 821
ARBITRATION
In the Matter of the Arbitration between:
INLAND STEEL COMPANY
Indiana Harbor Work
and
UNITED STEELWORKERS OF AMERICA
Local Union 1010
Grievance No. 24-S-33
Appeal No. 1432
Arbitrator: John Paul Simpkins
March 2, 1990

Appearances:
(January 12, 1990)

For the Company:
Bradley A. Smith, Representative, Union Relations

For the Union:
James Robinson, Arbitration Coordinator
Subject: Discharge; Unexcused Absence; Failure to Respond to 7-Day Letter; Evidence

Statement of the Grievance:
(August 23, 1988)

"The aggrieved . . . contends the action taken by the Company when on August 17, 1988 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 of Grievance:

Grievance Filed (Step 3):	August 23, 1988
Step 3 Hearing:	April 12, 1989
Step 3 Minutes:	June 15, 1989
Step 4 Appeal:	June 15, 1989
Step 4 Hearing:	December 15, 1989
Step 4 Minutes:	December 15, 1989
Appeal to Arbitration:	January 3, 1990
Case Heard:	January 12, 1990
Award Issued:	March 2, 1990

BACKGROUND

The grievant was a Truck Driver in the Truck Driver-Operator Sequence of the Mobile Equipment and Trucking Service Department at the time of his discharge on August 17, 1988. Sometime in mid-1988 (June or July) Grievant approached his Supervisor and requested time off to go to Yugoslavia to be married. After checking Grievant's previous absences and discussing the request with the Section Manager, the Supervisor advised the grievant that he should fill out the necessary papers to process his request. The grievant was familiar with the procedure having made similar requests in the past.

On July 18, 1988, the grievant went to the Company clinic complaining of being sick and he was advised to seek treatment from his personal doctor. He was given a form for his doctor to fill out explaining the grievant's illness. The next four days the grievant reported off and on July 25, 1988 he reported off with pneumonia. The same day Grievant changed his address with the Company and filed for sickness and accident (S&A) benefits.

On July 27, 1988, the Supervisor routinely forwarded a 7-day letter to Grievant at the address he provided on July 25, 1988. The letter informed Grievant to report to the Company Medical Department to verify the reasons for his absence within seven calendar days and to be examined. At the bottom of the letter was a form for the grievant's doctor to complete. The letter, which was sent certified, was accepted. Grievant's failure to respond resulted in Management sending an August 9, 1988 letter to him at the same address.

This letter was notice of suspension for five days effective the same date after which he was subject to discharge.

During mid-August Grievant's Supervisor learned that he had called the garage. A day or so later he called again at which time his Supervisor spoke to him. The Supervisor informed Grievant of his suspension for failure to respond to the 7-day letter. Grievant stated that he was calling from Yugoslavia. He mentioned that he was off sick and that he was also on an authorized leave of absence. The Supervisor questioned Grievant about being sick and being in Yugoslavia and reiterated that he was suspended and that he was on an unauthorized leave of absence. On August 17, 1988 the grievant was discharged and his Supervisor did not hear from him again until his return in March, 1989.

Grievant's supervisor was short handed during the time of the grievant's unauthorized absence. There is no labor pool from which to get replacement drivers and absences are filled by other employees on an overtime basis. Even though other employees were scheduled off during the time Grievant requested to be off in late July, his Supervisor was willing for the department to bare the overtime expense for him to go get married. Grievant informed his Supervisor that he would be gone only three weeks. The Supervisor told the grievant that he would support the request. But the Supervisor had no authority to approve it, only the department manager could do that.

When Grievant returned from Yugoslavia he reported to the Company and explained his absence. Grievant's explanation was unacceptable and he was not returned to work as he would have been if Management accepted his reasons for being absent without leave.

Grievant explained that his Supervisor informed him that his leave was approved and that he had to go through the process to formally make the request. He was aware of the procedure.

On July 4, 1988 Grievant purchased a one way ticket to Yugoslavia. A round trip plane ticket was not purchased because he did not want to risk losing it and a return ticket would cost only \$60.00 more. He could also make better connections if the return ticket was purchased in Yugoslavia.

After buying the plane ticket the grievant caught pneumonia and was advised not to work for two weeks. He returned to work on July 15, 1988 and worked until July 18, 1988. On that day he was sent home from the clinic and advised to see his own doctor. When he did, he was advised not to return to work until July 25, 1988. The Company form he got from the clinic was not prepared but his doctor's secretary assured him that it would be filled out and returned to the Company.

On July 24, 1988, Grievant received a letter from Yugoslavia informing him that his father was ill. He felt that he had to immediately go see his father. Grievant called the Company and spoke to his foreman. He reported off for July 25 and July 27, 1988 and left for Yugoslavia. July 27 through July 30, 1988 were regular days off. This time was his own and his feeling was what he did or where he went was not the Company's business. Therefore, Grievant felt no necessity or obligation to advise his Foreman where he was going and he needed no permission from the Company to go. He intended to submit a leave of absence form when he returned to work on July 31, 1988.

The next conversation between Grievant and the Supervisor occurred on July 31, 1988. During that conversation the grievant was informed that he was suspended a week or more ago. Grievant stated that he could not get out of the country because his passport had been revoked. There had been other occasions known to the Company when he was unable to return from Yugoslavia. Since he is not an American citizen he could not get assistance from the American consulate or embassy. His former wife whose address is the one given to the Company prior to his departure, is an American and she contacted United States officials about his detention.

CONTENTIONS OF THE PARTIES

The Company

The Company's position is that the grievant placed himself in a situation which caused his alleged detention. It argues that the evidence presented on Grievant's part is largely self-serving and unsubstantiated. The Company's evidence on the other hand, clearly demonstrates that there was just cause for the decision to discharge the grievant.

The Company maintains that the grievant breached one of the most basic precepts of the employment relationship, the duty to be available for work. It argues that the grievant was aware that he must substantiate his absence upon returning from Yugoslavia and he neither presented evidence of his father's sickness nor his detention for political reasons. During Grievant's absence Management sent a letter which requested a response. His failure to respond left Management without any knowledge or verification of his illness.

Continuing the Company contends that the grievant's departure to Yugoslavia on July 25, 1988 was premeditated; that he intentionally withheld his services for an extended period of time without permission; that he was not on an approved leave of absence; that he failed to keep Management informed or to advise when he would return; and that his discharge was justified under the Agreement.

The Union

The Union contends that the grievant's discharge was without just cause and argues that the Company cannot sustain its burden of proof in the absence of evidence that he was not detained in Yugoslavia during the time he was directed to report to the Company's clinic. The grievant received verbal approval to take leave to get married in Yugoslavia and while there his passport was taken and he was unable to leave the country.

The Union further contends that the grievant was under no obligation to report his whereabouts when he is on his own time. He properly reported off on July 25, 1988 and called the Section Manager about his situation later in July and again in mid-August. These acts on Grievant's part demonstrate his responsibility, the Union argues. In the Union's view, the grievant used proper care in trying to cover his job but he was prevented from reporting to work by events beyond his control. The circumstances involved in the grievant's inability to report for work are in the Union's opinion, mitigating factors denying just cause for his discharge.

FINDINGS

The evidence presented more than confirms the propriety of the grievant's discharge under the authority of Article 3, Section 1 of the Agreement. There is no evidence which suggests that affecting the grievant's discharge in any way offended Article 8, Section 1 of the Agreement. In this connection Management suspended the grievant for five days with the required notice of such forwarded to the address provided by him. Accordingly, there are no procedural or substantive obstacles barring the personnel action taken by Management concerning the grievant's employment.

By way of explanation, it should be pointed out that the grievant's conduct prior to leaving for Yugoslavia and the circumstances of his departure and actions thereafter formed the foundation for the Company's action as well as this decision. Particularly noteworthy is the purchase of the plane ticket on July 4, 1988. It is not clear whether the ticket was purchased before or after the request was made of Management for leave in order to permit him to travel to Yugoslavia to be married. There is no dispute that he was given oral permission for time off. Supervision expected the time would be taken during the last two weeks or so in July, 1988. The specific period requested would have appeared in the Leave of Absence Request form the grievant was directed to submit but did not. By his failure to do so his leave of absence was never officially approved by the Company. The evidence is undisputed that the Supervisor who verbally informed Grievant that the request would be approved had no official authority to do so.

Grievant was familiar with the procedure to acquire approval for a leave of absence. Similar requests were made and approved during 1979, 1982, 1985, and 1986. His first request was for time off to get married and the others were for the purpose of visiting family in Yugoslavia. On the last occasion the grievant submitted a leave request form which specified the time the leave was to begin and end. Each request was considered and apparently approved by two levels of supervision. The grievant's familiarity with the procedure like his failure to follow it, is undisputed.

The grievant recalls that he got sick and did not work for several days immediately after purchasing the plane ticket on July 4, 1988. The evidence of his attendance subsequent to July 5, 1988 does not support his recollection of being absent. It reflects that Grievant did not begin his sick leave of absence until July 19, 1988 and it continued uninterrupted until July 29, 1988.

Curiously, the grievant received a communication from Yugoslavia on July 24, 1988 about his father being ill. At the time he was on sick leave and he decided that he must immediately leave for Yugoslavia. The next day he changes his address at the Company's personnel office, reports his sickness to be pneumonia and submits an S&A form which indicated that his disability would last until August 15, 1988, when he would be able to return to work. The grievant's claim that August 15, 1988, his expected date of return, was entered on the form incorrectly is uncorroborated. The same day he boarded a 5:45 p.m. Yugoslav Airlines flight from Chicago to Belgrade, Yugoslavia. The ticket for the trip clearly indicates that it was purchased on July 4, 1988 for one way travel on July 25, 1988. Plainer evidence could hardly be found to demonstrate Grievant's planning and intentions.

This evidence shows that the grievant was not on his own time in the sense that he was not accountable to the Company for his absence. He was not, as he put it, on a scheduled four days off but on sick leave as the evidence demonstrates. Accordingly, he was obliged to explain his departure, indeed to acquire prior

official approval from Management to go to Yugoslavia while on sick leave and in advance of the time Supervision expected him to depart. This is especially true given the fact that he never submitted the leave of absence form.

The grievant's account of what occurred in Yugoslavia may or may not be true. But whether it is or not did not excuse his being there without a proper leave of absence. The evidence suggests that his being there was part and parcel of a scheme on his part to extend visitation with his family. Departing while on sick leave would have the effect of extending the visit for a period longer than that which was requested of his Supervisor. This is what the evidence points to and accordingly to the conclusion reached here.

While more can be said about the grievant's account of his absence and his version of the circumstances giving rise to it, based upon what has been stated thus far it would hardly seem necessary. Suffice it to say that the grievant's explanation for his absence is unacceptable and does not serve to mitigate the justifiable "cause" for his discharge. The grievance is, therefore, denied.

AWARD

Grievance No. 24-S-33 is denied.

/s/ John Paul Simpkins

JOHN PAUL SIMPKINS,

Arbitrator

March 2, 1990