

Award No. 822

ARBITRATION

In the Matter of Arbitration between:

INLAND STEEL COMPANY

Indiana Harbor Works

and

UNITED STEELWORKERS OF AMERICA

Local Union 1010

Grievance No. 11-S-82

Appeal No. 1433

Arbitrator: John Paul Simpkins

March 2, 1990

Appearances:

(January 12, 1990)

For the Company:

Laura L. Kocel,

Representative,

Union Relations

For the Union:

James Robinson,

Arbitration Coordinator

Subject: Discharge for Excessive Absenteeism; Application of Attendance Improvement Program; Last Chance Reinstatement; Evidence

Statement of the Grievance:

(May 2, 1989)

"The aggrieved . . . contends the action taken by the Company when on April 28, 1989, his suspension culminated in discharge is unjust and unwarranted in light of the circumstances."

Contractual Provisions Involved:

Article 3, Section 1

Article 8, Section 1 of the August 1, 1986 Agreement

Statement of the Award:

(March 2, 1990)

The grievance is sustained.

Chronology of Grievance:

Grievance Filed (Step 3):

May 2, 1989

Step 3 Hearing:

May 24, 1989

Step 3 Minutes:

September 18-24, 1989

Step 4 Appeal:

October 6, 1989

Step 4 Hearing:

January 5, 1990

Step 4 Minutes:

January 5, 1990 \*

Appeal to Arbitration:

January 5, 1990

Case Heard:

January 12, 1990

Award Issued:

March 2, 1990

\* Step 3 Minutes adopted in lieu of Step 4 Minutes

BACKGROUND

Company witness Dennis Mills is Section Manager of Plant No. 1, Galvanize. Included as part of his responsibilities is discipline and personnel matters including but not limited to absenteeism. Mills' policy is to interview employees with a view towards offering assistance in problem areas called to his attention, however, where necessary he will impose discipline.

Mills oversees the work of about 70 employees of the Company and absenteeism has affected his section's operation. There are three galvanize lines which operate continuously seven days per week for twenty-one turns. An employee who reports off may cause a line to be shut down. A substitute employee must be found either by calling someone in or holding someone over to work a double shift. Directing someone to work a double shift is a last resort to filling a vacancy created by an employee who reports off. No matter how the position is filled the cost to the Company is on an overtime basis.

In October, 1984 the Continuous Heat Treating Department implemented an Attendance Improvement Program under which attendance data for department employees is entered daily into a data processing system. Mills' section was included. The data processing system will inform Mills of employees who exceed the established absence ratio allowed for either daily or extended absences which are consecutive. The ratio is determined by separately comparing the daily absences and extended absences to the number of turns the employee was scheduled during the specific evaluation period. All employees were notified that the policy was being put into operation and those employees immediately affected were notified that they would be held to the standard.<FN 1>

Mills' practice is to examine the computer data for an employee's absence record, consider the trends or patterns which are applicable and then make a determination as to whether an interview is necessary. If necessary, he attempts to determine the causes for the absence and offers to assist with alleviating the problem. After discussion he may impose discipline or give the employee a pass and impose no discipline. Mills has been the grievant's Section Manager for two years. Grievant is on the lower job in the sequence, however, he normally works about two jobs higher than his regular position as a Piler Tractor Operator in the continuance line sequence. The use of mobil equipment and special cranes makes it difficult to get replacements. An employee just cannot be assigned as a replacement in the sequence or job Grievant performed. It takes about six (6) weeks of training to prepare someone to do Grievant's job, according to Mills. A laborer cannot be substituted to do the work without proper training.

On September 16, 1987 Mills suspended the grievant for two turns and on January 21, 1988 he suspended Grievant for three turns. Both suspensions were for absenteeism. On these occurrences the department manager conducted a record review of the grievant's absences and discipline in the presence of Union representatives. At that time Grievant was given a final warning and notice that termination could result if the absences persisted. After the record review of February 24, 1988, the grievant was absent once for personal reasons, twice for transportation problems and there were three occasions of sickness. He was also late on two occasions.

A record review conducted on January 26, 1989 again stressed the importance of the grievant being present and for all absences to be documented. At that time Grievant had been identified by the system for discipline but his suspension was averted and he was given another pass in response to his request for another chance to correct his problem. But, on April 2, 1989, when the system triggered the grievant again, Mills considered the previous passes and the medically unverified or excused absences that had subsequently accrued since January and recommended Grievant's suspension preliminary to being discharged.

On cross examination, Mills stated that the Grievant's absences centered around his taking off before or after a scheduled day off, vacation or weekend. This trend accounted for fifty (50%) percent of Grievant's absences, according to Mills. This trend existed at the time he was suspended for two turns.

Mills stated that the purpose of the program was to implement a form of progressive discipline which would result in less problems with absenteeism. Normally an employee's absentee rate will decrease. Where it does not a decision must be made as to whether the Company will be better off without the employee. That decision was made in Grievant's case because of the trends of absences, the lack of improvement, his overall record, and the lack of verification. His last day absent was after a scheduled day off.

Mills also acknowledged that if grievant had missed the entire week which included January 19 and January 20, 1989 or if he had been absent one additional day, January 21, 1989, the absences would have counted as one and the system would not have triggered him for discipline.

Department Manager, Gary VanAsperen, conducted the record review of Grievant and explained the consequences of his lack of improvement. He views the lack of attendance a serious problem and Grievant understood the situation he was in and the consequences of his continued absence.

Recalling the final warning and review of February, 1988, Grievant stated that VanAsperen informed him not to miss any more days and to be at work at all cost. He took the advice seriously and tried to comply with it. However, his wife's sickness each of the seven years of their marriage and her hospitalization caused him to be absent.

Additionally, while it appears that he was absent after a vacation Grievant asserts that it is not true because he never took a vacation when scheduled. He would request a change in his vacation schedule to be at home during his wife's recuperation upon being discharged from the hospital. Mills would grant his

requests. Thus, he concludes, that when he called off during the time he was originally scheduled for vacation he was actually not on vacation for any time preceding the absence.

On cross examination, Grievant acknowledged that the Company should be able to expect this regular attendance and the need to improve his attendance has been pointed out to him by Management over the past five years. Management also requested documentation for absences but the only documentation available was provided by medical insurance claims for family benefits. Grievant admits that he did not document any of his absences. The last two days of sickness in January, 1989, he was out with the flu which he caught from one of his children.

Continuing, the grievant stated that his absence on April 2, 1989 for transportation reasons was because his car got stuck in the Company's parking lot. He had a flat tire and a stripped lug. He could not get the tire off and he called plant security to get a tow truck to carry the car away. The car was not repaired in time for Grievant to return to work on the 3-11 turn. He had no money and attempts to get someone to take him to work were unsuccessful.

On further examination Grievant acknowledged that he was unaware that April 2, 1989, was a Sunday and he was scheduled off the following Monday and Tuesday. He further stated that he was unaware that he was scheduled off on January 18, 1989, the day preceding two days of sickness. Similarly, Grievant was unaware that the time he reported off for transportation problems on December 18, 1988 was between two days he was scheduled off. Upon being asked to explain this trend, Grievant stated that there was no reason for reporting off on certain days and that things happened in life that he could not control and that he does not call off just to call off.

Grievant stated further that he does not have a driver's license but he can rely upon his father to take him to work. He intends to purchase a car when he is able. He now lives with his father and he is separated from his wife who is still sick. His wife and children still need his support which he cannot provide without employment.

Grievant's prior record of discipline in connection with the Attendance Improvement Program is as follows:

Date	Infraction	Action
12/07/86	Absenteeism	Reprimand
12/23/86	Left job without proper relief	Discipline - 1 turn
04/29/87	Absenteeism	Discipline - 1 turn
09/16/87	Absenteeism	Discipline - 2 turns
01/21/88	Absenteeism	Discipline - 3 turns
02/24/88	Final Warning	Record Review

Following the February 24, 1988 final warning and record review, Grievant was absent or late for the following days:

Date	Reason
04/30/88	Late
08/01/88	Late
09/20/88	Sick
11/29/88	Personal
12/18/88	Transportation
01/19/89	Sick
01/20/89	Sick
04/02/89	Transportation

#### CONTENTIONS OF THE PARTIES

##### The Company

The Company contends that there is just cause for the grievant's discharge as established by the evidence. It agrees that the records show that the grievant failed to work 115 days in the last five years and that his percentage of absenteeism exceeded that of his department and the plant. Interviews and record reviews put Grievant on notice of his possible termination in the absence of improvement, to no avail, the Company argues. Accordingly, with his last absence on April 2, 1989, Management concluded that additional lesser penalties were unwarranted and that Grievant should be separated from the Company. At that point, the reasons for the absence no longer mattered.

##### The Union

The Union contends that the Company abdicated its responsibility to consider Grievant's record in deciding there was cause for discipline. The Union argues that the Company's assessment failed to include the six day schedule the grievant worked; that on an annual basis, Grievant's absences actually decreased from ten

(10%) percent in 1985 to nine (9%) percent in 1986 to eight (8%) percent in 1987. From 1987 there is a more drastic reduction in the grievant's absenteeism, according to the Union's calculations. In 1988 and 1989 the grievant's absences were reduced to 2.9% and 3.7% respectively, assuming all of his vacation was taken prior to the April 18, 1989. Since it was not, the percentage was actually less, the Union argues. This is surely improvement contrary to what the Company contends and in the Union's opinion consideration of the grievant's record in this manner is the most proper way to assess his improvement. To consider the 115 absences in five years does not reflect the progress made to his absentee record.

The Union also rejects the Company's claim that there is a trend to the grievant's absences. It argues that the vacation schedule of Grievant was changed and there was no premeditation on the grievant's part. Grievant has demonstrated that he can go for almost a year without missing a day's work. This amounted to less than three (3%) percent according to the Union's calculation and it questions the Company's failure to wait to see if this rate of absence could continue.

The Union further argues that Management's slavish reliance on the computer has resulted in the grievant's discharge. The traditional approach in absenteeism is to look for excessive frequency then cause, the Union asserts. In the grievant's situation it believes there is neither excessiveness nor cause for the grievant's discipline and discharge and urges that he be reinstated.

#### FINDINGS

The parties agree that this matter is uncomplicated by extraneous issues and concerns. The only issue is that of just cause for the grievant's discharge under the Attendance Improvement Program of his department.

There is no dispute that the grievant was aware of the Attendance Improvement Program and its purpose. He admits that he had an absentee problem that he was trying to correct. The explanations he offered at the arbitration have been discredited by Management witnesses and it is clear that action under the attendance policy was appropriate. The grievant's unenviable record of absences, lateness and early quits over the past five years are what figured into his separation. It showed 115 chargeable offenses of absenteeism under the policy.

Grievant, whose seniority dates back to February 27, 1976, acknowledges the Company's right to require regular and reliable attendance on his part. This right is uncontested by the Union. Grievant further claims that in recognizing the Company's right in this regard, he has tried to reduce his absenteeism. The record supports his claim. But, the system which monitors his absenteeism considers a basic rolling 90 day period for evaluation purposes. In the grievant's case this was extended to a rolling 182 days/365 day period because he had reached the level of a two turn discipline. Thus, he would violate the program guidelines with two or more extended absences or six or more instances of absence. The program will trigger a computer notice to Management for action when an employee at this level is absent five (5%) percent or more of scheduled turns. The April 2, 1989 absence for lack of transportation was Grievant's sixth absence at this level (since September 18, 1988), thus it was the triggering event that gave rise to the instance grievance.

The Company contends that the grievant's absentee rate was excessive and unimproved. The Union takes an opposite position. No matter which position is considered, unjustified absences totalling 115 for five years would clearly be excessive. But, what about the Union's claim that the grievant has made noticeable improvement? The record seems to favor this claim.

The grievant's total record of absences from April 2, 1984 to his separation in 1989 is recorded as follows:

1984 - 8  
1985 - 27  
1986 - 27  
1987 - 39  
1988 - 6  
1989 - 3

This conclusion is therefore unescapable that the grievant was indeed trying and had made marked improvement in reducing his absences. But, because he was at the level of triggering action where absences amount to five (5%) percent of scheduled turns over a rolling 182 day/365 day period, the Attendance Improvement Program was less tolerant.

The Company's leniency in imposing discipline by giving Grievant a pass when suspension preliminary to discharge was recommended in January, 1989, in effect delayed the issue of his separation. At that time the grievant's rate of absenteeism was declining. The same is true for him on April 2, 1989 notwithstanding the fact that he was in clear violation of the Attendance Improvement Program. It may be that Grievant will salvage his value as an employee if given a chance to do so. Consequently, in view of his significantly

reduced number of absences and the policy of affording a last chance to employees who accept their responsibilities and recognize the rights of the Company to have a reliable and dependable work force, the grievant will be granted one last opportunity to establish his value to the a Company.

Reaching this decision is not intended to suggest or imply disagreement with the decision to terminate Grievant under the Attendance Improvement Program. His value to the company has been acknowledged in that employees are needed to work in his job sequence. Returning him to work on a last chance basis is intended to serve the interests of both the Company and the grievant while at the same time cause no harm to either. In this regard, the harm which may have been caused Grievant as a result of his separation is considered his own fault for which no make whole remedy is merited. The grievance will, therefore, be granted.

AWARD

Grievance No. 11-S-82 is sustained.

The Company shall reinstate the grievant on a last chance basis to his position without loss of seniority and benefits, but with no back pay.

/s/ John Paul Simpkins

JOHN PAUL SIMPKINS

ARBITRATOR

March 2, 1990

<FN 1>The Union stipulated that the Attendance Improvement Program was implemented in October, 1984 and that it is functionally operated in this manner. However, the Union considers the Attendance Improvement Program as a tracking system which does not eliminate the establishment of cause in each case where discipline is imposed; i.e., it does not independently establish cause for discipline. As a tracking system the Union does not challenge the existence of the Attendance Improvement Program and it does not recognize it to be more than that.