Award No. 845
In the Matter of Arbitration Between:
Inland Steel Company
and
United Steelworkers of America,
Local No. 1010.
Grievance No. 28-T-17
Appeal No. 1456
Arbitrator: Jeanne M. Vonhof
May 6, 1991

REGULAR ARBITRATION

The Undersigned Arbitrator was appointed according to the rules of the applicable collective bargaining agreement. This hearing was held on Friday, April 26, 1991 at the Company's offices in East Chicago, Indiana.

Mr. Jim Robinson, Arbitration Coordinator, represented the United Steelworkers of American Local Union No. 1010, hereinafter referred to as the Union. Mr. Erwin Biddings, the Grievant, testified on behalf of the Union.

Mr. Brad Smith, Project Representative, represented Inland Steel Company, hereinafter referred to as the Employer or the Company. Mr. Larry Orth, Manager, Roll Shops and Maintenance, testified for the Company.

The Parties filed pre-hearing briefs in this matter.

THE ISSUES:

The Parties submitted the following issue(s) to the Arbitrator:

1. Was the Grievant discharged for just cause?
2. If not, what shall the remedy be?

RELEVANT CONTRACT PROVISIONS:

ARTICLE 3

PLANT MANAGEMENT

Section 1. Except as limited by the provisions of the Agreement, the Management of the plant and the direction of the working forces, including the right to direct, plan and control plant operations, to hire, recall, transfer, promote, demote, suspend for cause, discipline and discharge employees for cause, . . .and to manage the properties in the traditional manner are vested exclusively in the Company . . . .

BACKGROUND

This is a case involving the discharge of the Grievant for violating the terms of a last chance agreement. The Grievant, Erwin Biddings, had been employed at the Company for approximately nineteen (19) years at the time of his discharge. He was employed as a No. 4A Roll Shop Blaster in the No. 3 Cold Strip Mill at the time if his discharge.

The Grievant has a history of disciplinary problems, many of them related to poor attendance, and others to poor work performance. He had previously been discharged and was reinstated (for the second time) under the terms of a last chance agreement (LCA) dated July 11, 1990. The last chance agreement itself states that the Company and the Union recognized that cause existed for the Grievant's suspension and discharge, but the Company decided to return the Grievant to employment with one final chance.

The agreement stated that if the Grievant failed to work as scheduled, under either the Attendance Improvement Program (AIP) or certain guidelines set forth in the LCA, cause would exist for an immediate suspension preliminary to discharge. The agreement also stated in a general clause that any repetition of the conduct which led to the Grievant's most recent suspension would also result in suspension preliminary to discharge.

On November 12, 1990 the Grievant failed to report to work and failed to report off (FRO) for the 3:00 to 11:00 p.m. third turn for which he was scheduled. Upon his return to work the next day, he stated that he had read the schedule wrong and did not realize that he was scheduled for work on November 12th. He maintained this position at the arbitration hearing.

The Company terminated the Grievant for violating the last chance agreement, by letter dated November 26, 1990. The Union filed a grievance over the discharge, the Company denied the grievance, and the dispute proceeded to arbitration.

THE COMPANY'S POSITION

The Company contends that the discharge was issued for just cause and should not be overturned. In support of this position the Company argues that the Grievant was discharged in May, 1990 for his continued failure to report off (FRO) in violation of the Company's Attendance Improvement Program. According to the Company, both Parties agreed at that time that the suspension and discharge were for just cause, but the Company decided to give the Grievant one last chance.

The Company contends that the Grievant was fully informed of the terms of the agreement before he signed it, and that its terms were reviewed with him at least twice after he was reinstated, most recently just four (4) days prior to his final FRO.

The Company contends that by signing the last chance agreement the Parties agreed to substitute its terms for any other contractual definition of just cause. Any violation of the last chance agreement, the Company argues, is therefore just cause for the discharge of the Grievant.

The Company further contends that there is no real dispute that the Grievant violated the terms of the LCA.

The Company contends that the Union has focused only on Paragraph Five of the LCA, but that the final paragraph is equally important. This paragraph permits the Grievant's discharge for any repetition of the conduct which led to the Grievant's most recent discharge. According to the Company the prior discharge was based upon the Grievant's FRO problems, and the instance triggering the current discharge also involved an FRO. Therefore the Company alleges that this is a clear violation of that paragraph of the agreement.

The Company also argues that the reason given for the Grievant's failure to report off is not an acceptable excuse. The schedule as it appeared on the day in question was not confusing, the Company urges, even if the method of publishing it was changed after the Grievant's discharge. In addition, the Grievant had a special responsibility to make certain that he read the schedule carefully, the Company suggests, because, unlike the typical employee, he was working under a last chance agreement. According to the Company, even if the Grievant did honestly misread the schedule, this is not an adequate excuse for his failure to report off.

For all the reasons discussed above, the Company urges that the grievance should be denied and the discharge upheld.

THE UNION'S POSITION

The Union contends that the discharge should be overturned. The Union acknowledges that the Grievant was working under a last chance agreement which stated that a repetition of his prior misconduct would constitute cause for suspension and discharge. However, the Union notes that after being reinstated under the last chance agreement the Grievant worked without an attendance problem for four (4) months prior to the incident leading to this discharge.

The Union argues also that there is sufficient evidence that the Grievant did misread the schedule on the day in question. In its pre-hearing brief the Union argued that it was very unlikely that the Grievant simply would have failed willingly to report off, knowing that he was operating under his second last chance agreement.

In addition, the Union suggests that the schedule as posted was confusing. In support of this position, the Union argues that the method of designating "down turns" on the schedule, which was the alleged source of the Grievant's mistake in reading the schedule, was changed by the Company immediately after his FRO occurred.

The Union contends that misreading the schedule is not the type of reason that makes FRO's so serious. There are accidents and mistakes which happen in the normal course of a person's life, the Union urges, which result in an employee not reporting off, but are not caused by the employee's irresponsibility. This is not a case in which the Grievant simply failed to report off because he was pursuing some personal activity, the Union contends. Rather, this is a case in which the Grievant simply made a mistake in reading the schedule, according to the Union.

Therefore the Union requests that the grievance be upheld and the discharge overturned. As a remedy the Union requests that the Grievant be reinstated and made whole.

OPINION

This case involves the discharge of the Grievant for failing to obey the terms of a last chance agreement, dated about four months prior to this discharge. The Union filed a grievance over the discharge and it proceeded to arbitration for a determination of whether it was based upon just cause.

The Grievant had nineteen (19) years' tenure with the Company at the time of his discharge. His disciplinary record over the past five years includes many instances of discipline for both attendance problems and poor work performance.

Many of these instances involved the Grievant's failure to report off (FRO) for work, i.e. the failure to report his absence to the Company prior to the beginning of the turn. Under the Company's Attendance Improvement Plan (AIP) failures to report off are treated separately and more seriously than other kinds of absences. The first instance of an FRO results in one day's discipline and discipline moves progressively until the fourth instance, which may result in discharge. An employee may revert one disciplinary step if the current infraction occurs eighteen (18) to twenty-four (24) months after the last infraction.

The Company's witness testified that FRO'S are treated more seriously than other types of attendance infractions because in these cases supervisors must decide whether to keep employees over from the previous shift, call someone else in, or make changes in production. Without any call from the employee the supervisor must make these decisions without any information about when -- or whether -- the employee eventually will come into work.

The Grievant was discharged in May, 1990 for his attendance problems, primarily his FRO's. The Grievant already had been discharged prior to the May, 1990 discharge as well, although the basis for that first discharge was not presented at the arbitration hearing. In a last chance agreement dated July 11, 1990 the Parties acknowledged that there was cause to discharge the Grievant at that time, but the Company decided to give him one final chance. The Grievant agreed to nine (9) separate conditions for his continued employment.

The Arbitrator concludes that the Grievant did violate this last chance agreement. Paragraph five (5) of the agreement requires the Grievant to work as scheduled for a period of six (6) months from the date of the agreement, either under guidelines set forth in the agreement or under the Attendance Improvement Program. The Grievant did not violate the separate attendance guidelines set forth in the last chance agreement. However, he did violate the Attendance Improvement Program by his FRO on November 12, 1990. Because there was not sufficient time between this FRO and his last FRO, there was no reversion to a lower level of discipline. Therefore the Grievant returned to the same level of discipline as his last FRO, which was suspension prior to discharge. Paragraph Five of the LCA states that any violation of its attendance requirements would lead to immediate suspension prior to discharge.

The Grievant's FRO also violated Paragraph Nine (9) of the LCA, which states that the Grievant may be discharged for repeating any of the conduct which led to his May, 1990 discharge. Because that earlier discharge was based upon a series of FRO'S, accumulating another FRO is a violation of Paragraph Nine of the LCA as well.

The Union suggests, in effect, that the Grievant's most recent FRO was not a repetition of his earlier misconduct, because this one was caused by an honest mistake, misreading of the work schedule, rather than any irresponsibility on his part. According to the Union, anyone could make such a mistake, and therefore the Grievant should not receive the ultimate penalty for this mistake.

Even if the Grievant did make an honest mistake and misread the schedule, however, the Arbitrator concludes that this is not an adequate reason to excuse the FRO. The Grievant does bear responsibility for the mistake here and this situation therefore differs from the example raised by the Union advocate of an employee involved in a major car accident on the way to work. In the Union's example the cause of the employee's failure to report off is more purely accidental and outside the control of the employee than the misreading of a work schedule.

The employee has the primary responsibility for correctly reading the schedule to determine when he is scheduled to report for work. The Grievant's misreading of the schedule in this case, if it occurred, was not totally outside his control, like that of an employee involved in a car accident on the way to work.

The Grievant in this case testified that he misread the days scheduled as "down turns" for the week in question. The Company does have some responsibility to make the schedule readable. The Company indicated "down turns" at the time of the discharge by drawing a black line through the days on which production was shut down. The Grievant testified that he looked at the two other turns first, saw two black lines next to each other indicating two consecutive days on which down turns were scheduled, and thought he saw the same scheduling for his own turn.

However, the copy of the schedule introduced at the arbitration hearing clearly shows a black line drawn through only one of the days on his turn. Looked at for any length of time, it is clear that more black lines are drawn through the other two turns than through the Grievant's turn. Furthermore, the letter "B" is also clearly drawn in on each day that the Grievant was scheduled to work, including the day in question.

The Union suggested at the arbitration hearing that the Grievant did not have a responsibility to closely study the schedule, i.e. that it should be simple enough to be read rather quickly. The evidence indicated that during the relevant period the days of the week on which "down turns" were scheduled varied from

week to week. In addition, the evidence indicated that the Company did not always indicate "down turns" in the same way on the schedule each week. Furthermore, there was evidence that the number of days (five or six) for which the Grievant could have been scheduled during this period also varied from week to week. The possible changes in the Grievant's schedule from week to week and the way "down turns" were indicated indicate that the Grievant needed to exercise more care in reading the schedule than if the schedule remained virtually unchanged from week to week. This is especially true because the Grievant was working under a last chance agreement and he knew that his failure to report to work as scheduled would almost certainly lead to his discharge.

The Arbitrator concludes that the schedule as printed was sufficiently clear. There was no evidence that this was a new way of indicating "down turns;" rather, the evidence indicates that the Company had used this method in the past.

In reaching this conclusion the Arbitrator has considered the Union's evidence that the Company changed the method of indicating down turns the week after the Grievant's last FRO. Whether or not the new schedules are clearer (and the Arbitrator is not convinced they are) the old schedule was sufficiently clear that the average employee, with some care, could easily determine his schedule for the coming week.

It is unfortunate that the Grievant's nineteen years with the Company should come to an end with what may have been a brief and honest mistake in reading his work schedule. However, the Grievant's entire record lead to this consequence, not just the final triggering event. He already has been discharged twice, and reinstated for a final chance.

The Arbitrator cannot ignore or amend the terms of that last chance agreement. To do so would weaken the concept of last chance agreements, their attractiveness to the Employer and their availability to other employees. As Arbitrator Bert Luskin has stated in a case between these Parties cited by the Company,

> The parties have adopted the concept of "last chance" agreements in some selected cases as a means of providing an employee with one last opportunity to demonstrate that he can and will comply with Company rules and regulations in the same manner as that expected and required of all other employees. . . . . Any such agreement carries with it the understanding that it constitutes a final effort on the part of the Company to induce an employee to correct his habits and attitudes and to conform with the terms and conditions of the "last chance" agreement. Such agreements lose their effectiveness unless the terms and conditions of the "last chance agreements" are respected and given the same full faith and credit that should be given to any agreement. The failure to enforce a "last chance" agreement serves to dilute its effect and to reduce its significance, meaning and usefulness. The elimination of the concept of "last chance" agreements could serve to deny other employees of the opportunity to be restored to gainful employment and to preserve for such employees the benefits they had achieved during their period of employment with the Company. (Company Exhibit No. 9, Luskin, Arb., Award No. 738, 1983).

The Arbitrator concurs with this analysis and concludes that it applies to this case as well. For all of the reasons stated above, the grievance must be denied.

AWARD

The grievance is denied. The Company had just cause for discharging the Grievant.

/s/ Jeanne M. Vonhof
Jeanne M. Vonhof
Labor Arbitrator
Dated this 6th day of May, 1991.
Chicago, Illinois.