Award No. 858
IN THE MATTER OF THE ARBITRATION BETWEEN
INLAND STEEL COMPANY
and
UNITED STEELWORKERS OF AMERICA
LOCAL UNION 1010
Arbitrator: Terry A. Bethel
March 28, 1992
OPINION AND AWARD
Introduction
This case involves the discharge of grievant Mose Smith for absenteeism. The case was tried in the company's offices in East Chicago, Indiana on February 14, 1992. Pat Parker represented the company and Jim Robinson presented the union's case. Grievant was present throughout the hearing and testified in his own behalf. The company filed a pre-hearing brief and the union filed a prehearing memorandum.
Background
Although there is some question about some of the excuses offered by grievant, there is no real dispute about the facts of this case. Grievant has been employed by the company for almost 29 years. For at least the last several years he has experienced serious attendance problems. In 1988, grievant had more than 70 days of extended absence, 25 days of short term absence, and three failures to report off (FRO); in 1989 he had 5 days of extended absence, 24 short term absences, and 6 FRO's; in 1990, grievant had 88 days of extended absence, 10 days of short term absence, and 4 FRO's. Grievant was disciplined for absenteeism several times and, on August 3, 1990, was suspended preliminary to discharge.
Grievant was reinstated under a last chance agreement effective September 7, 1990. Although the company does not contend that grievant violated this agreement<FN 1>, it does assert that his attendance problems were not remedied because of it. In addition to several periods of extended absence since the last chance agreement (which are not asserted as justification for the discharge), grievant also experienced other problems. He was absent due to sickness on January 23, 1991; was absent for car problems on June 29, 1991; failed to report off on July 25, 1991; was again absent for car trouble on August 20, 1991; failed to report off on August 21, 1991; was absent for family illness on September 1, 1991; and failed to report off on September 11 and 12, 1991. The company discharged grievant for a second time on September 30, 1991. It is that action which is at issue in this case.
Mr. Parker did a good job of raising questions about some of the reasons advanced by grievant to explain his absences. On both June 29 and August 20, grievant claimed car trouble, but admitted to Parker that he did not explore other transportation alternatives. On September 1, grievant missed work due to his wife's illness, but was unable to tender any verification of her condition. And on both September 11 and 12, the culminating incidents, grievant claimed to have been suffering from black out problems, which he likened to being "de-arranged." Although I attach some credibility to this last explanation, as I will explain below, Parker nevertheless was able to portray grievant as an employee who had not given a high priority to regular attendance at work.
The union does not deny that grievant has experienced serious problems and it did not seek to belittle the company's concern. Instead, at base it tenders two arguments: first, some of grievant's difficulties are attributable to alcohol abuse, a problem he now seems to be coping with; second, grievant is less than two years away from a pension and should be given one last chance to succeed especially since, though still bad, his attendance has been improving.
Ignoring extended absences (which the union argues were not the reasons for the discharge) it does appear that grievant's record has improved somewhat. In final argument, Mr. Robinson pointed out that grievant had 28 occurrences in 1988, 30 in 1989, 12 in 1990 and only 7 up until the time of his discharge in September 1991. As the company points out, however, grievant's record is still bad, especially since he had several absences after his 1990 discharge and subsequent last chance agreement.
There is at least some evidence, however, that grievant has tried to improve. He participated in the company's alcohol abuse program and, at the insistence of coordinator John Bean, he received counseling from a private psychologist. Whether because of this experience or as a result of his most recent discipline, grievant claims he has now learned his lesson. He says that, if reinstated, he will mend his ways and report to work regularly. He also claims that some of the pressures in his life have been reduced. His marital problems are apparently in hand, his blood pressure medication seems to be working, and his father's illness is in control. In addition, grievant says he no longer feels de-arranged.

Although the company indicated considerable skepticism about these so-called black out periods, I am willing to give grievant's claims at least some weight. Don Lutes testified with credibility and candor that he had experienced similar problems after he'd quit drinking. He did not say, as Mr. Parker interpreted his testimony in final argument, that his experiences were similar to the blackouts he'd had when he was drinking. Rather, he said he sometimes woke up in the morning and felt like he had been drinking. He said his doctor explained that it sometimes took some time to rid the body of the effects of alcohol. These are similar to the symptoms reported by grievant.

Discussion

The hardest thing about this case is grievant's years of service. Although I attribute some weight to grievant's claim that he sometimes missed work because he felt "de-arranged" after he quit drinking, it is clear that such symptoms did not account for all of his problems. As I said above, Mr. Parker was able successfully to portray grievant as a man who did not assign the highest priority to reporting for work. The slight improvement grievant has shown and the apparent reduction of the tensions in his life are, however, not irrelevant. Although by no means certain, those factors indicate some promise that grievant will reform if given one last chance. Given his poor record, I would not even consider granting him that opportunity if grievant was not within two years of pension eligibility. As I observed in Inland Award 842, there has to be a limit to what the company will tolerate. Moreover, one cannot say that the company failed to show grievant substantial consideration in this case.

I understand that long years of service do not immunize an employee from disciplinary action. Arbitrator Luskin said as much in Inland Award 638 for an employee who had 13 years service. And Arbitrator Kelliher upheld the discharge of an employee with more than 25 years service in Inland Award 476. That case, however, concerned serious misconduct, not absenteeism. I, too, have upheld the discharge of employees with many years of service with the Inland Steel Company.

This grievant, however, has made at least some effort to improve and he is less than two years away from a pension. Although a very close case, I am persuaded to give him one final opportunity to improve. This is not an arbitration in which there are winners and losers. Mr. Parker put on a presentation that, in the ordinary case, would establish cause. But I think this is not the ordinary case.

Grievant should understand that he has placed himself in grave jeopardy. Some arbitrators would have upheld his discharge this time. Few would give him yet another chance. His attendance problems must improve.

I will order that the company reinstate grievant without back pay. The period since his discharge shall serve as a disciplinary suspension and, I hope, impress upon grievant the seriousness of his situation.

AWARD

The grievance is sustained, in part. The company is ordered to reinstate grievant without back pay. The period since his discharge shall serve as a disciplinary suspension.

/s/ Terry A. Bethel

Terry A. Bethel

March 28, 1992

<FN 1>There was some testimony that grievant did not, as the plan required, develop a personal action plan. Grievant testified that he thought he'd done so. Even if he did not, the company does not claim that his failure to do so justified his discharge.