

Award No. 860
IN THE MATTER OF THE ARBITRATION BETWEEN
INLAND STEEL COMPANY

and

UNITED STEELWORKERS OF AMERICA
LOCAL UNION 1010

Grievance 1-T-27

Appeal No. 1471

Arbitrator: Terry A. Bethel

April 29, 1992

OPINION AND AWARD

Introduction

This case involves the discharge of grievant Wayne E. Collins for a violation of two company rules, 132f, which forbids the possession of firearms on company property, and 133, which allows the discipline of employees who refuse to permit a search of their personal vehicles. The suspension preliminary to discharge was effective on June 28, 1991. The hearing was held in the company's office on April 22, 1992. Jim Robinson represented the union and Brad Smith presented the company'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 pre-hearing memorandum.

Appearances

For the Company:

B. Smith -- Sen. Rep., Union Relations
L. Doyle -- Coord. Spec., Protective Services
S. Nelson -- Project rep., Union Relations
W. Carter -- Section Mgr., Plt. 2 Blast Furnace
D. Wenzel -- Retired
T. Kinach -- Section Mgr., Union Relations

For the Union:

J. Robinson -- Grievance Committee Chairman
A. Jacque -- 1st Vice Chairman Gr. Comm.
R. Fernandez -- Griever
W. Collins -- Grievant
B. Collins -- Witness

Background

Sometime early in the morning of June 27, 1991, an employee who was working third turn in the No. 2 Blast Furnace Department Sinter Plant Pumphouse found a .44 magnum handgun in a rag barrel. The gun was not loaded. The employee reported his discovery to his supervisor. Larry Doyle, who was filling in as plant protection captain of investigation, received a call at home at 4:30 a.m. informing him of the discovery of the gun. Doyle went to the Pumphouse at about 5:00 a.m. and searched the area. He found no other weapons and no ammunition. He also examined the gun. He said it looked as though it had recently been cleaned. The gun was saturated with oil. He said there was no dirt or grit in the oil, even though the pumphouse is a dirty area.

At around 6:30 a.m., Doyle placed a call to the East Chicago police department, hoping that they could help trace the gun to its owner. He was told to call back at 8:00 a.m. Before he could do that, at around 7:30 a.m., grievant went to his supervisor and admitted that the gun was his. Grievant had overheard the employee who found the gun telling others about it. Grievant testified that his supervisor told him he was in trouble and summoned a griever. After conferring with his griever, grievant participated in an investigation that was attended by his steward, department supervision, Doyle, and Steve Nelson, from union relations. During the investigation, grievant said he did not bring the gun onto company property. Rather, he said he had taken his 1975 Ford LTD to his mechanic on June 14, 1991 and that his mechanic had taken the gun from a locked box in the trunk, where grievant kept it. Grievant said the mechanic was a crack dealer named Robert Thomas, also known as "Uzzi." Grievant said Thomas knew several people who worked at Inland and that he sometimes entered the plant and visited them. He said he called Thomas who admitted taking the gun to the pumphouse and leaving it on a "white machine." Grievant gave Doyle two telephone numbers for Thomas, one for a hotel where Thomas lived and the other for Perry's Towing, where grievant said Thomas worked.

Following the investigation, the supervisor notified grievant that he was suspended. Doyle and another security officer accompanied him to his locker and then to his car. Doyle asked for permission to search the locker, which grievant granted. Doyle said there was no contraband in the locker. They then proceeded to the parking lot and Doyle asked to search the car. He said grievant's demeanor changed at this point and he became nervous and started sweating. Grievant said they could not look in the car because his brother sometimes drove it and he wasn't certain what was in it. Doyle persisted and grievant said there could be dirty clothes or drugs or a weapon that his brother had put there. Doyle asked to look in the trunk and grievant declined.

This conversation occurred while the two plant protection officers and grievant were sitting in a plant protection car. At that point Doyle got out of the car to help a motorist who was apparently lost. Grievant then told the other plant protection officer that they could look in his car, but not in the trunk because he didn't have a key to the trunk. The other officer relayed this to Doyle, but he elected not to search the interior of the car. He said his real interest was in searching the trunk because grievant claimed that was where he kept the gun locked in a tool box. Doyle said after grievant told him he could not look in the trunk, he did not pursue the subject of the search. Grievant got in his car and left. The car was a 1984 Oldsmobile, not the 1975 Ford that grievant claimed to have left in the care of his mechanic.

Following grievant's departure, Doyle called both of the numbers grievant had given him for Thomas. One of the numbers really was for Perry's Towing, but they had never heard of anyone named Robert Thomas or "Uzzi." The number that was allegedly for Thomas' hotel was a private residence where no one knew Thomas.

Grievant appeared for his suspension hearing on July 8, 1991, and told a different story from the one he related at the investigation. The story he told at the suspension hearing was the same as the one he told at both the third step and arbitration hearings. Grievant admitted that the story about Thomas was untrue. He said that he had been cleaning his gun at home on the afternoon of June 15, 1991 and that after finishing, he put the gun in the pocket of his fatigue jacket. He then forgot it was there until after he got to work for the 3 to 11 turn. During the arbitration, grievant said he forgot about the gun until it banged against his locker door while he was taking off his coat.

Grievant testified that at that point, he didn't know what to do. He thought of telling his supervisor about the gun, but decided that it might cost him his job. He said he didn't leave the gun locked in his locker for fear that someone might break into it. He decided to take the gun with him to the pumphouse, which was apparently the area he was assigned to work that day. He said he hid it in the barrel of rags and then forgot about it. Grievant said he did not think about the gun again (or, if he did, he thought it was at his home) until he overheard the pumphouse operator telling someone he had found a gun in the rag barrel. Grievant said he realized it was probably his gun so he told his foreman.

Grievant also testified that Doyle's account about the request to search the car was accurate. Grievant said he was nervous and was trying to be consistent with the story he'd told about Thomas. However, he said he really did not have the key to the trunk. Grievant testified that the car had been stolen earlier in the year and that the ignition and trunk lock had been replaced. The result was that the car had three keys: one for the ignition, one for the doors, and one for the trunk. Grievant said he had the door and ignition keys but that his sister had the trunk key. He told this same story at the suspension hearing and third step hearing, but according to Nelson he did not explain why he didn't have the trunk key. Grievant's sister testified in both hearings that she kept the trunk key because grievant was forgetful and she was afraid he would lose it. She also testified at the arbitration and said that grievant did not have a key to the trunk, but that she had it instead.

Discussion

This is a sad case. In her testimony, Bernice Collins described her brother as a "good and kind person," a description that seems apt from my brief exposure to him. Grievant impressed me as a soft spoken, gentle man. He does not look like someone who would take a large bore handgun onto the work place. But that is exactly what he did and, frankly, I cannot understand why he did it.

Credibility determinations are not easy to make. Unlike some of the other principals, I had never seen grievant before and it is difficult for me to tell whether his demeanor while testifying was usual or unusual. There are, however, other factors. First, and most obvious, is the story about Thomas, the crack dealer who allegedly retrieved the gun from grievant's car. Grievant admitted that this fantastic tale was untrue, but obviously his willingness to lie in the first instance casts suspicion on his later accounts, even if they happen to be true.

Also influential is the nature of the story grievant has told at the suspension hearing, the third step hearing and the arbitration hearing. The gun at issue is not a cap pistol. It weighs about four pounds and it is between 10 and 12 inches in length. This is a large powerful hand gun of considerable bulk. Grievant claimed that he had stuck it in his jacket pocket and then had forgotten it was there. I have trouble believing that. In the first place, the temperature was in the mid eighties on the afternoon grievant reported to work. It is not easy to believe he would wear an army fatigue jacket to work under such circumstances.

More troubling is the fact that the gun did not really fit in the jacket pocket. Indeed, it would go in the pocket only if a considerable portion of the barrel stuck out of a hole in the pocket. But when it did that, given the weight of the gun, the barrel would hang down and be visible, unless someone took precautions to keep it from being seen. Even if the gun had fit in the pocket, its bulk would make it extremely unlikely that grievant would not have noticed it, especially since he is a large man who would have to crawl into and out of a car in order to go to work. In short, while it is obvious that grievant took the gun into the plant, I'm not convinced his story accurately depicts how and why he did so, or when he did so.

There are also other problems with grievant's account. He claims that he was unaware of the gun until after he got to work and that his sole desire then was to keep it from being discovered. If that was the case, it is hard to understand his actions. If he had kept it locked in his locker, he probably could have taken it home the same way he claims to have taken it in. Instead, he took it to the pump house and hid it in a rag barrel where it would be accessible to other employees. Grievant said he wanted the gun to be near him, apparently so he could keep an eye on it, but certainly he was not in view of the rag barrel all night. Indeed, he testified that he was up and down the stairs during the entire shift.

Equally incredible is grievant's claim that he simply forgot about the gun and left it in the rag barrel for almost two weeks. Grievant's sister testified that he was forgetful, but this is simply too hard to believe. Grievant claimed that he had the gun at home (against his mother's wishes) because he feared for their safety. One would think, then, that its whereabouts would be a matter of some concern to him. In addition, the gun was not an item of minor value. It cost about \$500. I might be able to believe that grievant forgets where he puts his keys, but forgetting about a \$500 gun is another matter.

Even more significant is grievant's story about why he put the gun in the rag barrel. He was afraid to leave it in his locker for fear someone would steal it. He took it to the rag barrel, he said, so he could be sure nothing would happen to it. And then he simply forgot it and left it there for two weeks?

If, as he claimed, he was afraid to tell his supervisor about the gun because he thought he would be fired, I simply cannot believe grievant would forget he left a gun in a place accessible to other employees. To the contrary, if he feared the gun would cost him his job, one would expect that the gun would be constantly on his mind and that he would be waiting anxiously for the end of the turn so he could take it home.

I also have difficulty believing grievant's story about the car. According to Nelson, grievant's sister testified at earlier hearings that she kept the key to his trunk because she was afraid he would lose it. She said the same thing at the arbitration hearing. But she also offered a second explanation about why grievant did not have a key to his trunk. She said that she was the one who had arranged to have grievant's car fixed after it had been stolen. She then made a set of keys and gave them to grievant, who lost them. She said she made another set, but didn't copy the trunk key because "I'm used to a car only having two keys." She then said she had given him two of the keys but that she hadn't taken care of the third one yet." The obvious inference from this testimony was that she had only copied two of the keys because she forgot about the third one and that she planned to get a copy of it but hadn't yet done so.

These are not consistent stories. One of the stories asserts that grievant could not be trusted with a trunk key so she just gave him what he had to have in order to operate the car. The other story claims that she didn't give him a key to the trunk because she forgot there were three keys and not just two. Either story would explain why grievant had no key to the trunk, but both cannot be true. The result, then, is to raise a question about whether grievant actually had a key to the trunk when Doyle asked to search it. Frankly, I have difficulty believing he did not.

I have recognized before that, under certain circumstances, the failure of an employee to submit to a reasonable search can warrant discharge, see Inland Award 849. I need not decide in this case whether grievant's refusal by itself justifies the company's action because I am persuaded that grievant violated rule 132f and that, in this instance, discharge is an appropriate penalty for that violation.

Rule 132f provides that "unauthorized use of, possession of, or storing of weapons or explosives on company property" is cause for discipline up to and including discharge. The union contends that not every violation of this rule automatically justifies discharge and it argues that grievant is simply guilty of bad judgment. It was careless of him to bring the gun onto company property, the union argues, but he had no

evil intent and he readily admitted his mistake. In fact, Robinson asserted, if grievant was trying to hide from the gun he would never have admitted it was his.

I cannot read too much into grievant's admission. He testified that he had a permit for the gun. He had to know, then, that it could be traced to him (as Doyle, in fact, planned to do) through the police. He had nothing to gain by waiting for the company to discover that the gun was his.

I cannot say categorically that bringing a gun onto company property is always automatically proper cause for discharge, since that is not the issue the parties have given me to decide. Certainly, as arbitrator Luskin recognized in Inland Awards 636 and 637, possession of firearms on company property can be cause for discharge, even if (as in Award 637) the employee has some reason to own or possess a gun. It also appears to be the case that, since these two awards, the company has consistently discharged every employee who has been caught with a gun inside the company gates.

I cannot say what the result would be in this case if grievant had mistakenly carried the gun onto company property and, upon discovering it, promptly notified his supervisor. Certainly, those facts would be more advantageous for grievant than the ones under consideration. But I am unable to conclude that grievant's possession of the gun on company property was merely an accident and I cannot believe that he put the gun in the rag barrel and then forgot about it. I'm also unsure of when grievant took the gun onto company property. It may have been on the 15th, as he claimed, or it might have been closer in time to the discovery, as Doyle speculated. I also don't know why he brought it onto company property or what he planned to do with it.

Whatever grievant's intention, it was an extraordinarily foolish act and one fraught with danger. Moreover, he exacerbated the danger by leaving the gun in a place accessible to other employees. It is no defense that the gun was unloaded. Ammunition is easy to carry into the plant. Even if the gun was never loaded, an employee confronted with it would not know that and would suffer the same emotional trauma as one threatened with a loaded gun.

I'm certain that grievant regrets his action. So do I. For all I know grievant has been a good employee. He impressed me as a nice and decent man. But there are some mistakes that cannot be overlooked or explained away. His regret seems genuine but it cannot change the fact that he committed a serious breach of company rules and, despite his long service, I think the company had cause to discharge him.

AWARD

The grievance is denied.

/s/ Terry A. Bethel

Terry A. Bethel

April 29, 1992

<FN 1>Grievant claims that he took the gun into the plant on June 15. It was not found until June 27.

Doyle testified that the gun had been recently clean and that it could not have remained clean if it was in an area as dirty as the pumphouse for almost two weeks. But it is also true that the gun was hidden in a barrel of rags that might have shielded it from the dust and dirt of the pumphouse. I don't know how often the rags are used or how likely it is that the gun might have gone unnoticed in the barrel for 12 days. Moreover, as I discuss below, I have some difficulty believing that grievant could have forgotten about the gun for such a long period. In the final analysis, I need not determine exactly when grievant took the gun onto company property, although my willingness to believe his explanation is influenced by the plausibility of the story, and I find it implausible that the gun stayed in the rag barrel for 12 days.