Award No. 875
In the Matter of Arbitration Between:
Inland Steel Company
and
United Steelworkers of America
Local Union No. 1010
Gr. No. 32-T-66
Appeal No. 1486
Arbitrator: Jeanne M. Vonhof
April 23, 1993

INTRODUCTION

The Undersigned Arbitrator was appointed according to the rules of the applicable collective bargaining agreement. This hearing was held on Friday, March 12, 1993 at the Company's offices in East Chicago, Indiana. The Company filed a pre-hearing brief and the Union filed a pre-hearing memorandum in the case.

APPEARANCES

UNION

Advocate for the Union:
J. Robinson, Chairman, Grievance Committee
Witnesses:
J. Harris, Grievant
T. Parkis, Mechanic
D. Scott, Mechanic
J. Torres, Mechanic
D. Godinez, Griever
Also Present:
A. Jacque, First Vice Chairman, Grievance Committee

COMPANY

Advocate for the Company:
B. Smith, Arbitration Coordinator, Union Relations
Witnesses:
J. Miskulin, ATQ Facilitator
B. Allen, Section Manager, No. 7 Blast Furnace
M. Gronewald, Section Manager, Mobile Maintenance

BACKGROUND

The instant case involves the discharge of the Grievant for failure to report off. The Grievant, J. Harris, began his employment with the Company in 1973 and was employed as a Mechanic in the Mobile Maintenance Services Department at the time of his discharge.

A "failure to report off" (FRO) can occur in a number of ways, one of which is when an employee fails to call into the mill to report his absence before the start of his assigned turn. The Employer tracks FRO's separately from other attendance violations and treats them more severely. The Employer bases the treatment of FRO's on the special scheduling problems created when an employee fails to call in at all before the turn begins.

The Company's attendance policy, which establishes guidelines for assessing discipline for various attendance problems, sets forth the following policy for disciplining instances of FRO:

Infraction	Discipline
First	1 day
Second	2 days
Third	3 days plus Record Review
Fourth	Suspension Preliminary to Discharge

Progressively more severe discipline is imposed when the current infraction occurs within twelve months of the prior FRO. The policy also allows for a reversion to good standing when an employee works for at least twelve months without experiencing an FRO.

The Employer's attendance system is not a no-fault system which automatically imposes the level of discipline outlined above whenever an infraction occurs. The policy explicitly states that a supervisor has the authority to give an employee a "pass."

The Grievant has the following record of FRO's and discipline over the past five years:

DATE OF FRO	Reason	Discipline Imposed
4/3/89	Sickness-self	
4/13/89	Overslept	
4/14/89	Sickness-self	3 turn discipline 4/18/89
6/27/89	Overslept-med	3 turn discipline, record review 7/19/89
12/14/89	Furnace-lost track of time	3 turn discipline, record review
6/3/91	Overslept-med	2 turn discipline 6/18/91
2/13/92	Overslept	3 turn discipline 2/25/92
10/9/92	Flat tire	3 turn discipline, record review 10/19/92
11/19/92	Misread sched	Suspension prelim to discharge

The Grievant was discharged on December 10, 1992, after a hearing. The Union filed a grievance, the Parties were unable to resolve the issue and it proceeded to arbitration.

THE COMPANY'S POSITION

The Company contends that it properly discharged the Grievant for his record of excessively failing to report off. In support of its position the Company notes that regular attendance is an obligation of each and every employee. The Company acknowledges that some absenteeism is unavoidable, but argues that even when an employee is absent the Parties have agreed that an employee must report off as far in advance of the turn as is reasonably possible, under Article 10, Section 3 of the Agreement.

The Company contends that FRO's are the most onerous form of absenteeism because of the disruption they cause to the work force. In addition, the Company relies upon testimony that FRO's are especially damaging in the department where the Grievant works.

The Company acknowledges that excessive absenteeism alone does not establish just cause for a discharge for poor attendance. However, according to the Company, the Grievant's reasons for his FRO's show a careless disregard for his employment responsibilities. The Company notes that the Grievant has been at the discharge level of discipline for the past four (4) years. However, nearly all of the excuses offered by the Grievant for his FRO's were within his control, the Company urges.

The Company argues further that there is no dispute in this case that the Grievant was well aware of his employment situation, having received four (4) record reviews within the past four (4) years. According to the Company the Grievant was made aware of the consequences of additional FRO's at every stage of the discipline procedure. The Company relies upon the testimony that the Grievant has one of the worst, if not the worst, records in regard to FRO's in his department. The Grievant's continued pattern of failing to report off under these circumstances demonstrates that he is either unwilling or unable to conform to the attendance standards required of all employees, the Company argues. The Company contends that there is no evidence here that the Grievant will rehabilitate himself, given his past record.

The Company argues that the Grievant's seniority does not provide him with immunity from discharge. However, the Company contends, it has recognized his seniority through its patience with the Grievant. The Company notes that the Grievant was discharged for his FRO's for the past five years, not for just the last two FRO's or even the last two years. In addition, whether or not the employee eventually does come in to work, the damage of an FRO is done at the beginning of the turn, the Company argues, when the supervisor does not know whether to schedule another employee to take the non-reporting employee's place.

According to the Company, the Union is not arguing that it did not administer the policy consistently. Rather, the Company views the Union as saying that the last two (2) excuses were good excuses. The Company contends, however, that the excuses offered were not good excuses, and furthermore, that the Grievant had reached the point where the reasons for his failure to report off had become immaterial.

For all of the above reasons the Company argues that the grievance should be denied and the discharge upheld.

THE UNION'S POSITION

The Union argues first that the Company's attendance program is only a tracking system. Because the Union has never agreed that the system substitutes for a showing of cause the Union argues that the Company continues to bear the burden of establishing cause for discipline and discharge actions arising as a result of the plan, and has not met that burden in this case.

The Union's primary argument in support of its position is that the reasons for the Grievant's last two FRO's, which followed one another in quick succession and which ultimately led to his discharge, are significantly different than the typical FRO. In each of these cases the Grievant reported for work, the

Union notes, where in the case of the usual FRO the employee fails to come to work and fails to properly call as well.
The Union also relies upon the testimony of its witness that in other circumstances when an employee has arrived at work under similar circumstances as the Grievant he or she has been permitted to remain and work. The Grievant should not suffer discharge, the Union argues, due to the counting of these two incidents.
The Union also argues that the Grievant showed a dramatic improvement in his FRO record until these last two instances, one of which is being grieved separately in the grievance procedure. For all of the above reasons, the Union argues that the grievance should be sustained and the Grievant reinstated with backpay.
OPINION
This is a case involving the discharge of a long-term employee for a series of FRO (failure to report off) violations. The Grievant was employed in the Mobile Maintenance Services Unit as a Mechanic at the time of his discharge. He had nearly twenty (20) years' seniority.
As discussed at length by the undersigned Arbitrator in Award 868, the showing that an employee has a record of excessive absences is not sufficient, standing alone, to establish proper cause for a discharge. The Parties have not agreed that the Company's attendance plan substitutes for a showing of cause in discipline cases based upon poor attendance. Furthermore, the attendance plan is not a no-fault plan. Under these circumstances the Arbitrator must look at the reasons for the Grievant's absences, as well as his prospects for rehabilitation, in addition to his record of absenteeism.
The Company has presented convincing evidence regarding the importance of a strict policy regarding FRO's. The Company acknowledges that some absenteeism is to be expected, but argues convincingly that when an employee fails to call in prior to the start of the turn, serious scheduling problems often are created. Without advance notice the supervisor does not know whether the employee will show up eventually and the supervisor must, by contract, keep the employee's job open for one half hour. This situation makes it difficult to fill the position promptly, either with employees called in or held over from the prior shift, as the supervisor could if the employee had called in to indicate that either he was or was not coming in. The Company presented convincing evidence that the problem is especially acute in the Grievant's department, because crews are formed and transported together to the far-flung reaches of the mill, to perform maintenance and repair work, much of which must be completed during down turns.
The Company contends that the Grievant has been at the discharge level for FRO's continuously for most of the past four years. In addition the Company notes that it did not discharge him at several points when it could have discharged him under its FRO policy, thereby demonstrating its leniency.
The Grievant was discharged solely on the basis of his record of FRO's; no other attendance data or disciplinary record was presented to the Arbitrator. His FRO record indicates that he had three FRO's within one month and one six weeks later in 1989, at which point he was subject to suspension prior to discharge under the progressive discipline guidelines of the Company's attendance plan. However, according to the Company's witness, the Company decided not to discharge the Grievant at that time, because his other attendance had improved and because the Grievant stated that his oversleeping was caused by the use of medication for a sinus condition, a situation which he would take measures to control.
The Company also did not discharge the Grievant six months later when he had an FRO when he lost track of the time while fixing his furnace. The Company witness stated that this was because the Grievant had gone six months without an FRO and because a broken furnace could happen to anyone.
The Grievant had no FRO's in 1990, and one in 1991. Therefore he went eighteen (18) months without an FRO until June 3, 1991, when he overslept again, allegedly due to medication. By this time his record had reverted to a lower level of discipline, under the Company's attendance plan, and he was charged with a two-day suspension.
The Grievant had one FRO in the early part of 1992. The evidence indicates that he overslept after celebrating his birthday on the previous day, and he was given a three-day suspension. Eight months later he had a flat tire on the way to work on October 9, 1992 and was late for work. He came on the floor ready for work more than one-half hour after his starting time and was sent home. The Grievant and his supporting witnesses testified that he came into work at about 7:25, and was dressed and on the floor by 7:34. He did not find his supervisor until after 7:40, by any witness' account. The Grievant presented a receipt for the tire, which the Company has not questioned. The Company did question why the Grievant did not call when he had the flat, and whether the Grievant, who was at the discharge level, left enough time for unexpected occurrences on the way to work

The Union has stated that there is a separate grievance pending in regard to the October, 1992 incident. The Arbitrator concludes that the Parties have given her the authority to make some determinations about what happened that day, given the extensive evidence in regard to that issue which was presented at the arbitration hearing of this case.

There was conflicting evidence regarding under what circumstances an employee who comes to work late is charged as having an FRO, as opposed to a tardy. There was also conflicting evidence regarding whether an employee is permitted to work when he or she comes to work more than one half hour late in the Grievant's department. It appears to the Arbitrator from this evidence that the policy is not entirely consistent, and that there is some discretion allowed to the supervisors, just as there is discretion to determine what discipline to impose for an FRO.

The Company has argued that the Grievant's failure to report off on October 9th was within his control. However, the Arbitrator concludes that it was not unreasonable for the Grievant to decide to fix the tire rather than take the time to find a telephone, given the absence of a telephone or many buildings in the area where he had the flat tire, an area which the Arbitrator viewed. Resolving any reasonable doubts over the evidence in the Grievant's favor, as the Arbitrator must in a discharge case, and considering that there is some discretion in how the company handles these situations, the Arbitrator cannot conclude that the decision to charge the Grievant with an FRO and to discipline him with the loss of three turns for the incident of October 9, 1992 was justifiable.

The Arbitrator takes note of the testimony that the Company's decision to discharge the Grievant was based in part upon the fact that the last incident followed so closely upon the October 9th FRO. It is not entirely clear that the Company would have discharged the Grievant if the October incident were not charged as an FRO.

The incident of November 19, 1992 is less clear-cut. Every employee has the responsibility to read the schedule correctly as part of his or her responsibility to attend work on time. The Grievant testified that he had been working a starting time of 7:00 for some time. Although this rationalization does not excuse his actions, this presents a different case from one in which an employee experiences frequent schedule changes, and therefore would be expected to examine the schedule more closely, as was the case in Inland Award 845, cited by the Company. The Arbitrator also notes that in Award 845 the grievant's FRO was a clear violation of the grievant's second Last Chance Agreement, which is not the case here.

The Arbitrator does not mean to minimize the Grievant's failure to report off because he misread the schedule, or any other incidents in which he did have control over his FRO, such as the time he lost track of time while fixing his furnace, or when he overslept the day after celebrating his birthday. These are poor excuses and if there were one or two more instances like those in the Grievant's four-year record, the ultimate result in this case might be different. However, the Arbitrator concludes that the Employer has not met its burden of showing that the Grievant's excuses as a whole were unreasonable or indicate that rehabilitation is not likely.

The Arbitrator does not fully concur with the characterization of the Grievant's record as being at the brink of discharge for the last four years. It was a brief series of incidents in 1989 which placed him at or near that level, as discussed above. As the record in this case shows, the plan itself is not automatic and the imposition of discipline on any given occasion is discretionary. Most importantly, being at the discharge level under the Company's attendance program does not necessarily mean that a discharge imposed at any time during that period would have met the standards of proper cause, for the reasons discussed above. The Grievant here was not in the same position as an employee under a Last Chance Agreement, for instance, for whom one more FRO would mean near certain discharge because the Parties have agreed that that will be the case.

It is with this perspective that the Arbitrator views the Grievant's five-year FRO record. After a flurry of incidents in 1989, the Grievant significantly improved his FRO record. Discounting the last two incidents, the Grievant's FRO record indicates a pattern of real improvement, marked by two incidents of backsliding since the end of 1989. This is not a record which is so bad that the reasons for any further FRO's have become irrelevant. On the basis of the entire record, the Arbitrator cannot conclude that the Employer has shown that the Grievant, who has nearly twenty (20) years in the mill, has shown himself unable or unwilling to comply with the FRO policy over the past five years, or incapable of doing so in the future.

On the other hand, the Arbitrator recognizes the serious disruption which FRO's cause, and also has noted that the Grievant has not been sufficiently diligent, on certain occasions, in his obligation to call in if he will not be at work at the start of the turn. The Grievant must recognize that he must call in before the start

of a turn if he will be absent or late, if it is at all possible. For this reason full back pay will be not be awarded.

AWARD

The grievance is sustained in part. The Grievant is to be reinstated with backpay, except for a one-month period which shall be regarded as a one-month suspension.

/s/ Jeanne M. Vonhof
Jeanne M. Vonhof
Labor Arbitrator
Acting Under Umpire Terry A. Bethel
Decided this 23rd day of April, 1993.
Chicago, IL.