Award No. 881
In the Matter of Arbitration Between:
Inland Steel Company
and
United Steelworkers of America
Local Union No. 1010
Gr. No. 23-T-117
Appeal No. 1492
Arbitrator: Jeanne M. Vonhof
December 7, 1993

INTRODUCTION

The Undersigned Arbitrator was appointed according to the rules of the applicable collective bargaining agreement. This hearing was held on Friday, October 29, 1993 at the Company's offices in East Chicago, Indiana.

APPEARANCES

UNION

Advocate for the Union:
J. Robinson, Chairman, Grievance Committee
Witnesses:
J. Lopez, Grievant
J. Cadwalader, Members Assistance Committee
Also Present:
Alexander Jacque, 1st Vice Chairman Grievance Committee
Darrell Reed, Griever

COMPANY

Advocate for the Company:
B. A. Smith, Arbitration Coordinator, Union Relations
No witnesses

BACKGROUND

The Grievant, J. Lopez, had been employed by the Company for nearly twenty (20) years and was working as a Craneman at the No. 3 Cold Strip Mill at the time of his discharge.

In February, 1989 he was suspended and subsequently discharged, due to his violation of Rule 132-d and his overall work record. Rule 132-d prohibits an employee from reporting for work under the influence of intoxicating beverages. The Grievant had been found in violation of the rule in February, 1988, April, 1988 and February, 1989.

The Grievant was reinstated under a Last Chance Agreement (LCA) dated April 3, 1989, giving the employee "one final chance to prove that he (could) become a responsible employee of the Company." The Last Chance Agreement required the Grievant to participate fully in the Inland Steel Program for Problem Drinkers until released by the Coordinator of the Program. The LCA also required the Grievant to maintain contact with the Union's Alcohol and Drug Committee for a period of one year following reinstatement. Paragraph 5 of the LCA required the Grievant to refrain from using mood altering substances and stated that the detection of such a substance will be cause for immediate suspension preliminary to discharge. No time limit is specified in this paragraph, but the following paragraph requires the Grievant, for the period of one (1) year, to submit to random testing by the Employer to detect the mood altering substances specified in Paragraph No. 5.

The Union presented evidence that the Grievant had complied with the limited terms of the Last Chance Agreement, i.e. that he had fully participated in the Inland alcoholism treatment program, had kept in contact with the Union committee and had not tested positive for drugs or alcohol during the specified one-year period.

On September 9, 1992 the Grievant began operating an overhead crane on the second turn and a supervisor allegedly observed something wrong with his conduct. The supervisor asked him to descend to the floor level, and after speaking to the Grievant, directed him to go to the Inland Medical Department for a fitness to work evaluation.

The evidence indicates that when the Grievant was tested, he failed the fitness to work evaluation and the Clinic determined his alcohol concentration level to be .30. He testified at the arbitration hearing that he had been out drinking with friends the night before, but had stopped drinking around 1:00 a.m.

The Company suspended the Grievant, held a hearing and discharged him for violating Rule 132-d, and his Last Chance Agreement, and on the basis of his overall past record. In reference to the LCA, the Company has relied primarily upon Paragraph No. 10, which states,

This arrangement represents a final chance at employment for you. Failure to meet any of the conditions set forth above or any repetition of the conduct which led to most recent suspension action, or a violation of any of the Company rules or regulations, will be cause for your immediate suspension preliminary to discharge.

The discharge also was based upon the violation of Rule 132(d) and upon the Grievant's past record. The Union grieved the discharge, the Parties could not settle the dispute and it proceeded to arbitration.

THE COMPANY'S POSITION

The Company contends that the Grievant has violated his Last Chance Agreement by reporting for work under the influence of alcohol on September 9, 1992. Therefore the Company urges that the discharge must be upheld.

According to the Company, the Grievant's original reinstatement was based upon assurances and promises he made after his first discharge. Although the Company concedes that the Grievant complied with many of the conditions imposed in the Last Chance Agreement, it alleges that in Paragraph 10 he essentially agreed not to report to work intoxicated, and he broke that agreement.

The Company also contends that this provision of the Agreement has not expired. The Company notes that some provisions of the Last Chance Agreement contain specific time limits, but Paragraph No. 10 does not contain any time limits. The Company argues that Paragraph No. 10 is in force for a period of five (5) years because Article 8, Section 2 permits disciplinary actions to be used against an employee for a period of five (5) years and the Last Chance Agreement is a disciplinary action. In addition, the Employer cites the provision of the Last Chance Agreement in which the Grievant agreed to waive the Justice and Dignity provisions for five (5) years as further support for its argument that the general provisions of the Last Chance Agreement remain in effect.

The Company contends that the Grievant engaged in the same type of conduct for which he was discharged the first time, and therefore violated Paragraph No. 10 of the LCA. The Company argues that the terms of the Last Chance Agreement become the just cause standard for an employee who is returned to work under one, and urges that the Arbitrator uphold the Last Chance Agreement here in part to support the use of Last Chance Agreements in general.

The Company asserts that the danger of the situation at issue here is especially relevant in this case. The Company notes that the Grievant lifts 50,000 lb. coils in a confined environment, where other employees work. In further support of this argument the Company notes that the Grievant reported to work with an alcohol concentration level that was six (6) times the acceptable level set by the Company, and three (3) times the legal limit for automobile drivers in Indiana.

In addition, the Company contends that the amount of time which has elapsed between the signing of the Last Chance Agreement and the second discharge is not a mitigating factor because of the seriousness of the Grievant's action, which placed other employees in great danger. The Company argues that it is not acceptable to place other employees in such danger once every month, every year or every three years. The danger also distinguishes this case from an absenteeism case, the Company asserts.

In addition the Company argues that the Grievant promised he would change and rehabilitate, and argues that is nothing different this time than it was after his first discharge. According to the Company, the Grievant's post-discharge rehabilitative efforts are not sufficient alone to change the outcome in this case, because he took the same actions after his first discharge.

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 notes first that the Grievant complied with the strict provisions of the Last Chance Agreement which lasted one year. Although the Union concedes that the Last Chance Agreement remains a fact on the Grievant's disciplinary record for a five (5) year period, the Union argues that the Grievant did not violate the Agreement in this case.

According to the Union the Grievant was discharged the first time for a pattern of coming to work under the influence of alcohol. Here, the Union asserts, the Grievant came to work under the influence only once in a three and half year period. The Union argues that because this is not the same conduct which led to the Grievant's original discharge, the Grievant is not in violation of Paragraph No. 10.

According to the Union the Grievant's case is like that of an employee who has been discharged for absenteeism and reinstated under a Last Chance Agreement. The Union argues that the Company would not be justified in discharging an employee the first time his absenteeism rate exceeded an acceptable level, and argues that a similar situation exists in this case.
The Union also argues that the Grievant has demonstrated that he can avoid alcohol, because he has gone for a significant period of time avoiding it. The Union argues that the Grievant must be looked at differently than an employee who repeats the conduct leading to discharge after only a short period. This fact, in combination with his post-discharge rehabilitation efforts, argues in favor of the Grievant's reinstatement, the Union contends.
OPINION
This is a case involving the discharge of an employee under the terms of a Last Chance Agreement. The Grievant had been discharged in 1989 for violating Rule 132(d) three times within the period of one year. The rule prohibits employees from reporting to work under the influence of alcohol.
The Grievant was reinstated under the terms of a Last Chance Agreement (LCA) which contained several strict conditions. The evidence indicates that the Grievant complied with the terms of these conditions, including completion of the Company's alcohol treatment program, and subjecting himself to a year of random testing for drugs or alcohol.
The strict terms of the LCA expired in April, 1990. In September, 1992 the Grievant reported for work and began operating his crane. As described in the "Background" section, the Grievant was sent to the clinic, was determined to have an alcohol concentration of .30, and was discharged.
There is no real factual dispute over whether the Grievant reported to work under the influence. The Company contends that the Grievant violated Paragraph No. 10 of the LCA by this conduct. That provision states that "repetition of the conduct which led to (the Grievant's) most recent suspension action, or a violation of any of the Company rules or regulations" will provide cause for the Grievant's immediate suspension preliminary to discharge.
The Union argues that the Grievant complied with the strict terms of the Agreement, and that his current conduct did not violate Paragraph 10. The Union argues that the conduct leading to the Grievant's original discharge involved repeated instances of reporting to work intoxicated, while the action leading to the current discharge was a solitary incident after a long period during which the Grievant did not report to work under the influence.
The Grievant's conduct in the instant case was a violation of Rule 132-d, reporting to work under the influence of alcohol, just as the other three incidents were violations of the same rule. This is very different from a case in which an employee is discharged for absenteeism, for example, reinstated under a Last Chance Agreement, and then violates some other unrelated rule.
In addition, the Company argues that any Last Chance Agreement is likely to be based upon a pattern of conduct, rather than upon a single incident, because of its progressive discipline policy. The Union noted in the hearing that the Company does not discharge employees for a single instance of reporting to work under the influence. Therefore a Last Chance Agreement involving alcoholism will almost surely be based upon a series of incidents.
The fact that the Grievant was discharged for a series of incidents does not demonstrate convincingly to the Arbitrator that the Parties intended to require the Employer, through the Last Chance Agreement, to wait for a pattern of similar incidents to develop again. This would require the Employer to go through the steps of progressive discipline again, and would dilute the "last chance" nature of the Last Chance Agreement.
In some cases the Parties' intent under a Last Chance Agreement, the nature of the violation or other factors may permit the employee to engage in a series of incidents before a violation of a Last Chance Agreement can be found. Some absenteeism cases may fall into this category, for instance. Under certain circumstances some absences may be excusable, even for an employee on a Last Chance Agreement. However, coming to work intoxicated is different than absenteeism, and the Parties have treated it differently, because it poses a far different risk. A steel mill is an inherently dangerous place; it is difficult to imagine how an employee working intoxicated would not pose a danger to other employees on the mill floor.
There is merit in the Union's argument that the Grievant stands in a different position than an employee who has not complied with the strict one-year conditions regarding alcohol treatment or testing, or similar conditions, like the employee in Inland Award No. 806. In addition, the Arbitrator has considered the fact that the Grievant worked for more than two additional years after the strict one year period, without coming to work under the influence. The question is whether these factors are sufficient to mitigate the seriousness

of the Grievant reporting for work intoxicated after being placed on a Last Chance Agreement for that conduct.

If it is true that the Grievant relapsed after a substantial period of sobriety, does this fact make it more or less likely that he will relapse again? Of course no one can answer that question with certainty.

It is clear that the Grievant came to work with a concentration of alcohol in his system that was six (6) times the allowable limit for the mill, and three (3) times the legal limit for automobile drivers in many states, including Indiana. Even allowing for any personal deviation from the average person's reactions, a person with a .30 alcohol concentration is not in condition to operate dangerous machinery. Yet the Grievant was operating his crane when his supervisor asked to speak to him. He lifts very heavy objects in an area where other employees work.

The extremely high concentration of alcohol in the Grievant's blood is especially alarming. The Grievant testified at the arbitration hearing that he stopped drinking alcohol at 1:00 a.m., yet his alcohol concentration was very high a number of hours later. Either he was not telling the truth about when he quit drinking, and he continued to drink heavily until closer to the time he began work, or he consumed what could have been a nearly fatal amount of alcohol before he went to bed.

In either case it is reasonable to conclude that an employee who comes to work with a .30 concentration of alcohol in his system is significantly more dangerous than an employee with a lower alcohol concentration level, even if both exceed the Inland standard of .05. The Grievant's lack of judgment in coming to work and attempting to operate heavy equipment in that condition is frightening, even if the poor judgment was caused in part by the alcohol consumption itself. The seriousness of this danger posed by the Grievant must be balanced against the Grievant's post-discharge rehabilitation and his record of working for a significant period of time with no alcohol incidents on the job.

The facts of this case do not provide sufficient certainty for the Arbitrator to conclude that the Grievant no longer poses a significant safety risk. The Grievant's post-discharge rehabilitative efforts are commendable, and hopefully the Grievant will be able to remain sober. But the Arbitrator cannot ignore the fact that the Grievant was discharged once before for alcohol-related problems, and came to work highly intoxicated after going through treatment and being placed on a Last Chance Agreement. Under these circumstances the Arbitrator cannot conclude that the Company erred when it determined that retaining the Grievant could pose a serious danger to the health and lives of other employees by the risk of his coming to work intoxicated.

AWARD

The grievance is denied.

/s/ Jeanne M. Vonhof

Jeanne M. Vonhof, Arbitrator

Acting Under Umpire Terry A. Bethel

Decided this 7th day of December, 1993.

Chicago, Illinois.