Award No. 888
IN THE MATTER OF THE ARBITRATION BETWEEN
INLAND STEEL COMPANY
and
UNITED STEELWORKERS OF AMERICA
LOCAL UNION 1010
Arbitrator: Terry A. Bethel
March 25, 1994
OPINION AND AWARD
Introduction
This case concerns the discharge of grievant William Boyden for a violation of the company's attendance program. The case was tried in the company's offices in East Chicago, Indiana on March 11, 1994. Brad Smith represented the company and Jim Robinson appeared on behalf of grievant and the union. Grievant was present throughout the hearing and testified in his own behalf. The parties submitted the case on final argument.
Appearances
For the company:
B. Smith -- Arbitration Coordinator
D. Oppman -- Manager, 2A/21" Mill
For the union:
J. Robinson -- Staff Representative
A. Jacque -- Grievance Chrm.
L. Aguilar -- Grievance Vice Chrm.
F. Boilek -- Griever, Area 7
J. Cadwalder -- Assistance Comm.
N. Aranda -- Assistance Comm.
W. Boyden -- Grievant
Background
None of the material facts that led to grievant's discharge are in dispute. Grievant has over fourteen years service with the company and was discharged for attendance violations effective September 18, 1992. The company introduced a detailed summary of those instances in which grievant failed to work as scheduled, most of which were sporadic short-term absences, tardies, or failures to work as scheduled. Because the union does not contest this summary, and because grievant offers no excuses for his record, I need not describe this exhibit in detail.
In addition to the summary of absences, and the history of the disciplinary action that was taken as a result of those absences, Douglas Oppman, manager of the 2A/21" mill, testified in some detail about the adverse effects grievant's absences had on his department. He also explained the extent to which the company attempted to help grievant retain his job, which included progressive discipline and counseling, as well as repeated attempts to aid him through the Employee Assistance Committee. Ultimately, and through no fault of the company, the efforts failed and grievant was discharged.
The union does not dispute that grievant's attendance record violated the standards promulgated by the company, though it points out that, viewed annually (as opposed to the company's program which uses a 90 day rolling period) grievant's record improved between 1990 and 1992. Indeed, when looked at in this manner, grievant's absence rate was below the cut-off level of 5%, though it was not if viewed under the 90 day rolling period applied by the company. The union also points out that grievant's record, while poor, is not as bad as the attendance records of other employees whose cases have come before me. That characterization is probably accurate although, as Mr. Smith pointed out, most of those employees lost their cases.
I need not dwell long, however, on whether grievant's record was sufficient to provoke his suspension preliminary to discharge, because the union's primary argument lies elsewhere. Although Mr. Robinson did not concede that grievant's absence record established just cause, the bulk of his case focused on grievant's efforts at rehabilitation after his discharge. There is no dispute that, although he initially denied a problem with alcohol, grievant acknowledged he needed help prior to his discharge. He was unsuccessful in the program sponsored by Inland and Local 1010, and he also did not succeed in other programs, including one in which he was hospitalized. Although grievant managed to avoid drinking for periods of time he was, as he testified, "dry, but not sober." Inevitably, he began drinking again and, ultimately, he lost his job and his

wife. As grievant described his life, "I wrecked my marriage, I wrecked cars, I wrecked my job, I wrecked everything."

His life began to turn around, he said, in September 1992, after his discharge. He has attended AA meetings regularly since that time, a fact he substantiated with an impressive stack of attendance verification sheets. He has obtained a sponsor, has changed his attitudes, has changed his lifestyle (or, as he put it his "playmates and playgrounds") and is applying the principles of AA in his life. He said he recognizes that some people think of AA as brainwashing, but remarked "This brain needed a good washing." The union's primary contention, then, is that I should order the company to reinstate grievant because of his successful effort to rehabilitate himself.

Discussion

Other arbitrators have recognized that post discharge efforts at rehabilitation are relevant to the question of whether an employee should be reinstated. In Inland Award 749, for example, Arbitrator McDermott considered the case of a grievant which he described as "a classic example of industrial derelictions that are caused by alcoholism." McDermott compared the treatment of alcoholism to the treatment afforded other diseases and concluded that it was appropriate to consider the employee's post discharge experiences. Similarly, Arbitrator Jean Vonhof considered post discharge efforts at rehabilitation in Inland Award 864, though her careful opinion noted that such claims must be received with some skepticism. I, too, have noted the importance of post discharge rehabilitation, see Inland Award 827, though I have not always believed employee vows to improve, see e.g., Inland Award 842.

I am mindful of the fact that employees often claim rehabilitation as a way of salvaging a career lost to alcoholism. Unfortunately, those claims are sometimes made too late and sometimes made with scant possibility of success. I am not persuaded, however, that grievant's prior record was so bad that evidence of rehabilitation cannot be considered and, while such predictions are difficult, I found grievant's testimony to be impressive and I think his chances for success are good.

I have heard a great many employees testify about how they have reformed from whatever habits got them in trouble. As Jean Vonhof recognized in Award 864, those claims must be viewed with some suspicion. Even so, I have seldom been more impressed than I was with grievant's testimony. He struck me as a man who has been through a terrible ordeal, but one who has finally gotten control of his life. He offered no excuses for his past and he pointed to no scapegoats. He caused his own problems, often after ignoring the efforts of those at the company -- both management and union -- who tried to help him. But he seems finally to have realized that he can change and that his number one priority should be to stay sober.

During the hearing, Mr. Smith argued forcefully that it would be improper to find the company guilty of failure in a case like this. The company, he said, did everything it could do. I agree that the company's efforts on grievant's behalf were substantial. This case, however, is not about the company's failures. Rather, this case is about the grievant's successes. I have never been more impressed with an employee's testimony about rehabilitation and I have seldom been more optimistic about someone's chances to succeed. As everyone understands in cases such as this, alcoholism is an insidious disease and there is never any guarantee against relapse. Grievant, however, spoke convincingly about how his life has changed and about how he has been able to remain sober for the last year and a half. Four years ago in Inland Award 827, I quoted Justice Frankfurter's famous statement "Wisdom too often never comes and so one ought not to reject it merely because it comes late." That sentiment seems equally apt in this case.

I conclude that grievant's successful efforts at rehabilitation have earned him another chance to salvage his job. I will, therefore, order that he be reinstated. However, because the company surely had cause to discipline him at the time of his suspension, and because grievant had the burden to rehabilitate himself before he could be reinstated, I will not award him any back pay.

AWARD

The grievance is sustained. Grievant is to be reinstated, but without back pay.

/s/ Terry A. Bethel

Terry A. Bethel

March 25, 1994