Award No. 899
IN THE MATTER OF THE ARBITRATION BETWEEN
INLAND STEEL COMPANY
and
UNITED STEELWORKERS OF AMERICA
LOCAL UNION 1010
Arbitrator: Terry A. Bethel
February 27, 1995
OPINION AND AWARD
Introduction
This case concerns the three day discipline administered to grievant Gay Woolsey for violating company rules concerning the possession of alcoholic beverages on company property. The case was tried in the company's offices on February 14, 1995. Brad Smith represented the company and Jim Robinson presented the case for grievant and the union. Grievant was present throughout the hearing and testified in her own behalf. The parties submitted the case on final argument.
Appearances
For the company:
B. Smith -- Arb. coord., Union Relations
R. Cayia -- Mgr., Union Relations
R. Nanney -- Chief, Plt. Protection Serv.
R. Hughes -- Hum. Res. Gen., No. 3 CS
J. Spear -- Staff Rep., Union Relations
P. Berklich -- Proj. Rep., Union Relations
L. Selby -- Proj. Rep., Union Relations
For the union:
J. Robinson -- Staff Rep., USWA, Dist. 31
D. Lutes -- Secretary, Grievance Comm.
G. Woolsey -- Grievant
M. Mezo -- President, Local 1010
Background
Most of the facts are not in dispute. Prior to 1992, most Inland bargaining unit employees parked in lots outside the facility and were transported to their work places by bus. With the advent of a new security system sometime in 1992, employees were able to drive their cars into the plant and, in most cases, park near the work place. Even before 1992, the company had work rules which prohibited the possession of alcohol on company property. General Rule No. 5 of the plant driving regulations, for example, provides, in relevant part that "Possession/Transporting of . . . intoxicating beverages . . . in any vehicle on company property is a violation of the Inland Steel General Rule for Personal Conduct. . . . " Even more significant is General Rule 132d from the General Rules for Safety and Personal Conduct:
The following offenses are among those which may be cause for discipline, up to and including suspension preliminary to discharge:
d. Reporting for work under the influence of intoxicating beverages; being in possession of, while on company property, or bringing onto company property, intoxicating beverages.
Obviously, the relaxed drive-in policy meant that it was easier for employees to bring alcohol onto company property.
Thus, in October 1992, Union Relations Manager Cayia sent a memo to all managers with bargaining unit employees. Attached to the memo was a notice to be posted for the attention of bargaining unit employees. The notice restated the text of Rule 132d and advised employees that the rule applied to the presence of alcoholic beverages in automobiles. It also said that if alcohol was discovered in the search of any vehicle, it would be confiscated and the employee would be required to take a breathalyzer test.
Grievant was stopped while exiting the plant on the morning of December 1, 1992. A search of her car revealed an unopened case of beer in the trunk. In accordance with the policy, the beer was confiscated and grievant was required to submit to a breathalyzer test, which she passed. This arbitration results from the company's decision to administer a three day discipline to grievant for violation of Rule 132d.
Grievant does not question that beer was found in her truck. She asserts, however, that it was placed there by a friend and that she was unaware of it. Grievant testified that she and a friend named Mike Azumi had gone shopping on the day after Thanksgiving. During their visit to some shopping centers, she and Azumi

separated and went into different stores. In order to prevent mixing up their packages, she put her purchases in the back seat and Azumi put his in the trunk. At one point during the day, Azumi asked her to stop at a DeLock's liquor store so he could buy some cigarettes. Grievant testified that she went to a doughnut shop while Azumi was in the liquor store and that he was already back in the car by the time she returned. Grievant submitted a signed statement from Azumi in which he assets that he bought the beer and put it in the trunk without grievant's knowledge.

Grievant testified that, after they had finished shopping, she took Azumi to the train station so he could return to his home in Chicago. At that point, he told her he could not carry all of his packages and said that he was leaving some in the trunk, which he would retrieve later. The case of beer was one of two packages he left behind.

Grievant said that she did not look in the trunk and that Azumi did not tell her what he left there. She also said that she had no reason to know that he had purchased beer. He asked her to stop at DeLock's so he could buy cigarettes and he did, in fact, buy ten cartons. Grievant apparently went to work two or three days with the beer in her trunk, which was not discovered until she was stopped and searched in a random check. Grievant said that she was aware of the rules concerning alcohol on company property, that she agrees with them and, in fact, thinks there should even be stricter requirements. She said that she would never knowingly have violated the rule.

The union does not attack Rule 132d and does not question the company's right to conduct random searches of employee automobiles, at least in this arbitration. The thrust of the unions case goes to grievant's lack of knowledge that the beer was in her trunk. The union argues that it is not fair -- or, as the contract puts it, just -- to subject an employee to discipline when she had no reason to know the beer was in her trunk. The union claims that this amounts to a form of strict liability and argues that arbitrators have generally required some fault or wrongdoing in order to hold employees accountable to discipline. However, fault cannot exist when an employee is unaware of the circumstances that lead to the discipline.

The company argues that it has a legitimate interest in controlling the presence of alcohol on its property and that its new drive in policy made it necessary to enforce the rule strictly. As Cayia testified, the company wanted to insure that its disciplinary actions obtained "maximum deterrent value." The company argues that knowledge is not an essential element of the offense and notes that, if it were, the rule would be almost impossible to enforce.

Discussion

The union's principal argument is that grievant did not know the beer was in her trunk. As I will discuss below, I have some question about grievant's claimed ignorance, but I am willing to assume she was not aware of the beer. That, however, does not settle the matter, as even the union's argument concedes. Mr. Robinson argued forcefully that grievant had no actual knowledge of the beer, but he also asserted that grievant had no reason to know of its presence. This argument was necessary because, however much the union might want a ruling that actual knowledge is essential to a violation of rule 132d, no such requirement can be imposed. What someone knows or doesn't know is a subjective matter that can usually not be proven with objective evidence. One can never know what lies in the mind of another human being. We can, however, make guesses about subjective states of mind by viewing objective facts and drawing reasonable inference.

And, whatever someone might have actually known, we can ask what they should have interpreted certain facts to mean. <FN 1>

Indeed, even criminal law does not require actual knowledge.

Of course, this is not a criminal case and criminal standards do not apply. But arbitrators have often found criminal law to be instructive in disciplinary matters, and this case is no exception. It is a familiar principle of criminal law that there are no strict liability offenses. Though it is commonly said that intent is an element of criminal activity, it is probably more accurate to say that criminal law requires mens rea, which is not exactly the same thing as an intent to commit an act. In essence, mens rea requires knowledge or conduct that is reckless or negligent. These concepts are instructive in the instant case.

Despite the union's argument, and in spite of the fact that the company made strict liability arguments in the grievance procedure, the company's argument at the hearing was not premised on strict liability. Rather, the company argued that grievant knew, or had reason to know, that there was beer in the trunk of her car. The facts of this case establish to my satisfaction that grievant did have reason to know of the beer. Thus, I need not speculate about whether strict liability would ever justify disciplinary action. Nor do I need to address the union's argument that the company's theory would impose discipline even if someone had hidden contraband in grievant's hubcaps. Such issues will have to wait for another day.

The easy way to decide this case would be to conclude that grievant knew about the beer in her trunk. Moreover, despite the union's claim to the contrary, there are reasonable inferences to be drawn from the facts which could support such a finding. Nevertheless, while the matter can never be free from doubt for an outsider who did not witness the events, I found grievant's story to be plausible. It is reasonable to believe that Azumi had more packages than he could carry and that he had to leave some in grievant's trunk. Although one might question why he would leave a perishable -- and freezable -- item in the trunk for a week, I also note that a case of beer is heavy and, if he had other packages, might have been too much to carry. I am willing to assume, then, that grievant had no knowledge that the beer was in her trunk.

The question remains whether grievant had reason to know of the beer or, stated differently, whether her conduct was reckless or negligent. The "reason to know" standard is an appropriate line of inquiry in this case. No one doubts the company's right to discipline employees who knowingly or willingly bring alcohol to the work place. But the company's interest does not end there. It also has a legitimate interest in insuring that employees do not act negligently or with indifference.

From the company's perspective, after all, the vice is the presence of alcohol, not merely the state of mind of the person who carried it in. And, without commenting about whether the company could discipline an employee who acted without knowledge or negligence, it surely can rebuke one who acts without due care. In fact, as the company pointed out at the hearing, imposing a burden of actual knowledge would make it difficult for the company to enforce a rule banning alcohol, since knowledge often cannot be proven objectively.

A determination of whether grievant had reason to know about the beer requires consideration of all of the facts. It is not sufficient to say merely that someone put a case of beer in grievant's truck without her knowledge. While I can accept grievant's claim that she did not know what was in the trunk, it is also true that she knew Azumi had left something in the trunk. She also knew that Azumi had made a purchase in a liquor store. Indeed, she drove him to the liquor store. With these facts in mind, the union's argument that grievant had "no reason to suspect" that there was alcohol in her trunk loses much of its force.

The relevant facts are that Grievant knew that she would drive her car to work, she knew that company rules prohibited the transport of certain items in the car, she knew that Azumi had put something in her trunk and she also knew that he had visited a liquor store while they were shopping. These facts, the union claims, do not warrant liability because discipline must be based on "fault." I agree that, in most cases, discipline is based on fault, a matter I have explored in more detail in a recent case. See, e.g. Chrome Deposit Corp., 102 LA 733 (1994). The difficulty with the union's argument, however, is that it equates "fault" with "intent." It is simply not accurate to say that employees are not subject to discipline unless they act intentionally.

In this case, I must consider not only the facts detailed above, but the legitimacy of the company's rule and the circumstances that led to the enforcement effort that caught grievant with beer in her trunk. As Mr. Smith argued at the hearing, a steel mill is a dangerous work environment. In various places in the mill, employees are exposed to molten metal, fire, extreme heat, mobile equipment weighing thousands of pounds, overhead cranes with heavy loads, and assorted other hazards. No one could doubt the company's interest in insuring that employees do not bring alcoholic beverages onto company property. The danger is compounded even further when employee drive to work and park their cars close to the work place, where items left in the cars are easily obtained during an employee's shift.

This case does not raise the question of whether an employee who drives to work should check her car regularly -- or even irregularly -- to insure it contains no items banned by company rules. I need not speculate about the liability of an employee whose son left a can of beer in the trunk after a Friday night date. Whatever the outcome in that case, the standards are higher for an employee who takes a friend to a liquor store and, shortly thereafter, allows him to leave some packages she has not seen in her trunk. Given the employer's rule -- which grievant said she supported -- and the renewed interest in enforcement stemming from the new drive-in privileges, grievant had a responsibility to insure that the package Azumi left in her trunk was not alcohol.

I understand that grievant will be unhappy with this result and that she feels incensed by the company's action, an emotion that was evident at the hearing. This case, however, is not a forum about grievant's character. There are no judgments made here about whether grievant is a good or bad person or about whether she has committed an offense involving moral turpitude. In a criminal sense, grievant is not guilty of wrongdoing. But she also is not completely innocent. Although her actions were not reckless, she had reason to know that there could have been alcohol in her car and she took no action to discover it or remove it. In my view, those actions justify disciplinary action.

The union argues that, even if grievant violated the rule, she did not deserve a three day penalty, a sanction that it says was too harsh for an employee who did not act with actual knowledge. Moreover, the union argues that the unfairness of the discipline is shown by the fact that employees who do knowingly violate the rule would receive exactly the same penalty. <FN 2>

I don't disagree with the union's claim that the company might distinguish between grievant and one who intentionally sneaks beer onto company property. But I understand the company's position that, even if such offenses occur, they will be difficult to prove. That is, even though some employees might be more culpable than others, the company has some interest in treating them all alike, since the difficulties of proof make it likely that knowing actors may be indistinguishable from people like grievant, who had no actual knowledge, but had reason to know. In addition, the company does have a legitimate interest in informing employees that it takes the matter of alcohol seriously and that it intends to deal with violators sternly.

It may be that circumstances would justify a managerial decision to impose less than a three day suspension on grievant. That, however, is not my decision. There is a difference between concluding that a lesser penalty would be appropriate and concluding that management has no right to impose a three day suspension. Given the company's interest in protecting its employees and its property, and given that grievant had reason to know of the beer, I cannot say that a three day suspension was unreasonable. Thus, I have no discretion to modify the penalty.

AWARD

The grievance is denied.

/s/ Terry A. Bethel

Terry A. Bethel

February 27, 1995

<FN 1> A "reason to know" requirement is consistent with Ohio Department of Mental Health, 93 LA 377 (1989), on which the union places much reliance. In that case, an employee was discharged after police found a scale belonging to her employer in a search of her apartment. As in the instant case, the grievant claimed that she had no knowledge of the scale and asserted that her boyfriend had left it in her apartment. In an opinion not notable for its reasoning, the arbitrator rejected the employer's strict liability argument and opined that knowledge was an element of the offense. It is clear, however, that the arbitrator did not require actual knowledge. Thus, she said "the employer must prove that the employee had either actual or imputed knowledge." Although the arbitrator did not explain what she meant by "imputed knowledge," she was apparently asking whether grievant had reason to know of the presence of the scale. In finding that she had no reason to know, the arbitrator was influenced by several facts, including the boyfriend's access to the area where the employer kept the scale, the short time it had been missing, and the fact that grievant had not been home for most of that time.

<FN 2> Union Relations Manager Cayia testified that he informed company officials that they should impose a three day discipline for a first offense when employees are caught with alcohol on company property. There was also testimony from company and union witnesses alike that the typical penalty for a first offense possession of alcohol is a one to three day suspension.