Award No. 903
IN THE MATTER OF THE ARBITRATION BETWEEN
INLAND STEEL COMPANY
and
UNITED STEELWORKERS OF AMERICA
LOCAL UNION 1010
Arbitrator: Terry A. Bethel
July 13, 1995
OPINION AND AWARD
Introduction
This case concerns the discharge of grievant Timothy Gullickson for unauthorized absence stemming from his decision to absent himself from work to enroll in a drug treatment program. The case was tried at the company's offices in East Chicago, Illinois on June 16, 1995. Pat Parker represented the company and Alexander Jacque presented the case for 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:
P. Parker -- Sen. Rep. Union Relations
N. Andryuk -- Section Manager, ISIP
J. Bean -- Employee Assistance Coord.
P. Berklich -- Proj. Rep., Union Relations
T. Kinach -- Coordinator, Union Relations
For the union:
A. Jacque -- Chrm., Grievance Comm.
D. Lutes -- Secy., Grievance Comm.
L. Aguilar -- Vice Chrm., Grievance Comm.
J. Cadwalder -- Assistance Comm.
T. Gullickson -- Grievant
R. Chandler -- Witness
D. Estes
S. Adcox
Background
This is a fact pattern that is repeated too often in modern industrial life. Grievant is a long service employee who has had a chronic problem with drug and alcohol abuse. He has made numerous attempts at treatment, including many efforts in programs sponsored by the company, but to no avail. Although he once kept his addiction in check for about three years, inevitably grievant would returned to the same pattern of behavior. Obviously, this behavior had dire consequences for his job, most often manifesting itself in absences and failures to report off. Grievant was warned and suspended a number of times in the five year period preceding his discharge.
In April, 1994, apparently while drying out from a drug binge, grievant heard about a program called Teen Challenge, <FN 1> which has many locations, including one in Western Michigan. The program, which was not described in detail, is apparently quite rigorous and is centered on spiritual beliefs. There is no direct medical supervision and no reliance on traditional psychological and counseling principles. Moreover, unlike most drug rehabilitation programs which last only a few weeks, Teen Challenge lasts a full year. The program, which seems to be affiliated in some way with the Assembly of God Church, claims a success rate of nearly 80%, much higher than that achieved by traditional programs.
Grievant testified that he called his supervisor and, in his words, "took a sick leave from my job." Grievant's supervisor, Nick Andryuk, testified that all he knew was that grievant had reported off "until further notice." This was apparently in mid-April. Andryuk said he did not know where grievant was until some time later, when grievant called him. According to Andryuk, when he learned of grievant's whereabouts, his reaction was "not a lot." The record does not make it clear exactly when this conversation occurred, but it was apparently in mid to late June. Andryuk said that, following the conversation, he sent grievant a seven day letter, advising him to return to work. The letter is dated June 23. Andryuk said he had more than one telephone conversation with grievant and that grievant told him that he thought the Teen Challenge program was the only way to save his life.

Neither Andryuk nor John Bean, the company's Employee Assistance Coordinator, approved grievant's absence for the one year period, nor did they authorize his participation in Teen Challenge. Grievant, in fact, claims no express authorization, though he said that he assumed he could take a sick leave to attend the program. When he decided to enter the program, he called Skip Chandler (then a griever) and asked him to call Andryuk. Chandler made the call, though he said he did not tell Andryuk that grievant was to be gone for one year. He did tell Andryuk, however, that grievant was going to enter a drug rehabilitation program.

Grievant testified that he also called Andryuk directly and told him that he was going to enter the one year program. He said Andryuk's response was "I wish you well." This was in April, before the conversation testified to by Andryuk. Andryuk testified that he had no memory of the April conversation. It is clear, however, that some conversation occurred in April before grievant entered the program because both grievant and Andryuk testified that grievant asked to move a week of his vacation from later in the year to April so grievant could get the money to pay some bills. Ultimately, however, the company ordered grievant to return to work.

At that point, in mid to late July, grievant said he was in a quandary. He thought his efforts at Teen Challenge were working and he wanted to complete the program. But he also wanted to keep his job. Grievant said Andryuk told him he would have to "deal with the union from here on out." Thus, grievant called Don Lutes, the grievance committee secretary well known for his efforts on behalf of employees suffering from drug or alcohol addiction. Lutes testified that he told grievant that if he stayed in the program and succeeded, Lutes would "get his job back for him." Lutes said he made the promise based on his knowledge of grievant's record, which he thought was better than those of other employees who have been reinstated, and his previous dealings with Inland. Ultimately, however, the company rejected Lutes' overtures on grievant's behalf.

Among the witnesses at the hearing were Scott Adcox, a recovering heroin addict, who holds an administrative position at Teen Challenge, and Dan Estes, grievant's pastor who testified about grievant's activities in the church since his release from Teen Challenge.

Discussion

Cases like this one sometimes ask whether the company has given a grievant an adequate opportunity to reform. Here, no one could fault the company's efforts to assist grievant with his drug problems. Grievant's work history is marked by a series of treatment programs and hospitalizations. He was often enrolled in the Inland program and, though he once completed an initial 90 day phase in order to satisfy a court-ordered probationary period, he never successfully completed the entire program. Grievant did, however, manage to control his problem for about three years, from about 1990 to sometime in 1993. Ultimately, however, he returned to his previous patterns of behavior. It is not surprising, then, that the company greets grievant's current reformation efforts with considerable skepticism. It has heard such declarations from grievant before, including his claim that he has found strength in religion.

The company also notes that this is not merely a case in which an employee burdened with drug or alcohol addiction claims to have reformed, a status more often avowed than achieved. Grievant's discharge did not result immediately from his drug problems. Rather, he refused to report for work even after having been properly advised that his failure to appear would cost him his job. As I have recognized in a previous case, See Inland Award 892, the company can legitimately discipline employees who take extended, unauthorized leaves. Unlike that case, however, there are some mitigating factors in this one.

In Award 892, the grievant had no excuse for his absence, other than his incarceration for actions he had taken. In this case, it is not sufficient to argue merely that grievant believed it was necessary for him to enter the Teen Challenge program. I think grievant was sincere when he said that he thought the program was the only way to save his life. And, in fact, his failure to get help at that point may have had disastrous consequences. Nevertheless, neither grievant nor any other employee can decide unilaterally that he can leave his job for an extended time period.

Here, however, grievant seemed genuinely to believe that he could take a medical leave of absence to attend the program. That does not mean that he had such a right, of course, but it does help to define his actions. It is fair to say that, at least initially, grievant's decision to enter Teen Challenge was not a defiant one, taken without regard to the employer's attitude. Further evidence of this is the fact that grievant called Andryuk and told him he was entering the program (though I question whether he told Andryuk it was for a full year). And, equally important, at that point Andryuk did not tell grievant that he could not go. Rather, grievant testified without rebuttal that Andryuk said "I wish you well" <FN 2> and also helped grievant reschedule a vacation so he could get some needed cash. Although this doesn't amount to permission from

Andryuk, it does help understand why grievant mistakenly thought his absence was sanctioned. I also cannot ignore the fact that the company waited until June before ordering grievant to come back to work. Of course, that is not to say that grievant had a right to be absent. But he had been gone since April and, until that time, the company had done little to tell him his absence was improper.

There is no question, however, that at least by mid July, grievant knew he had no right to a sick leave to attend Teen Challenge. At that point, he faced a difficult choice. He did not make it on his own. Rather, he called Don Lutes who testified candidly that he assured grievant he would "get his job back." Lutes acknowledges the obvious: he cannot speak for the company and he had no right to guarantee grievant that his job was secure. Moreover, I have no doubt that in Lutes' mind, he was merely telling grievant that, based on his previous experience in such cases, he was confident that the company would agree to reinstatement. Although Lutes' belief is in no way binding on the company, it is relevant for what it says about grievant's state of mind. As was the case when he entered the program after his conversation with Andryuk, grievant's decision to remain was not taken in defiance. Rather, he had started the program in good faith and, while he understood the company's position, he also had been insured from someone in a position of union leadership that he should remain in the program.

In short, while I acknowledge that grievant had no right to unilaterally declare himself to be on sick leave, I am persuaded that he took his actions in good faith and that there are significant differences between this case and Inland Award 892, where there were no mitigating factors. A mere finding that grievant's leave was not solely an act of rebellion, however, is not the end of this case. The fact is that, while his continuing drug addiction was not the immediate cause of grievant's discharge, his lengthy absence was caused by his problem with drugs as, apparently, were most all of his other employment related problems. It would be foolhardy, then, to consider reinstatement for grievant unless the root cause of his troubles is under control.

I agree with the company advocate's assertion that, in order to establish cause for discharge, the company does not have to prove that an employee has been fired once before or that he has been on (and violated) a last chance agreement. Indeed, in the typical last chance agreement, the union acknowledges that cause for the discharge exists. A record of previous serious disciplinary actions may help the company establish cause and may assist its claim that it has tried without success to give an employee an opportunity to reform. But such evidence is not essential. In this case, as I have already observed, no one could fault the company's efforts on grievant's behalf.

I also agree with the company's assertion that it has been lenient with grievant in the past and that, at some point, it need make no further concessions. Exactly where that point it cannot be established with precision. Ultimately, it depends both on objective factors, like length of service, and subjective factors, like my assessment of whether grievant's claim of reformation is genuine. As I have noted, it is not uncommon for employees to claim repentance after the fact. In a significant number of cases, at Inland and elsewhere, I have found the claim lacking. In this case, I am less convinced of grievant's transformation than I was by the grievant in Inland Award 888, perhaps because I am suspicious of spiritual awakenings, perhaps because grievant claims to have experienced such revelations in the past. Nevertheless, Grievant seemed sincere and his Pastor affirmed grievant's commitment to change. He also completed a lengthy and rigorous rehabilitation program. More impressive is the testimony of Don Lutes, who said that in his twenty years of experience, grievant was one of three men most committed to reform. Obviously, this is not a claim that Lutes could often make with any credibility. Nor is his testimony sufficient, by itself, to warrant reinstatement, especially where the company's advocate is able to marshall a substantial case in support of discharge. Lutes' testimony, however, mitigates the doubts I had from grievant himself sufficiently so that I find that grievant deserves one last chance.

By last chance, however, I mean just what I say. Grievant has a considerable history at Inland and he must realize that the company can no longer be expected to tolerate the effects of his drug addiction. Accordingly, while I order grievant to be reinstated, I also find that the company may condition his reinstatement on a last chance agreement which contains terms common to such instruments, including random drug and alcohol testing. I hope grievant succeeds and I wish him well. But this case is not solely about him. It also involves the company's right to expect performance and regular attendance from its employees. By imposing a last chance agreement, the company can insure those goals, while giving grievant the opportunity to redeem himself. Given grievant's history and the fact that his absences were due to his own fault, there is no question that grievant is not entitled to any back pay.

AWARD

The grievance is sustained in part. The company is ordered to reinstate grievant without back pay. It is also authorized to impose a last chance agreement that includes the terms customary in such instruments, including random drug and alcohol testing.

/s/ Terry A. Bethel

Terry A. Bethel

July 13, 1995

<FN 1> Despite the name, the Teen Challenge program is not limited to teenagers.

<FN 2> On rebuttal, Andryuk said that he did not remember grievant telling him that the Teen Challenge program lasted a year. He did not deny, however, that grievant told him about the program or that he wished grievant luck.