*** **Gr. No. 5-V-21**
In the Matter of Arbitration Between **Appeal No. 1515**
Inland Steel Company and **Award No. 904**
United Steelworkers of America
Local Union No 1010 **REGULAR ARBITRATION**
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INTRODUCTION

The Undersigned Arbitrator was appointed according to the rules of the applicable collective bargaining agreement. This hearing was held on Friday, July 28, 1995 at the Company's offices in East Chicago, Indiana.

APPEARANCES

UNION
Advocate for the Union:
J. Robinson, Staff Representative, USWA Subdistrict 2
Witnesses:
R. Baldazo, Grievant
J. Cadwalader, Members Assistance Committee
I. Aranda, Members Assistance Committee
Also Present:
M. Bochenek, Griever
W. Harris, Members Assistance Committee
D. Lutes, Members Assistance Committee
COMPANY
Advocate for the Company:
P. D. Parker, Senior Representative, Union Relations
Witnesses:
J. Moscoe, Section Manager, No. 2 BOF/CC
J. Bean, Senior Employee Assistance Coordinator, Medical Dept.

BACKGROUND:

The issue in this case is whether the Grievant was discharged for cause. The Grievant had been employed by the Company for sixteen (16) years at the time of his discharge. The Employee's discipline record for the five (5) years prior to his discharge is as follows:

DATE	INFRACTION	DISCIPLINE
August 1, 1989	Absenteeism	Reprimand
October 9, 1989	Poor Workmanship	Reprimand
June 19, 1990	Absenteeism	1 day discipline
February 18, 1991	Absenteeism	2 day discipline
January 21, 1992	Absenteeism	Record review & 3 day discip.
May 21, 1992	Absenteeism	Final warning
July 2, 1993	Sleeping on job	Verbal warning
November 7, 1993	FRO[1]	2 day discipline
November 9, 1993	Absenteeism	3 day discipline
December 17, 1993	Absenteeism	Record review
December 24, 1993	FRO	3 day discipline
January 10, 1994	Absenteeism	Record Review
April 28, 1994	Absenteeism	Record Review

[1]Failure to report off

According to the undisputed facts in this case, on March 22, June 7 and June 8, 1994 the Grievant failed to report off from work. The Grievant had another FRO on July 21, 1994 and by letter dated July 22, 1994 the Grievant was notified that he was suspended preliminary to discharge because of excessive incidents of failing to report off and because of his overall attendance record.
A hearing was held on July 29, 1994. The Company contends and the Union did not dispute that at that meeting the Grievant raised for the first time that his absences were due to a dual addiction to alcohol and cocaine. By letter dated August 3, 1994 the Grievant was discharged.

The Union filed a grievance on August 11, 1994, stating that the discharge was unjust and unwarranted in light of the circumstances and requesting that the Grievant be reinstated with backpay. On August 31, 1994 the Grievant failed to appear for the third step grievance meeting. As a result of this failure the Company rescinded the Grievant's permission to work while his grievance was pending, under the "Justice and Dignity" provisions of the collective bargaining agreement.

The evidence indicates that the Grievant began participation in the Company's assistance program for drug and alcohol abuse in February, 1993, as a result of a reference from a source not connected with the Company or the Union. (Arbitrator's Note: The Union objected to the evidence about how the Grievant was referred to the program. The Arbitrator accepts the evidence only to the extent that it indicates that the Grievant did not seek out the program on his own and enter it entirely voluntarily at that time.) He completed the one year program.

In July, 1994, the Grievant began participating in the Company's alcohol and drug rehabilitation program again. He missed several lectures and a session in July and early August and was discharged from the rehabilitation program on August 16, 1994, while the grievance over his discharge from employment was being processed.

The Grievant continued to work with the Union's Members Assistance Committee after his discharge from the EAP. In December, 1994 the Members Assistance Committee sought permission from the Company for the Grievant to enter the Inland Assistance Program again. The Company agreed, even though the Grievant had already been discharged from his job, and thus was not entitled to participation.

The Company presented evidence that the Grievant was put on notice at that time that any consideration he might be given for re-employment would depend upon his strict compliance with the rules of the rehabilitation program, including attendance at all scheduled meetings. On January 6th, and then again on February 3, 6, 16, and 22 the Grievant missed lectures or scheduled meetings.

On February 24, 1995 he was sent a letter directing him to contact Mr. J. Bean, the Senior Employee Assistance Coordinator. Mr. Bean testified that he informed the Grievant that because he had missed so many meetings, he was not a candidate for Mr. Bean to go to Management and request that he be reinstated. Mr. Bean testified that this was a decision he reached in consultation with the Union committee. The Grievant was discharged from the EAP program again on March 3, 1995.

The Grievant testified that he has an alcohol and drug problem, and that the last time he used these substances was in February, 1995. He testified that although he went through the Company's program in 1993 and admitted in the program that he had a problem, he was just saying that to get by. He stated that he was "in denial" about his drug and alcohol problems when he was asked about such problems during earlier record reviews. He acknowledged that he remembers being told at various times that he had to attend all scheduled meetings in the EAP program and that unless he changed his behavior, he was endangering his job. He stated that he now knows that he cannot get anywhere in life unless he deals with these problems, and he believes that he will not have further problems with absenteeism if he is reinstated.

Mr. J. Cadwalader, Members Assistance Committee, testified that when the Grievant first came to the Union committee in July, 1994, Mr. Cadwalader believed the Grievant was still in serious denial about the nature of his problem. He testified that alcoholism is a disease of denial and that it is more common than uncommon for a person to go through a rehabilitation program more than once. Recovery does not proceed in a straight-line progression, he testified, but is more like a dimmer switch on a light fixture, with very gradual progression, interrupted by bouts of backsliding. This sentiment was echoed by another member of the Members Assistance Committee, Mr. I. Aranda, who testified about his own bumpy recovery.

Mr. Cadwalader testified that the Union Members Assistance Committee told the Grievant in February, 1995 that they would not ask the Company for a Last Chance Agreement for him unless he made a real commitment to recovery. According to Mr. Cadwalader, the Committee does not ask for a Last Chance Agreement unless they believe there is a high probability that an individual will succeed under an Agreement. The Witness acknowledged that even under this criteria, there is not total success for all employees who have been recommended for Last Chance Agreements.

Although the Grievant had come to meetings reluctantly until that point, Mr. Cadwalader testified that it appeared to him that the Grievant began now, in February, 1995 to change his attitude and see the real value in the program. According to the Witness, the Grievant did a lot of growing up during this period, and has regularly attended AA meetings since that time.

The Company's Witness J. Moscoe, the Section Manager, testified about the importance of the Grievant's job and the procedure the Company follows when an employee does not come to work. He testified that

FRO's are especially disruptive, and that the Company discharged the Grievant because of his overall absenteeism and because there were no signs of change in his behavior.

THE COMPANY'S POSITION

The Company argues that this is a case where enough is enough. According to the Company the Grievant was warned at four (4) separate record reviews that his job was at risk because of his attendance. Yet, after the last record review, the Company notes that the Grievant had three (3) additional FRO's.

The Company notes that at none of the record reviews did the Grievant admit that he had a problem with alcohol or drug addiction, even though he was asked. According to the Company, the argument that the Grievant was "in denial" can be an infinite excuse. The best that the Company can offer is education, guidance and support to help an employee change his behavior, and the Company argues that it did so in this case.

Even after the Grievant made the claim a year ago that his absenteeism was due to alcohol and drug problems, he did not change his behavior, the Company asserts. The Company argues that post-discharge rehabilitation could not have been considered by the Company when the decision was made to discharge the Grievant, and therefore should not be considered in arbitration, which should be based only upon the evidence available at the time of discharge.

If the Grievant were really serious about recovery, he should have taken these steps prior to discharge, the Company argues. To admit this evidence encourages other employees not to become serious about alcohol and drug problems until after discharge, the Company contends.

Even the Grievant's post-discharge conduct does not support his claim for reinstatement, the Company argues. According to the Company he was still using drugs and was discharged from the EAP program shortly after his discharge, and again several months later.

According to the Company, it has given the Grievant enough warnings that his continued conduct would lead to discharge. He also was given sufficient opportunities to participate in the Company's rehabilitation program, twice before, once during, and once after his discharge.

The Company argues that the grievance should be denied and the discharge upheld.

THE UNION'S POSITION

The Union argues first that the issue of post-discharge rehabilitation has long been resolved between these Parties. The Union submitted several arbitration awards which it contends demonstrate that consideration of post-discharge rehabilitation as mitigation is a well-established principle in this bargaining relationship.

The Union argues that the Grievant's absenteeism record does not support discharge. Only two of the last five years include extended absences, the Union notes, and the number of individual days of absence has been decreasing. The Union acknowledges that there have been problems with the Grievant's FRO's but contends that his overall record is not that bad. In addition, the Union notes that the Company's policy is not a "no fault" policy.

The Union also suggests that even if the record supported discharge on its face, what has happened since the discharge serves as mitigation of the penalty. The Union notes that the Section Manager testified that he might have reached a different decision if he had believed that there was a possibility for a different outcome in terms of the Grievant changing his behavior.

While the effect of the rehabilitation is a judgment call, the Union argues that the Arbitrator can turn to the Union witnesses' help in making this determination. These witnesses, who have personal experience with substance abuse and experience with other abusers, testified that the disease is a disease of denial. The Union argues that the Assistance Committee members testified that they don't support a person getting his job back unless they believe the person has a good prognosis for recovery.

There are no guarantees that the Grievant will be a successful employee, but there are probabilities, the Union argues, and the judgment of people who have specialized expertise with the problem is the best we can do. The Union also argues that the Grievant has presented credible testimony that he was "in denial," but he now knows that he cannot use drugs and alcohol, and keep them under control; he simply cannot use them.

The Union agrees that denial could be an infinite excuse, but to take that argument to its logical extreme would mean that we would never consider denial; yet, alcoholism and substance abuse is a disease of denial. There may be a time when we have to realize that a person is not moving beyond denial within a reasonable period of time, the Union acknowledges, and employees do not have a lifetime right to argue that they have mitigated the causes for some ancient discharge. But that is not the case here, the Union argues.

The Union argues that the combination of the Grievant's absenteeism record with the testimony concerning the mitigation indicates that the Grievant should be returned to work, and the discharge overturned.

OPINION

This is a case involving the discharge of an employee for absenteeism. The Union challenges the Grievant's discharge on two grounds, his absenteeism record and his post-discharge rehabilitation.

The Union asserts that the Grievant's attendance record was not so bad as to justify discharge. The Grievant's absenteeism rate, according to the Union's evidence, was nearly nine (9) percent in 1990. The rate did improve over the next several years, although it was still poor enough that the Grievant had a final warning and record review in mid-1992. After that he improved his record for about a year, but then began backsliding again. From about mid-1993 until the time of his discharge in July, 1994, the Grievant had an unusually high number of FRO's (a total of six from November, 1993 to the final one in July, 1994) and other absences as well. These absences were marked by increasing levels of discipline, including a two-day discipline, two three-day disciplines and three record reviews between November, 1993 and April, 1994. Significantly, no grievances ever were filed contending that any of the disciplines meted out to the Grievant for his poor attendance were not issued for just cause, other than his discharge. Because they were not challenged at the time they arose, his record stands as it is.

The evidence indicates that the Grievant was told at the record reviews that his job was in real jeopardy and that he would be discharged if his behavior continued. (Arbitrator's Note: He also refused assistance for drug or alcohol abuse at these record reviews.) However, after record reviews in December, 1993 and January, 1994, the Grievant had three more FRO's within a two and a half-month period between March and June, 1994. He also had another record review in the middle of that period. After a final FRO in July, 1994, the Company decided that it had offered the Grievant sufficient opportunities to improve his attendance.

The Union argues that the Arbitrator has seen worse attendance records in discharge cases for absenteeism between these Parties, suggesting that the Company "jumped the gun" and discharged the Grievant too hastily. In the calculation of the Grievant's overall absentee rate, contained in Union Exhibit No. 2, the FRO's in the Grievant's record are counted the same as a regular missed day. The FRO's do not raise his overall absentee rate any higher than if they had been regular absences where a person calls in before the turn.

However, an employee who has a string of FRO's is particularly disruptive to an employer's business. When the employee does not appear on any given day and does not call in, the employer never knows whether the employee will be there within the next ten minutes, the next two hours or not at all. Often the Company has to call someone in or get someone to stay over on overtime to fill the position, a supervisor may be unsure about exactly when to call in someone, and delays may hamper production in a way that does not occur when an employee calls in ahead of the turn. Therefore the Grievant's absentee rate, standing alone, does not accurately reflect the seriousness of his absenteeism record in this case.

Although I have seen discharge cases between these Parties involving higher overall absenteeism rates than the Grievant's, the other cases did not involve a similar number of FRO's. No cases were presented to me where other employees with similar records were treated more leniently.

The Grievant came to the brink of discharge four times in the past five years, and each time he was warned that he could be discharged for further absenteeism. Nevertheless he continued his behavior and had a very high number of FRO's in his final year. The Company applied progressive discipline, and did not apply it in a mechanistic way: the Company offered the Grievant several chances to improve after his initial record review. The Company repeatedly offered help through the Employee Assistance Program.

The Union argues that, combined with his attendance record, the Grievant's post-discharge rehabilitation argues for his reinstatement. The Company argues that post-discharge rehabilitation should not be considered by the Arbitrator at all because this factor did not exist at the time of the discharge.

For some time now, arbitrators have been routinely considering post-discharge rehabilitation in alcohol and drug abuse cases, both in this bargaining relationship and in labor arbitration as whole. There are different situations in which an arbitrator might consider post-discharge rehabilitation in a discharge case. The issue may be raised in a case where the discharge is flawed in some other respect not related to the alcoholism question. It also may arise in cases where there would otherwise be justification for termination at the point of discharge for an offense like absenteeism. If the absenteeism relates to alcohol or drug abuse, the arbitrator may take that factor into account, just as we would consider whether another employee's absenteeism were due to some other disease.

Under either case described above, it may be reasonable to consider post-discharge rehabilitation in determining whether an employee is healthy and reliable enough to be offered reinstatement. In some cases it also may be reasonable to consider such rehabilitation as a factor in mitigating the penalty, depending upon the circumstances of the discharge and the nature of the employee's rehabilitation.

This is not really a departure from how other serious illness cases are treated in labor arbitration. The real change in how arbitrators consider post-discharge rehabilitation in alcohol and drug cases came about because society began to see substance abuse as a disease, rather than as a totally voluntary behavior.

It is reasonable to consider evidence of post-discharge conduct in this case in particular, because the Company offered the Grievant an unusual post-discharge opportunity to go through its EAP program. However, the Grievant's post-discharge participation in rehabilitation programs has been fraught with problems. Twice since he was discharged from his job with the Company, he has been discharged from the Company's EAP program for failing to attend meetings and lectures. At the time the Union Members Assistance Committee was arguing that he should receive a post-discharge chance to participate in the program, the Grievant admitted he was still using alcohol and drugs. The Company did, however, give him that opportunity, and he admitted that he continued to use alcohol and drugs, until his final discharge from the rehabilitation program, long after his discharge from employment.

The Union argues that the Grievant was "in denial" until March, 1995, about eight months after his discharge from the Company. At that point the Union Committee told the Grievant that they would not intercede in his behalf with the Company unless he made a real commitment to sobriety.

I accept the Union's premise that alcoholism is a disease of "denial." After hearing many alcoholism-related cases, the Arbitrator is convinced that denial may be the most important obstacle in successfully treating the disease. In this case, for example, when the Company gave the Grievant an unusual chance after his discharge to participate in its rehabilitation program, the Grievant was still in a state of denial about his problem, as confirmed by his testimony, the testimony of the other Union witnesses and his own conduct. In cases involving alcoholism, it is legitimate for arbitrators to consider denial, as well as the uneven progress and pace of recovery, symbolized by the "dimmer switch" in this case. However, at some point the employer has the right to say "enough is enough." Alcoholism, like any other disease, may so debilitate an employee that he or she is unable to meet the basic responsibilities of the job, including the responsibility to come to work regularly and on time.

The Arbitrator cannot conclude that when the Employer made its decision in this case there was a violation of just cause. Although there were some periods of improvement, the Grievant's record of FRO's progressively got worse, and his overall absenteeism in the last year was up from previous years too. Progressive discipline was applied and the Grievant was warned that his job was at stake.

The Company had offered the Grievant four opportunities to go through its assistance program for drug and alcohol abuse. (Arbitrator's Note: The Union argues that the Grievant's initial participation in the program should not be considered because it falls outside the five-year limit prior to discharge for considering an employee's disciplinary record. His participation in the program is not a disciplinary matter, however, and therefore the five-year limit does not apply.) Even during and after his discharge from employment, the Grievant was given two opportunities to complete the rehabilitation program and was not able to do so. Here the Union Committee agreed the Grievant should be discharged from the rehabilitation program in March, 1995, after his discharge from employment. The Union Committee never has asked for a "Last Chance" agreement for the Grievant, except to the extent that this challenge to the discharge is such a request.

Thus, even if post-discharge rehabilitation should be considered in this case, the nature of the Grievant's post-discharge conduct does not argue for mitigating the penalty of discharge. The Company has legitimate reason to question whether the Grievant's recovery is real and will last, given his past record. In addition, the Company has a legitimate concern that if the Grievant is reinstated other employees might conclude that they need not get serious about alcohol and drug problems until some time after a discharge.

It may be that the Grievant has now hit rock-bottom and is on the road to recovery. The Arbitrator was impressed by his statement that he started his substance abuse at a very young age and now realizes that he cannot get anywhere in life unless he takes care of this problem.

However, on the record before me, I cannot say that the Company made a mistake when it decided that "enough is enough." Neither the Grievant's attendance record nor the record of his efforts at rehabilitation offer sufficient reasons to overturn the Company's decision.

AWARD

The grievance is denied.

s/s Jeanne M. Vonhof
Jeanne M. Vonhof
Labor Arbitrator
Acting Under Umpire Terry A. Bethel
Decided this 21st day of August, 1995.