Award No. 913

IN THE MATTER OF THE ARBITRATION BETWEEN

INLAND STEEL COMPANY

and

UNITED STEELWORKERS OF AMERICA

LOCAL UNION 1010

Arbitrator: Terry A. Bethel

March 2, 1996

OPINION AND AWARD

Introduction

This case concerns the discharge of grievant Donny Lott for failure to report off and for his continuing absence record. The case was tried in the company's offices in East Chicago, Indiana on February 12, 1996. Brad Smith represented the company and Rudy Schneider presented the case for grievant and the union. Grievant was present throughout the case and testified in his own behalf. The parties submitted the case on final argument.

Appearances

For the company:

B. Smith -- Arb. Coordinator

F. Tom -- Section, Mgr., ISIP

J. Medellin -- Contract Admin. Resource

G. DeArmond -- Human Resources Generalist

For the union:

R. Schneider -- Griever

A. Jacque -- Chrm., Grievance Committee

D. Lott -- Grievant

R. Nystrom -- Assistant Griever

T. Crowder -- Witness

Background

The company discharged grievant for repeated instances of failure to report off (FRO) and for his overall attendance record in the three year period leading to his discharge. Evidence submitted at the hearing indicated that grievant had had no attendance related discipline between 1983 and 1993. However, he received a reprimand on October 27, 1993, as a result of seven different incidents between July 6 and October 13. None of the incidents involved an FRO. Grievant was warned that "continued failure to work as scheduled will result in more severe discipline." Grievant did not incur another disciplinary action for an attendance violation until a little over a year later, when he was suspended for one day for a failure to report off on November 21, 1994. He was also warned that continued failures to report off could lead to more severe discipline, including discharge.

Despite that warning, grievant failed to report off on February 12, 1995 and was suspended for two days. On March 24, 1995, grievant received another discipline letter under the company's Attendance Improvement Program. This letter referenced seven different incidents, including the November 21 failure to report off. In addition, it listed an FRO on December 21, 1994 for which grievant had apparently not been separately disciplined. Grievant was suspended for one day on June 16, 1995, again for violation of the company's attendance program. He received a three day discipline and a record review on July 13, 1995 for repeated FROs. The discipline recap indicates that the suspension and record review occurred because of FROs on April 24, 25, 27, 28, 29, 30, May 3, and June 30. This is a total of 11 FROs between November 24, 1994 and June 30, 1995. At the record review, grievant was reminded that continued FROs could lead to more severe disciplinary action, including discharge.

Grievant's attendance problems did not end with his record review. On July 16, 1995, grievant failed to report off for his first day in a new department.<FN 1> He was charged with an early quit on July 29, 1995, and then failed to report off on August 12, 13 and 14. On August 15, grievant was suspended preliminary to discharge, though he continued to work under the justice and dignity provisions of the agreement. He was charged with early quits on August 23 and 29 and was tardy on September 7. He failed to report off on September 24 and was absent on disability from September 25 to the date of his discharge on November 2, 1995.

The company argues that grievant's overall attendance record is bad, but it particularly notes his numerous failures to report off. These absences are the most troubling, the company says, because they leave the

company without information about the employee's whereabouts and without knowledge about whether he will report for work late. This was a particular problem in the department where grievant worked until about a month before his discharge because there was no labor pool. Thus, when an employee failed to report off, the company sometimes had no replacement and had to modify work or leave it undone. Mr. Tom, the section manager, offered no specific examples of this in grievant's case, and he acknowledged that grievant was an auxiliary employee whose absence would not necessarily stop production. Nevertheless, he said that any failure to report off caused problems in the department.

The company also points to grievant's overall attendance record, which included numerous incidents in addition to the FROs. Moreover, the company notes that grievant's attendance did not improve after the record review and even while he was working under the justice and dignity provisions of the agreement. These facts, the company says, do not demonstrate that grievant is deserving of another chance.

The union offers some explanation of some of grievant's FROs and other attendance incidents. In addition, it says that grievant's attendance record is better than that of some employees who have been given a second chance and that there was no evidence that grievant was a poor worker. Its primary contention, however, is that grievant's problems were caused by his abuse of alcohol and cocaine, something he started in early 1994 following the death of his mother. His personal problems were further compounded by the breakup of his marriage. In particular, grievant pointed to the FROs on August 12, 13 and 14, which led to his suspension preliminary to discharge. August 12 was the day he signed a quit claim deed, transferring his interest in his house over to his wife. Grievant said that he realized he had made a mistake shortly afterwards and that he went on a three day alcohol and cocaine binge. He acknowledged that he did not call the company and made no excuse for his actions other than to say that he was not acting rationally and that "I did what I did."

Grievant did not raise his problem with alcohol and cocaine to the company until the third step hearing. Indeed, he had been asked about it specifically during each of the disciplinary actions mentioned above -- including the record review -- and had said that he did not have a problem with drugs or alcohol. Grievant said that he did not realize that he had a problem for some time and that he was reluctant to admit it even when he became aware of it. He says that he has attended Alcoholic and Narcotics Anonymous meetings since his discharge and that he is trying to put his problems behind him. He as not able to say how long it had been since he had used cocaine, though he said it had been "a while." He acknowledged that he drank one beer the night before the arbitration hearing.

The union says that grievant has been a good employee for most of his time at Inland and that he merely "hit a bad stretch" when his mother died and his marriage dissolved in a relatively short time. Grievant's answer was to turn to alcohol and drugs. The union does not condone that reaction, but it says that grievant has now recognized his problem and taken steps to deal with it. Given his length of service and a lack of any evidence of bad work, the union says that grievant should get another chance.

The company questions whether grievant's substance abuse problems are real or, if they are, whether they were the reason for grievant's problems. The company asserts that grievant's claim is an after-the-fact declaration made merely to try and secure his continued employment. Even if the problems are real, the company questions whether grievant has really reformed. It quite rightly points out that arbitrators do not reinstate employees merely because they acknowledge alcohol and drug problems; that is only part of the equation. An equally important part is demonstrating that the problem is under control and that it will not hinder the employee's performance or attendance in the future. The evidence here is not strong, the company argues. Although grievant had records which demonstrated his attendance at meetings, he acknowledged that he had not stopped drinking entirely, a principal tenant of AA. Moreover, grievant was vague about when he had last used cocaine, an unusual situation for AA or NA participants, who usually remember such dates with precision.

Discussion

As I noted before, the union offered some explanation for some of the incidents, primarily through grievant's testimony. His last FRO (after the discharge and while he as working under the Justice and Dignity provisions) resulted from his involvement in a traffic accident. An injury suffered in that accident caused grievant's medical disability leave just prior to his discharge. In addition, the July 16, 1995, FRO resulted from confusion about when grievant was to report for work in his new department. Grievant acknowledged that he did not call the pickle line after being informed of his successful bid. But, the union pointed out, no one notified grievant about his new work schedule either. In any event, all grievant missed was a day of orientation, which he was able to complete the following day, July 17. Thus, although both of

these incidents count as FROs, I am inclined to accept grievant's claim that there are some mitigating circumstances for both of them.<FN 2>

There is also some question about the evidence surrounding the early quits on August 23 and August 29 (which also happened while grievant was working on Justice and Dignity). The union introduced evidence that grievant had arrived and left at exactly the same time as another employee in the same crew (Crowder)<FN 3>, but that grievant and not Crowder had been docked and charged with an early quit. The union cites this as evidence of disparate treatment, arguing that the employer saw grievant merely as a body, a new employee in the department for whom it had little concern.

The company points out that grievant and Crowder worked different jobs and might have had different starting times, a fact that Crowder denied. He testified that all employees at 5 pickle line started and stopped at the same time. However, the company pointed to another employee in grievant's same job who left even later than grievant on the same day, but who also was docked for an early quit. That employee also arrived almost 40 minutes later than grievant, which supports the company's claim that this job may have had a different starting time.

Obviously, it is difficult for me to know whether grievant was treated differently from Crowder for good reason. I do have some difficulty believing that the department management was indifferent to grievant because he was a new employee. Crowder testified that he did not start at 5 pickle line until May, 1994, so he had been there only about 15 months. He hardly fits the pattern of a long-term department employee who is likely to be treated with leniency. In any event, both of these incidents occurred after the company's decision to discharge grievant and are relevant here primarily to counteract grievant's claim of entitlement to leniency.

Finally, grievant explained one other incident, an early quit on July 9, 1995, which happened shortly before his discharge. In that case, grievant said he left early because he had gotten notice that his house had been broken into, an excuse that he had also tendered on one other occasion. Again, the reason proffered for this incident can have a mitigating effect, if it is true. The fact that grievant once used the same excuse before causes some suspicion. Moreover, no matter what the excuse, the more absences an employee has to explain away, the less convincing the explanations become.

There was no specific explanation of the other incidents. At the time they occurred, grievant claimed that some were due to sickness and others to transportation difficulties. Grievant did not explain the remaining -- and numerous -- FROs, other than to attribute them to his problems with cocaine and alcohol. I believed his testimony that he sometimes incurred an absence or other reportable incident because of transportation problems. At one time or another, most employees experience problems with their cars, miss their bus or their ride, or otherwise have problems getting to work. I can have sympathy for an employee who occasionally has such problems. But grievant claimed such problems more than occasionally. When such claims are made in the face of numerous other absence problems, it is easy to doubt their veracity. Moreover, even if true, there is a point at which transportation problems are no longer an adequate excuse. It is the employee's responsibility to get himself to work. The company is not accountable for such failures. It may need to understand the occasional difficulty, but even if true, repeated transportation problems are no excuse. This is especially true in an industry where the employees are well paid.

It is also not fair to believe that grievant has been treated harshly, either by the cold mill or by the company generally. He had numerous FROs and was warned on several occasions that his pattern of conduct could have dire consequences. Also, the company grouped some of the FROs together instead of issuing separate discipline for each of them. This is not action typically taken by an employer who is out to get a particular employee.

The record establishes, then, a very poor attendance record, replete with FROs, probably the most serious and damaging kind of absence. Moreover, grievant did not improve after his suspensions or his record review, or even after his discharge and while he was working under Justice and Dignity. This is a particularly telling consequence for an employee who needs to demonstrate the ability to report for work on a regular basis.

The union does not really contest grievant's record, as it clearly could not do so. Rather, it seeks leniency for grievant based on two factors -- his length of service and his admission and reform from substance abuse.

These are never easy cases because the changes in the industry almost guarantee that any employee subjected to discipline will have long service with the company. Moreover, the union is obviously aware that arbitrators often consider length of service, especially when cases are close. I have done the same. See e.g., Inland Award 858. But I have also observed that length of service does not immunize employees

against discharge and that the obligation of regular attendance falls on all workers, long term and short term alike.

Also complicating this case is grievant's claim of substance abuse, a factor in many discharge cases. Here, however, I share some of the company's doubts about whether substance abuse really caused grievant's problems. In the first place, he said nothing about it until the third step hearing. I have heard enough cases about substance abuse to know that denial is often a factor in the disease. But I have also heard enough to know that substance abuse is sometimes offered to try and explain away poor records, an after-the-fact attempt to get one more chance. Equally problematic for the grievant is the fact that he claimed his substance abuse problems did not start until early 1994, after his mother's death in December 1993. He also said his problems were compounded by subsequent marital difficulties. But his record indicates that he was disciplined for seven attendance related problems between July and October 1993, well before grievant now says he had a problem with drugs and alcohol.

It is true, as the union claims, that grievant apparently had no attendance problems until sometime in 1993 and it may be, as the union argues, that this sudden onslaught was the result of drug and alcohol abuse. But even if grievant had such a problem, that is not the end of the inquiry. It is not enough to assert -- or even prove -- that employment problems were caused by alcohol or drugs; the employee must also establish that he has the problem under control and that the company can expect regular and competent service from him in the future. This latter burden is typically more difficult to prove. In my view, that is especially true in a case like this one, in which grievant consistently denied any substance abuse problems and did not raise it as an issue until after the discharge, not only because it raises suspicion about his condition but also because, even if true, it denied the company (and the union) a chance to offer assistance before the problem became dire.

I have been hearing arbitration cases for almost eighteen years and in that time, many employees have claimed dependency on alcohol and drugs and all of them have said they had the problem under control. There have been occasions when I believed them (see e.g., Inland Award 888) and occasions when I have not (see e.g., Inland Award 842). As those opinions and others indicate, it is not always easy to explain why some employees are convincing and some are not.

I had difficulty believing grievant's claims of reform. He was unable or unwilling to specify how long it had been since he used cocaine and he was equally vague about alcohol. He admitted drinking a beer the night before the hearing, an act that would not necessarily foreclose the possibility of a successful recovery. But he did not say how long he had been sober and he did not discuss his success in avoiding alcohol. Even more problematic was grievant's discussion of cocaine. He could not -- or would not -- say how long it had been since he had used that drug. At one point on redirect his representative tried to assist him by asking him to estimate how long he had been drug free. One month? Two months? Several months? Grievant evaded the question. He said "it's been a long . . . it's been a while. I'm trying to put that behind me." This is not the kind of answer that inspires great confidence in grievant's ability to reform. Grievant repeated several times that he was trying to leave his problems behind him. I hope that is true and I hope he succeeds. But I have considerable doubt about whether he has done so at this time.

It may be, as the union claims, that other employees with worse records have gotten a second chance. Discharge cases, however, cannot always be reduced to formulaic equations in which one merely counts occurrences (though, of course, the number of such incidents is an important consideration); one must also consider evidence in mitigation and aggravation. The only mitigating factor I can find in this case is grievant's long seniority. But the obligation to respect a senior employee does not fall solely on the company; grievant had an obligation to protect himself. I find no reason here to believe that he tried to do that. The company warned him about his attendance problems several times, but his record did not improve. Indeed, it did not improve much even after his discharge, while he was working on Justice and Dignity. Also of importance is the large number of FRO's, the most serious form of absence. And, finally, I have doubts about whether grievant's problems were caused by substance abuse or, if they were, about whether he has adequately addressed that problem.

As I said above, discharge cases are often hard. No arbitrator likes to see an employee lose his job. In this case, however, the facts convince me that the company had just cause for its action. Thus, I must deny the grievance.

AWARD

The grievance is denied.

/s/ Terry A. Bethel

Terry A. Bethel

March 2, 1996
<FN 1>Grievant claims that his incident occurred because of confusion over when he was to begin work, a matter I will discuss more fully below.
<FN 2>That does not mean, however, that I can totally ignore the July 16 incident. By that time, grievant knew that he was in serious trouble because of his attendance. Yet he made no effort to find out what his schedule would be, something he acknowledged was his responsibility. He said he elected to rely on "word of mouth," the same excuse he gave for swiping out early. An employee with grievant's attendance record cannot rely on "word of mouth." He needs to check with supervision to find out where he is supposed to be and when he is supposed to be there.
<FN 3>Grievant and the other employee shared a ride to work.