Award No. 915
In the Matter of Arbitration Between:
Inland Steel Company
and
United Steelworkers of America,
Local No. 1010.
Grievance No. 6-V-085
Appeal No. 1526
Arbitrator: Jeanne M. Vonhof
March 27, 1996
REGULAR ARBITRATION
INTRODUCTION
The Undersigned Arbitrator was appointed according to the rules of the applicable collective bargaining agreement. This hearing was held on Friday, February 23, 1996 at the Company's offices in East Chicago, Indiana.
APPEARANCES
UNION
Advocate for the Union:
A. Jacque, Chairman, Grievance Committee
Witnesses:
L. Bates, Grievant
D. Lutes, Secretary, Grievance Committee
J. Cadwalader, Members Assistance Committee
W. Harris, Members Assistance Committee
COMPANY
Advocate for the Company:
B. Smith, Arbitration Coordinator
Witnesses:
V. Soto, Human Resources Generalist, Retired
W. Dalzotto, Manager, Utilities
RELEVANT CONTRACT PROVISIONS:
ARTICLE 3
PLANT MANAGEMENT
Section 1. Except as limited by the provisions of the Agreement, the Management of the plant and the direction of the working forces, including the right to direct, plan and control plant operations, to hire, recall, transfer, promote, demote, suspend for cause, discipline and discharge employees for cause, . . . and to manage the properties in the traditional manner are vested exclusively in the Company. . . .
BACKGROUND:
This is a case involving the discharge of an employee for violating a last chance agreement. The Grievant, L. Bates, was first hired by the Company in 1970, and had twenty-five years' seniority at the time of his discharge.
The Grievant's discharge stemmed from excessive absenteeism. According to the record, the Grievant was first suspended preliminary to discharge due to excessive absenteeism on May 29, 1990. The Parties agreed to return the Grievant to work under a last chance agreement dated June 29, 1990.
The last chance agreement required the Grievant to maintain an absenteeism rate of less than 5% for a period of eighteen (18) months from the effective date of the agreement. The last chance agreement also included a paragraph stating that the Grievant had stated that he had no problem with either alcohol or drug addiction. Under this paragraph any claim of a pre-existing drug or alcohol addiction would not serve as mitigating circumstances with respect to the terms of the agreement. The final paragraph in the document stated that the Grievant acknowledged an understanding of his basic employment responsibility to report to work on time, to give timely notice when he was unable to work, and that absence, tardiness or failure to work a complete turn may only be for just cause.
The Grievant was laid off for about nine months in 1992-93 and then returned to work. The Company's computer system identified him as targeted for a suspension for absenteeism after an absence on May 2, 1993. Mr. Dalzotto testified that the Department decided not to suspend the Grievant at that time, due to his

long service and the fact that his absenteeism record had shown some improvement. Instead the Company instituted a record review.

The record shows that the Grievant was suspended shortly thereafter on July 8, 1993 for excessive absenteeism, but this letter was rescinded on July 21, 1993. Another record review was held on August 26, 1993 regarding the Grievant's attendance, at which time he was given a final warning. The Grievant denied any problems with drugs or alcohol when representatives of the Company asked him about it during this period.

The Grievant testified that in October, 1993 he entered a hospital rehabilitation program for drug addiction. He was absent from work until sometime in December, 1993 in order to participate in that program.

The Grievant was suspended preliminary to discharge for excessive absenteeism in July, 1994. The Grievant continued to work under the Justice and Dignity provisions of the labor agreement until his discharge hearing was held on March 16, 1995. The Grievant had a good work record in the eight-month period between his discharge and the discharge hearing, and he was reinstated.

According to Jt. Ex. No. 4, the Company and the Union agreed that the Grievant would be reinstated at that time under the conditions of the last chance agreement dated June 29, 1990, and that the terms of that agreement would remain in effect until July 6, 1996, about sixteen (16) months later. The Grievant returned to work. He testified that no one from either the Company or the Union told him that he was reinstated under the terms of a last chance agreement. There was no testimony that anyone gave him a copy of the Step 4 disposition form, setting out the terms of his reinstatement. Mr. Dalzotto testified that he did not give the Grievant a record review at the time of his reinstatement, but that he believed that someone had told the Grievant that he was reinstated under a last chance agreement, as an extension of his prior agreement.<FN 1>

Mr. Lutes testified that on August 1, 1995 the Grievant came to the Union office in "real bad shape," "spaced out," "a total wreck," and that the Grievant said he was on drugs. According to Mr. Lutes the Grievant asked for help in getting into a hospital to address his drug problems. Mr. Lutes testified that he agreed to help the Grievant, and asked the Grievant if he had reported off from work that day. The Grievant said that he had done so. Mr. Lutes testified that he told the Grievant that the Union would take care of reporting him off work after that day.

The Union Members Assistance Committee began working immediately to place the Grievant in a hospital program, but was unable to obtain a bed for the Grievant until August 4, 1995. In the meantime the Grievant did not attend work and did not call in to report off work. No one else called in to report the Grievant off work during this period.

Mr. Cadwalader testified that employees typically do not report for work during the short period normally spent waiting to enter a hospital rehabilitation program for substance abuse, because usually they are in no condition to work. He also suggested that the Grievant had to wait somewhat longer than usual to enter a program.

Mr. Dalzotto, the Section Manager, testified that during the first week in August, 1995 he went to deliver the Grievant's 25-year watch, and discovered that the Grievant had been off for several days without reporting off. By letter dated August 8, 1995 the Company informed the Grievant that because he had been absent for five work days without notifying the Company, he would be suspended preliminary to discharge unless he reported for work or notified the Company within five (5) days.

Mr. Dalzotto testified that the Grievant first failed to report off on August 1, 1995 and did not notify the Company of his whereabouts until after the Company's letter was issued on August 8th. He also testified that someone from the Company discovered the reason for the Grievant's absence after the letter of August 8th was sent.

By letter dated August 9, 1995 and again by a second letter dated August 17, 1995 the Grievant was informed that he was being suspended preliminary to discharge for violating his last chance agreement. Mr. Dalzotto testified that the Company sent the second letter because Company representatives had forgotten to send a copy of the first suspension letter to the Chairman of the Grievance Committee.

The Union presented evidence that the Grievant has attended Alcoholics Anonymous and Narcotics Anonymous meetings very frequently, as many as seven times a week, since August 1, 1995. The Grievant testified that he did report off on August 1, 1995, and that he failed to report off for the next several days because he believed the Union was doing it for him. According to the Grievant he was relying upon statements made by Union representatives and the fact that the Union had reported off for him in the past in similar circumstances. He also testified that when he reported to the Company in 1993 and 1994 that he was not having problems with drugs or alcohol, he was not having problems at that time.

The Company presented testimony from Mr. Dalzotto that many of the Grievant's absences immediately preceded or followed a scheduled day off. According to Mr. Dalzotto the Grievant had the worst absenteeism record in his department.

THE UNION'S POSITION

The Union contends first that this case does not involve a clear violation of the last chance agreement. The Union contends that only part of the last chance agreement was extended to July, 1996. The Union argues that the entire LCA was renewed for a period of only about sixteen months, and therefore could not include Paragraph No. 4 of the original agreement, which called for a two-year suspension of the Justice and Dignity provision, and Paragraph No. 5, which called for an eighteen month period of low absenteeism. According to the Union the failure to re-type the original agreement with only the relevant sections included is only one of many errors which was made in this case.

The Union also points to the sequence of letters discharging the Grievant in this case as evidence of more mistakes. The Union notes that the Company sent out a letter dated August 8th giving the Grievant five (5) days to respond, and then sent a letter suspending him the very next day. The Union points out that the Company failed to send the proper notice to the Chairman of the Grievance Committee. The Union suggests that it is not a coincidence that the second suspension letter was sent to the Grievant on the day he returned to work.

The Union argues forcefully that the Company erred when it failed to give the Grievant a record review or to tell him that about the last chance agreement when he was reinstated in March, 1995. The Union argues that the Parties usually go over with an employee the terms of his reinstatement when he returns to work. Although the Union acknowledges that it may have erred in not telling the Grievant the terms of his reinstatement, the Union argues that the Company also has this responsibility, and the Grievant should not be penalized for the failure of the Parties in this case to inform him. The Union also urges the Arbitrator not to hold against the Grievant any other failures on the part of the Parties, including the Union's failure to call off the Grievant.

The Union urges the Arbitrator not to consider the Grievant's prior discharges and discipline. According to the Union the Grievant already has paid the price for these infractions, and they should not be considered in this case. Although an Arbitrator may consider a grievant's prior five (5) years, the Union concedes, these problems did not initiate this case, which is based on a violation of the last chance agreement.

For the reasons discussed above, the Union urges that the grievance should be sustained and the discharge overturned.

THE COMPANY'S POSITION

The Company contends that the Parties have agreed that the standard to be applied in this case is the last chance agreement first entered into in 1990. The Company contends that the Grievant should not be reinstated because of errors the Union made, in particular the Union's failure to call off the Grievant the first week in August, 1995 and the Union's failure to communicate to the Grievant the terms of his reinstatement in March, 1995.

The Company argues that if the Arbitrator were to sustain the grievance on these grounds, then the Union could continue to commit errors in other cases and prevent the Company from being able to discharge any employee. The individual employee has the ultimate responsibility to make sure that he is reported off from his job, according to the Company. In addition, the Grievant's past record of discipline for absenteeism should have given him a heightened awareness of the need for reporting off, the Company argues. The Company contends that the Union has not brought forth a good reason for the Grievant's failure to report off in the days prior to his being admitted to the hospital.

The Company argues that the Grievant clearly was aware of the 1990 agreement and the Grievant has not stated that he did not know of its terms. In addition, the Company argues that the Grievant had a responsibility, when he was reinstated, to find out the terms of his reinstatement, especially since he had been reinstated under a last chance agreement previously.

The Company also argues that it has acted consistently in discharging employees who violate the terms of a last chance agreement. The Company points to a judicial opinion and arbitration awards supporting this position.

According to the Company the Grievant violated the portion of the last chance agreement prohibiting the violation of any part of the absenteeism program. In addition, the Company argues that the Union is barred from raising the Grievant's drug addiction problems as mitigation for his behavior by the second paragraph of the last chance agreement.

The Company contends that it already has considered the Grievant's length of service and other factors in mitigation as the Grievant progressed through the discipline procedure. The Company argues that the Grievant's length of service is only one factor to consider, and not an absolute shield against discharge. The Company also argues that the Arbitrator should not ignore the Grievant's past five years.

According to the Company, this is a case where "enough is enough." The Grievant has been given many "last chances" for employment, the Company urges, and has not shown respect for his basic job responsibilities. Under these circumstances, the Company urges that the grievance should be denied and the discharge upheld.

OPINION

This is a case of the discharge of a long-term employee for violation of a last chance agreement relating to absenteeism. A number of unusual events occurred during the course of this discharge, including the Company's issuance of two letters suspending the Grievant preliminary to discharge, separated by about a week. The Company explained that the first letter mistakenly was not sent to the Chairman of the Union Grievance Committee, making it necessary to send a second letter.

The first suspension letter was sent one day after a letter was issued telling the Grievant that he had five days to report for duty or be suspended. However, the suspension letter of August 9th was based upon the view that he had violated his last chance agreement, whereas it appears that the letter the day before was the type of letter which goes to any employee who does not show up for work or report in for a number of days.

There were some procedural irregularities in the way the Company issued the letters discharging the Grievant in this case. However, it is not clear that the irregularities discussed above are sufficiently serious or harmful in themselves to justify overturning the discharge.

The discharge letter states that the Grievant was discharged for violating the terms of a last chance agreement. The Parties agreed to extend the 1990 last chance agreement (or at least some portion of it) in March, 1995 after the Grievant was discharged for a second time.

However, the Grievant testified that no one informed him when he was reinstated in March or April, 1995 that his reinstatement was conditioned upon an extension of the terms of his prior last chance agreement. There was no testimony from any other witness or other evidence that anyone told him about these terms. It appears that the Grievant may have simply "slipped through the cracks" when he was reinstated. He testified that he was not required to sign any reinstatement papers when he returned to work or to go to the clinic for a physical, as he had done in the past.<FN 2> He was not given a reinstatement record review, or had the terms of his reinstatement or last chance agreement explained to him in a joint session with management and his Union representative, as he testified had occurred in the past. Although he was sent to Labor Relations, where he testified record reviews had occurred in the past, he was told only to pick up his Company identification there and to report to his work station.

The Company argues that the Union and the Grievant bear responsibility for the Grievant's lack of knowledge of the terms of his reinstatement. According to the Company the Union failed in its obligation to tell the Grievant the terms of his reinstatement when the Union reported to him that he would be reinstated. In addition, the Company contends that the Grievant, as someone who had been discharged once before and had been disciplined many times, had the responsibility to inquire about and determine the terms of his reinstatement.

The Company argues in this case, as it has in other cases, that when the Parties enter into a last chance agreement they agree that the terms of that agreement constitute just cause for the discharge or discipline of that employee. Whatever the Union's obligations may be in this situation, the Company has an obligation, under the just cause principle, not to discipline employees without proper notice about the standards under which they are being evaluated. This is especially true when the employee is being evaluated under very specific terms, like those included in a last chance agreement. Therefore, when the Company agrees to reinstate an employee only under certain conditions, such as the extension of a last chance agreement, the Company has an obligation to make certain that the employee is fully informed about the conditions of his or her reinstatement.

Mr. Dalzotto, the Section Manager, acknowledged this responsibility in his testimony, but stated that he assumed that someone else had informed the Grievant about the terms of his reinstatement. There was no evidence to back up this assumption, however.

The Company may not reasonably shift its obligation to the individual employee. Unless someone tells an employee that his or her reinstatement is subject to specific conditions or restrictions, it is reasonable for the employee to assume that he or she is simply reinstated, without restrictions.

Because the Grievant was not properly informed about the existence of the last chance agreement, there was no enforceable last chance agreement at the time of his discharge. At that moment the Grievant was in the position of an employee with a very poor attendance record who had failed to report off for a number of days, but not one who had fatally violated a last chance agreement.

The Union contends that the Arbitrator should not consider the Grievant's overall record, because he has paid the price for earlier absenteeism problems. However, the Grievant, who has been discharged for absenteeism and received earlier treatment for drug abuse, stands in a different place than an employee with a better record. Although I conclude that discharge is not appropriate under the circumstances here, I have considered a variety of factors, including the Grievant's past record, in determining the appropriate remedy in this case.

Thus, I have considered the Grievant's reason for his final absences, namely his enrolling himself in a hospital drug abuse program. It is significant that he sought out the program himself, because doing so is one indication of the strong personal commitment to recovery which individuals usually need in order to make possible lasting recovery. I have also considered the Grievant's reliance upon the Union as the reason for failing to call off, and the record of his rehabilitation, which indicates attendance at many AA and NA meetings.

On the other hand I am concerned about the Grievant's testimony that he did not believe he had a drug problem in 1993 and 1994. His reluctance to admit at the arbitration hearing that he had problems in 1993 and 1994 raises questions about whether the Grievant fully understands how drug abuse has affected his life, which is one important component of recovery. I don't believe that this testimony, standing alone, should bar the Grievant from reinstatement, given the other factors here. However, it is one factor in my decision to continue certain restrictions upon the Grievant to help ensure that he can maintain good attendance.

I have also considered that the Grievant, even if he thought the Union was reporting him off, still had the ultimate responsibility to make sure the Company knew of his whereabouts during the first week in August. His conduct is not blameless, and his failure to report off triggered his discharge in this case.

In addition, I have considered that the Company has offered the Grievant many opportunities to reform. There were instances in which the Company decided to give the Grievant another chance, rather than a discipline. The Company has a legitimate need for assurance that the Grievant will remain free of drug addiction, and maintain a good attendance record.

Therefore, on the basis of all these factors, the Grievant will be reinstated under the terms of the last chance agreement, which will be extended to July 31, 1997. In addition, the Grievant will be reinstated without backpay.

The heavy penalty imposed in this case should serve as a serious warning to the Grievant. If there had been an enforceable last chance agreement in this case, the discharge probably would have been upheld. Although it appears that the Grievant has made substantial progress in addressing his drug abuse problem, he should realize that he still is in great danger of losing his job, unless he can maintain a good attendance record like other employees. Even though substance abuse is a disease, and the Grievant has many years' seniority, at some point the Employer may discharge an employee who cannot maintain good attendance.

AWARD

The grievance is sustained in part. The discharge is overturned and the Grievant is to be reinstated without backpay. The Grievant is reinstated under the terms of the 1990 last chance agreement, which will be extended to July 31, 1997.

/s/ Jeanne M. Vonhof

Jeanne M. Vonhof

Labor Arbitrator

Acting Under Umpire Terry A. Bethel

Dated this 27th day of March, 1996.

<FN 1>The Parties agree that at least the strict terms of the original last chance agreement had expired at some point prior to March, 1995.

<FN 2>Although it is not clear from the record, it is plausible that the Company may not have required a physical examination, since the Grievant had continued to work after his discharge, under the Justice and Dignity clause of the labor agreement.