Award No. 916
IN THE MATTER OF THE ARBITRATION BETWEEN
INLAND STEEL COMPANY
and
UNITED STEELWORKERS OF AMERICA
LOCAL UNION 1010
Arbitrator: Terry A. Bethel
April 8, 1996
OPINION AND AWARD
Introduction
This case concerns the discharge of grievant Robert Ferron for his failure to work as scheduled. The case was tried in the company's offices in East Chicago, Indiana on March 15, 1996. Brad Smith represented the company and Alexander Jacque 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, UR
R. Vela -- Hum. Resc. Gen., ISBC
J. Medellin -- Con. Admin. Res., UR
P. Berklich -- Proj. Rep., UR
C. Lacey -- Hum. Resc. Gen.
For the union:
A. Jacque -- Chair, Grievance Comm.
L. Aguilar -- Vice Chr., Grievance Comm.
M. Ferron -- Griever
R. Ferron -- Grievant
Background
Although grievant offers explanations for some incidents, there is no real dispute about the facts that motivated the company to discharge him. At the time of his discharge, grievant had been employed for about twenty years. Although grievant had sporadic absences in 1992 and early 1993, his attendance pattern changed noticeably in late 1993. Form mid-August through November, 1993, grievant was tardy 12 times, was absent twice, and quit early one time. He was tardy 21 times in 1994 and had two FROs. This pattern continued in 1995, up until the time of his discharge on December 19. During that year, he was tardy nineteen times, he quit early three times, and he failed to report off three times.
Obviously, none of this went unnoticed by the company. Grievant was reprimanded twice, once in late 1993 and again in early 1994; he was suspended for a day in June of 1994 and then again in February of 1995 for an FRO; the company suspended grievant for two days later in February and then again in May; he received his first three day suspension in May 1995, along with a record review; that same action -- a three day suspension and a record review -- was repeated in July 1995. At this latter record review, the company told grievant "this is your last and final warning." Grievant was suspended preliminary to discharge in October, 1995, but continued to work under the contract's Justice and Dignity provisions. His last four incidents (all tardies) occurred during this period.
The company argues that grievant's record is more than sufficient to justify his discharge. It points out that grievant has had ten different instances of absence related discipline in the last three years, but has shown no improvement at all, even while on J&D following his suspension preliminary to discharge. The company points out that it has made numerous attempts to help grievant, but says it has not been rewarded with improvement on grievant's part. Also, the company cites the serious nature of grievant's record. Most of his incidents are tardies which, like FRO's, are particularly troublesome since the company starts a turn without knowing whether it will need to find a replacement worker. The company also points out that at least some of the excuses offered by grievant have been untruthful<FN 1> and that there is no dispute that any of the incidents occurred. Indeed, the company says, there was never even a grievance over any of its previous disciplines against grievant.
The union does not deny that grievant had a poor record, though it says that other employees were allowed to compile worse records without the same dire consequences. Moreover, the union says, many of grievant's problems were exacerbated by numerous and lengthy layoffs in 1992 and 1993. The union did not question the need for the layoffs or the company's right to impose them. Rather, grievant testified that

his daughter had moved in with him and that he had given her money to pay his bills, including rent. However, she kept the money and ultimately used it to go to Jamaica, leaving grievant and his unpaid bills behind. In addition, grievant say that his layoffs made it difficult for him to make child support payments, some of which were apparently already past due (since his daughter was then living with him).

After his daughter left, and with reduced income from his layoffs, grievant said he did not have the money to obtain reliable transportation. Grievant acknowledges that he made more than $40,000 in each of 1994 and 1995 (in fact, almost 50,000 in 94), but he says that much of this money went to pay off back child support that he was unable to pay during layoff. Those payments, combined with the unpaid bills from his daughter, kept him from buying a reliable car, though he did buy several automobiles. This lack of transportation, the union says, explains why most of grievant's incidents were tardies. Unlike many employees with attendance problems, grievant usually came to work. But because he did not have -- and could not afford -- a reliable car, he was often late.

The union also points out that grievant is a long service employee and that he did not encounter any significant problems until late 1993. Thus, unlike some other employees, grievant did not have chronic attendance problems over the years. This lends credence, the union says, to his claims that his difficulty with getting to work on time was caused by the financial problems created for him by his daughter and the layoffs. Also, the union reminds me, there is no claim here about the quality of grievant's work and there was no record of other disciplinary problems. This was, the union says, merely the case of an employee who hit a bad stretch because of problems that he did not cause. Finally, the union says that at the time of his final discharge in December, grievant had only one week to go before he could have retired, which is what grievant says he will do if he wins this case.

Discussion

Although I appreciate Mr. Jacques' position, it is stretching the matter to attribute all of grievant's problems to matters beyond his control. Grievant struck me as a credible witness and there is no reason to disbelieve his testimony about his daughter or about the financial hardship caused by the layoffs and child support obligations. Nevertheless, though his daughter and his former wife may have made life harder for him, grievant is the one who was responsible for reporting to work on time, and his daughter's conduct did not excuse him from doing so. I also note that grievant made a respectable amount of money in both of his final two years and I have some difficulty understanding why he could not finance a reliable used car out of those earnings.

Even so, there are some aspects to this case that are missing in most attendance cases involving long service employees and those different facts help rather than hurt this grievant. In most such cases, employees claim that their problems have been caused by drug or alcohol abuse, leaving the arbitrator with the problem of determining whether the claim is true, whether the problem is under control, and whether the employee deserves another chance. Although grievant says he had a problem with alcohol at some point in his past, he denied that any of current problems were caused by alcohol, and I believed him. But even the absence of alcohol as a defense does not make this case easy.

Grievant offered no testimony that he attempted to have his child support payments reduced when his income fell because of the layoffs. If his obligations were set by his anticipated income, it seems likely that a court would have taken any reduction into account. Similarly, a court would undoubtedly have understood grievant's need to retain enough money to buy a decent used car so he could get to work. Even more troubling is grievant's decision to live more than 20 miles from work when he knew he did not have reliable transportation. I could understand that decision if grievant owned a home that he could not sell. But he rented a house and, even if he had a lease, it seems likely that he could have moved closer to the mill sometime between 1993 and 1995. Other employees with transportation problems have represented to me that they have moved close enough to the mill to walk to work. Frankly, I can understand someone's reluctance to live in the immediate vicinity of the Harbor Works. But it's better than getting fired.

On the plus side, however, is the fact that grievant was seldom absent, which lends some credence to his story that he wanted to work but merely had trouble getting there. Also notable is the fact that grievant regularly hitchhiked to work, which he said required him to leave home at 4 a.m. As I have already indicated, this practice -- as well as certain other facts already mentioned -- causes some question about grievant's judgment, but it also shows that he was serious about working.

The company does not necessarily deny this. Nor did it question grievant's performance as an employee. It merely says that it cannot take him back because it cannot count on him to get to work on time. For his part, grievant says that won't be a problem. Usually, employees tell me that they have learned their lesson and they vow to work when scheduled in the future. Grievant makes no such claim. He merely says that he

plans to retire, an option available to him because his department has shut down. Indeed, the union says that grievant could have retired had he been able to work another week. I also note that the relief sought by the union at the third step was that grievant be able to take a voluntary layoff until he could retire.

I respect the company's concern about whether grievant would retire, or whether he has simply used that as an argument to get back in the door and then resume his pattern of reporting for work late. I also understand that, at the hearing, the union asked for reinstatement. It may also question whether I have the authority to require grievant to retire.

I need not address that issue. I have the equitable authority to mold remedies to the facts presented to me. Based on grievant's past performance and his failure to convince me that he would improve if he actually returned to work, I will not order that he be reinstated as a working employee. Nevertheless, I was impressed enough by the efforts grievant made to get to work to believe that he deserves some relief from the company's discharge decision, which will reduce the amount of the pension he earned over the previous twenty years. And, of course, grievant's length of service and overall work record count for something here too. In short, while I think the company had cause to impose significant discipline against grievant, and while I agree that grievant has not proved that he can be counted on to work regularly in the future, I also think that there are some mitigating factors that should ameliorate the harshness of the discharge.

In accordance with the union's position at the third step hearing, I will order the company to reinstate grievant on a voluntary layoff until, but only until, the retirement he sought as a result of his department closing was available to him. I cannot force grievant to retire. However, should he elect not to pursue that option, then I will not order that he be reinstated at the conclusion of his layoff period. Nor will I order that he receive any back pay. The extent of the remedy to be afforded grievant is reinstatement on voluntary layoff (or whatever other administrative device is appropriate) to allow him to retire as a result of the closure of his department.

AWARD

The grievance is sustained in part. The company will take the action specified in the last paragraph of the opinion.

/s/ Terry A. Bethel

Terry A. Bethel

April 8, 1996

<FN 1>For example, grievant once told the company he was tardy because his car broke down and the state police towed it. Although it appears that the police did tow his car, they did not do so until several days after grievant offered the excuse. On another occasion, grievant promised he would buy a car with his next paycheck, a promise that he did not keep in a timely manner.