

Award No. 917  
IN THE MATTER OF THE ARBITRATION BETWEEN  
INLAND STEEL COMPANY  
and  
UNITED STEELWORKERS OF AMERICA  
LOCAL UNION 1010

Arbitrator: Terry A. Bethel  
May 9, 1996

OPINION AND AWARD

Introduction

This case concerns the discharge of grievant Abraham Garcia for possession of a switchblade knife on company property. The case was tried in the company's offices on April 9, 1996. Tim Kinach represented the company and Mike Mezo presented the case for grievant and the union. Grievant was present throughout the hearing and testified in his own behalf. The parties filed pre-hearing briefs and submitted the case on final argument.

Appearances

For the company:

T. Kinach -- Union Relations  
R. Nanney -- Police Chief, Plt. Prot.  
H. Harth -- Guardsmark  
V. Soto -- HRG, MHS Dept. (Retired)  
A. Kocal -- Gen. Foreman, MHS Dept.  
E. Montelone -- Supervisor, MHS  
J. Nittner -- Cust. Serv. Rep., MHS  
J. Saltanovitz -- Sen. Eng. MMD  
R. Palacios -- Supervisor, MHS  
S. Kovesci -- Planner, MHS  
P. Parker -- Arb. Coord. Union Rel.  
M. Stok -- Section Mgr., MMD

For the union:

M. Mezo -- President Local 1010  
A. Jacque -- Chrm. Grievance Comm.  
L. Aguilar -- Vice Chrm., Grievance Com.  
A. Garcia -- Grievant  
G. Spudic -- Witness  
R. Maldonado -- Witness  
U. Anguiano -- Witness  
R. Rios -- Witness  
L. Garcia -- Witness  
J. Strauch -- Witness  
J. Gonzalez -- Ass't. Griever  
F. Gonzalez -- Witness  
D. Guardiola -- Witness  
S. Norman -- Griever  
A. Nicolai -- Witness  
T. Hargrove -- V.P. Local 1010  
J. Robinson -- USWA Staff  
J. Gutierrez

Background

Many of the facts are not disputed, though the parties disagree vigorously about the prevalence of switchblades at the Harbor Works. On September 25, 1995, the company was cutting locks off unassigned or unclaimed lockers when it discovered a switchblade knife in a locker that it ultimately learned was used by grievant. When confronted with the knife, grievant admitted that it was his. Following an investigation, grievant was suspended preliminary to discharge and was subsequently discharged on October 6, 1995. In its action, the company cited Rule 132f, which reads as follows:

The following offenses are among those which may be cause for discipline, up to and including suspension preliminary to discharge:

f. unauthorized use of, possession of, or storing of weapons or explosives on company property.

In addition, the company points to a posting, a version of which it says was commonplace throughout the Harbor Works. That document, Company Exhibit 6, cites rule 132f and says that it bans:

1. All guns (including starter pistols, replicas and pellet guns)
2. Bows and Arrows
3. Knives with a blade exceeding 3 inches except a knife commonly used as a work tool and approved for such use by management
4. Ammunition
5. Gunpowder
6. Firecrackers

The company points out that, though not mentioned expressly, an illegal switchblade is among the type of weapon prohibited by this posting. The company acknowledges that some employees carry pocketknives at work and that some of them use such implements in the course of their duties. However, the knife in question here had a three and one-half inch blade (expressly prohibited by the posting) and could not lawfully be purchased or carried. The company asserts that it has an obligation to provide a safe working environment and it cites other cases which recognize its power to discharge employees for violating rule 132f. The company called witnesses to rebut the union's contention that switchblade knives were commonplace at Inland, each of whom said he had never seen an employee with such a knife.

The union mounts at least two theories. First, the union says that even though a knife can be used as a weapon, the knife in question here was not. Rather, the knife was used as a tool and, as such, grievant did not violate the rule. The union also asserts that grievant was not properly advised of the rule at issue and that, even if he had been, the company did not enforce the rule. Thus, the union tendered witnesses who said it was common for employees to use knives with blades longer than three inches. It also called witnesses who said that they and other employees used switchblades and that they did so in plain view of supervisors, none of whom had ever said anything about it. Under either theory, the union asserts that the company did not have cause to discharge grievant and it asks that he be reinstated with back pay.

Although Mr. Kinach obviously disagrees that grievant should be reinstated, he asserted in his opening statement that the company's case is either right or wrong. Thus, he said that either the discharge must be upheld or grievant should be reinstated with full back pay and benefits.

#### Discussion

I agree with the union's contention that this case differs from the typical gun case, in which arbitrators (including me -- see Inland Award 860) have taken a strict view of employee possession of guns on company property. There is no justification for possession of a gun on company property. The same thing is not necessarily true of a knife, since the evidence showed that employees sometimes use them to perform their duties. Of course, the complicating factor here is that the knife was a switchblade and that it had a three and one-half inch blade.

This would be an easy case if grievant were charged with threatening another employee with the knife in question. It would also make things simpler if grievant were known as a threatening or menacing or even a contentious individual, who one might reasonably expect to use such a knife. But none of those things is true. Grievant has amassed a good work record in his more than twenty years with the company and there is no reason to believe that he ever used the knife against another employee, or that he brought it onto company property with that intention. Rather, I believed the assertion that grievant used the knife in his work and also at the lunch table, apparently a communal event that is attended by numerous employees and, on occasion, by supervisors.

I have considered the testimony of the many witnesses called by each side. There is no reason to record all of that testimony here. In brief, the union called numerous witnesses who said that blades longer than three inches were common and that several -- perhaps many -- employees used switchblades.

They also asserted that such knives were used around management officials, none of whom ever said anything about them. On cross examination, most union witnesses could not say that they had ever seen an employee actually open the knife (release the blade) in management's presence. However, employees had done so in the presence of Adeo Nicolai, who employees mistakenly believed to be a supervisor. For their part, company witnesses acknowledged that employees commonly use knives as a tool (though some questioned their need in grievant's work area), but denied that they had ever seen an employee with a

switchblade. At least one company witness -- Supervisor Ed Montelone -- said that he had seen employees with long blades, but had not mentioned the three inch rule to them.<FN 1>

I have some doubt here about whether the company adequately publicized its rule regarding blades in excess of three inches. No union witness had seen Company Exhibit 6 in grievant's work area and even two company witnesses said they were not familiar with the rule (Montelone and Roberto Palacios). Also, Jim Saltanovitz testified that he could not say the rule had been posted in grievant's work area. There was also testimony from company witnesses -- most convincingly from Mike Stok -- that they could not remember covering the knife rule in safety meetings. Even if the rule had been posted, grievant and others in his department either do not read English, or read it poorly. Obviously the company would have known this. Thus, it was incumbent on the company to take appropriate steps to inform employees of the rule. There was no convincing evidence that the company had done so here.

Of course, whatever the company may have said about long blades, one might question whether it was necessary to say anything about switchblades, since such knives are not legal. I have some sympathy for this position. Nevertheless, grievant and others testified that numerous employees had them and it is possible that grievant's inability to read or speak English with any real proficiency affected his knowledge of the law. In any event, he testified that he did not know switchblades were illegal.

Despite the union's testimony, I do have some question about how commonplace switchblades really were. I can believe that employees used them and I did believe that Nicolai saw them and said nothing (though I think he may have exaggerated how often he encountered them).<FN 2> It is probably the case that other supervisors saw the knives, too, although they may have already been opened at the time. In particular, the lunch table seemed to be the most common areas for the knives, and the testimony was that the knives were left open and on the table. But even if no supervisor actually saw an employee open a switchblade, I found unconvincing company testimony that knives could not be recognized as switchblades. Even when open, switchblade knives have a distinctive shape and are obviously not ordinary pocket knives. If supervisors were serious about enforcing rules regarding knives, the presence of an open switchblade knife on the table should have prompted an investigation of some sort.

It seems likely that no one questioned the knives simply because they had not been a problem and there was no reason for concern. I think one supervisor's comment was particularly revealing about how seriously management saw this problem. Although Montelone denied that he had ever seen a switchblade, he said that if he had, he would have told the employee to put it away and not bring it back to the work place again. Obviously, this reaction is not consistent with the company's actions in this case. Moreover, it seems reasonable to believe that such an attitude could be prompted only in a work place where the use of knives was relatively common and where management had not perceived them as a threat.

In sum, I think the company has not demonstrated that it adequately publicized its rule about long blades or about switchblades. Even if it had, the evidence demonstrated that the company did not enforce its rules vigorously or uniformly. In fact, there was no evidence of any other discipline for an employee in this bargaining unit for possession of a knife, despite testimony about how common they are. This does not mean that the company has no interest in eliminating switchblades from the work place or that it cannot ban knives with long blades. Under the circumstances of this case, however, it was not appropriate to enforce this rule against grievant by discharging him.

#### AWARD

The grievance is sustained. The company is ordered to reinstate grievant and to make him whole for lost wages and benefits.

/s/ Terry A. Bethel

Terry A. Bethel

May 9, 1996

<FN 1>The company's rule does say that blades longer than three inches can be used with management approval. But no one was able to testify about a process for seeking approval. Thus, the union claims that knives were effectively approved by management silence in the face of knowledge of the knives.

<FN 2>I agree with the union's contention that Nicolai's lack of supervisory status is not determinative. The employees testified convincingly that they thought he was a supervisor and, given his duties, that impression was not unreasonable.