Award No. 922
J. Williams Grievance
IN THE MATTER OF THE ARBITRATION BETWEEN
INLAND STEEL COMPANY
and
USWA LOCAL UNION 1010
Arbitrator: Terry A. Bethel
November 11, 1996
OPINION AND AWARD
Introduction
This case concerns the termination of grievant Jerry Williams from the company's recall rolls. The case was tried in the company's offices on October 22, 1996. Pat Parker represented the company and Alexander Jacque presented the case for grievant and the union. Grievant was present throughout the hearing and testified in his own behalf. The parties submitted the case on final argument.
Appearances
For the company:
P. Parker -- Arbitration Coordinator
K. Koch -- Project Analyst, HRIM, CPT
For the union:
A. Jacque -- Chrm., Grievance Committee
D. Shattuck -- Secy., Grievance Committee
J. Williams -- Grievant
Background
Many of the relevant facts are not in dispute. Grievant began work for Inland in 1981 and worked until his layoff in October of 1986. Apparently he has not worked for the company since that time, though he was still in good standing as a laid off employee at the time of his discharge and he possessed certain recall rights that are not at issue in this case. His discharge resulted from the operation of the following provision of the contract:
Once per calendar year, the company will send via certified mail a letter to each laid off employee who has been continuously laid off for lack of work for two years or more a request to notify the company in writing of his/her intent to remain on the company's recall rolls. Such response by the employee must be made within thirty (30) calendar days of delivery or attempted delivery of the company's letter and must be returned via certified letter to the company by the employee. Failure of the employee to respond as set forth above shall result in termination from the company's rolls.
This provision was included in the 1993 collective bargaining agreement and, apparently, is similar to another provision that had been in the contract prior to 1986. It was not in the agreement when grievant was laid off or for several years thereafter. However, grievant acknowledged that he received such a letter in 1993 (to which he responded in a timely fashion) and he did not claim at the hearing that he was unaware of the notification requirement.
The company's practice is to send notices each August and the parties agree that it sent the required certified letter to grievant on August 11, 1994. They also agree that the company sent the notice to the last address it had on file for grievant, which was 4232 Tennessee Street, Gary, Indiana. In fact, grievant admitted that he was in the personnel office the day before the company sent his notice -- August 10, 1994 -- to change his telephone number on company records. However, he did not change his address even though he no longer resided at the Tennessee Street address.
Grievant testified that he had marital problems and that he moved out of the home he shared with his wife on Tennessee Street in June of 1994. At that time he went to stay with a relative at an address on 35th Avenue in Gary. Grievant said that he did not inform the company of this move because he did not consider it a permanent change of residence. However, he did file a change of address form with the post office, which thereafter forwarded his mail to the 35th Avenue address. In fact, records introduced at the hearing made it clear that the company's August 11 letter notifying grievant of his obligation to request retention on the recall rolls was addressed to the Tennessee Street address but was forwarded by the post office to the 35th Avenue address.
It is not clear to me where grievant was living in August of 1994, except that he apparently was not living at either the Tennessee Street address or the 35th Avenue address. This is, obviously, consistent with grievant's claim that he was in a period of transition and that he didn't know where his permanent residence

would be. Perhaps for that reason, grievant rented a post office box at the Glen Park Station in Gary on June 6, 1994. He also claims that he filed a change of address form with the post office and asked it to forward his mail to the post office box. The problem in this case, the union says, is that the post office did not forward the August 11 letter to the post office box, although grievant claims that it did forward his other mail there. As a result, grievant did not get the letter and, therefore, was not able to return to the company the required request to stay on the recall rolls.

Interestingly enough, the union does not claim that the company violated the contract. Rather, it concedes that the contract only requires that the company attempt delivery (which it did) and it acknowledges here that grievant did not return his notification to the company within the required time period. But, the union says, the fault was not grievant's; rather, the post office failed in its obligation to forward his mail to his post office box, a matter over which grievant had no control. Thus, the union argues, the grievant should not be penalized for someone else's error. And, the union points out, the remedy it seeks would not prejudice the company in the least. Grievant was laid off at the time of his discharge and if he had not been discharged, he would still be laid off. In fact, if grievant is reinstated to his position on layoff, there would still be several hundred employees ahead of grievant on the recall list.

Discussion

If the matter were solely one of my discretion, I might be inclined to reinstate grievant to his position on layoff. There was no testimony that grievant's work was in any way deficient (though, to be fair, he has not worked in over ten years, so it might have been difficult for the company to produce any such evidence.) It is also true that grievant may not have been entirely at fault for his failure to receive the August 11 letter and, in any event, as the union says, there is no financial liability involved. This is not a case, however, in which the parties agreed to trust to my discretion about who should be on the recall list. Rather, they negotiated a specific contract provision about it and that provision is stated in mandatory -- not discretionary -- terms.

The contract says unambiguously that the company is to attempt delivery of the notice to laid off employees, something the union agrees it did here. And there is no question that grievant did not return the response within the required time period. The consequences of that failure are not ambiguous. The contract clearly says that in that event, the employee "shall" be removed from the recall rolls. Unlike a previous case in which the parties also used the word "shall," there is nothing here to qualify or confuse the meaning of this explicit language. In addition, there are other arbitration decisions which say that contract language providing that employees "shall" be discharged upon the happening of certain events deprive the arbitrator of discretion.

What the union really says, however, is that I should use my equitable power to reinstate grievant to his former position because, while grievant did not comply with contractual requirements, his failure to do so was neither his fault nor the company's. Instead, the post office made an error that was without consequence to it, but which had disastrous consequences to the grievant. If this defense is to be accepted, however, I must be sure that the equities clearly favor the grievant. Unfortunately for him, I have some doubt about that.

Grievant's explanation about how he forwarded his mail, frankly, does not make sense. He testified that he moved out of his house in June, 1994 and that he then filled out a change of address form to have his mail forwarded to the 35th Avenue address. I have no doubt that the post office did have such a forwarding order since it forwarded the company's August 11 letter to 35th Avenue. But grievant also says that he forwarded his mail to his post office box. However, he tendered evidence that he obtained a post office box on June 6, 1994. If that was the case, and if he gave the post office a forwarding order for the post office box, then why did he also give them one for the 35th Avenue address? I could understand successive forwarding orders if there was some time lag between the time grievant moved out of the house and the time he decided to get a post office box. But he got the box on June 6 and if he moved out of his house in June, then he obviously got the box shortly after his move, if not before. In short, it does not make sense to think that grievant gave the post office two different forwarding orders in such a short span of time.

Grievant's actions with respect to the company are even more curious. He claims that he got a post office box in June, 1994 in order to have his mail forwarded to one place, since he did not have a permanent residence. So why didn't he inform the company of that fact when he went to the personnel office on August 10? He went there specifically to change his telephone number. Why not also change his address? It makes no sense to say that he got a post office box to facilitate mail delivery and then not notify one of his most important correspondents of that fact.

I realize that there are conflicting hearsay claims about what a postal representative said. Mr. Jacque testified credibly that a man named David Grant (a postal employee) told both him and grievant that the post office had made a mistake, a fact he refused to confirm in writing to the union. He did respond to a company request (made with grievant's permission), but he told the company that there had been no mistake. Rather, he said that grievant's forwarding order to his post office box had expired. I have no reason to question Mr. Jacque's testimony or grievant's account of the same conversation. But I have no basis for evaluating Grant at all, since neither side subpoenaed him to testify at the hearing. It is possible, of course, that both accounts are correct. That is, he may have believed that the post office made an error when he talked to Jacque but discovered the order had expired when the company asked him to investigate further. It is difficult for me to find, then, that the post office made an error, which is the main thrust of the union's case. But there would have been no possibility of such an error if grievant had merely notified the company of his post office box number. And, since he says he got the post office box to insure mail delivery at a time when he had no permanent residence, his failure to tell the company of that fact is, to say the least, curious. This is an unfortunate result for someone who had maintained his recall rights since 1986. Were the question simply one of fairness, I might be inclined to favor grievant's claim. But the contract provision at issue is unambiguous and deprives me of such discretion. With so many employees on layoff, it is understandable that the parties decided that laid off workers would be held to a strict standard to preserve their rights. Unfortunately, grievant failed to comply with those standards in this case.

AWARD

The grievance is denied.

/s/ Terry A. Bethel

Terry A. Bethel

November 11, 1996