

Award No. 924
IN THE MATTER OF THE ARBITRATION BETWEEN
INLAND STEEL COMPANY

and

UNITED STEELWORKERS OF AMERICA

Arbitrator: Terry A. Bethel

January 14, 1997

LOCAL UNION 1010

OPINION AND AWARD

Introduction

This case concerns the discharge of grievant Isaiah Coleman. The case was tried in the company's offices on December 16, 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 -- Arb. Coord., Union Rel.

K. Galvin -- Sec. Mgr., No. 2 BOF

R. Walker -- Day Super., No. 2 BOF

K. Honcek -- Caster Coord., No. 2 BOF

W. Boos -- Sen. Rep., Union Rel.

For the union:

A. Jacque -- Chrm., Grievance Comm.

L. Aguilar -- Vice Chrm., Griev. Comm.

M. Bochenek -- Griever

E. Harvey -- Asst. Griever

I. Coleman -- grievant

C. Standefer -- Witness

D. Jones

Background

On Friday, August 30, 1996, Caster Coordinator Kevin Honcek was on his way to a meeting and was crossing the cat-walk through the lean-to building. He testified that he observed a man carrying two 25 pound bags of copper alloy walk down the ramp and head down the stairs that would take him outside. Honcek said he was suspicious because the copper alloy is used only in the furnace area and there was no reason for anyone to take it from the building. In addition, there was no reason for anyone to be in that part of the building. The ramp is not supposed to be used for foot traffic and usually only electricians have reason to be in the area, which is used to store motors. Honcek said the man he saw was black, was dressed in blue work clothes, and was wearing a gray RHOB or World War I style hard hat. The man apparently did not see Honcek.

Honcek said he walked swiftly downstairs and went outside. He observed the man he had seen upstairs as he entered a white Ford Explorer. Honcek said he told the man to stop and approached the vehicle. The man turned out to be grievant who, Honcek said, was still wearing the distinctive hard hat he had seen upstairs moments before. Honcek approached the vehicle and asked grievant about the two brown bags. Grievant responded, "I ain't got no two brown bags." At that point, Honcek said he did not know what to do. He hesitated and, while he did so, grievant pulled out of his parking space and left, heading in the direction of the hopper house.

Honcek went upstairs and reported the incident to supervisor Robert Walker. Honcek described the man he had seen (including the hard hat and the white Explorer) and Walker identified him as grievant. Walker knew that grievant would be headed for the hopper house for lunch so he called there. Cliff Standefer, grievant's coworker, answered the telephone. Walker asked Standefer what grievant did with the two brown bags. Standefer replied that he didn't know but that he would ask grievant when he came inside.<FN 1> When grievant entered the hopper house he denied having two brown bags. Standefer relayed this information to Walker and then gave the telephone to grievant. Grievant told Walker that he did not have any bags.

Walker and Honcek then walked to the hopper house. As they approached it, they noticed that grievant was outside waiting for them. He had opened all of his car doors and he said to Walker, "Ain't got no bags,

Bob." Walker said he advised grievant of the consequences of theft of company property. He said he glanced in grievant's car, but did not search it. Walker and Honcek then left. They returned to the BOF and attended the end of the meeting. After the meeting, they reported their concerns about grievant to section manager Kim Galvan. Galvan was immediately concerned and opined that the bags would have to be someplace in the area of the hopper house. Thus, she and Walker went to the hopper house to search for them.<FN 2>

Walker said that when he got back to the hopper house, grievant was still there. Galvan told Walker to send grievant back to work, so grievant departed. Walker then busied himself with a crew of laborers who he had assigned to a job in the area, and also by spotting a truck. In the meantime, Galvan began searching the area. Ultimately, she found two brown bags of copper ally hidden under a pallet at the rear of the hopper house.

Both Walker and Galvan testified without rebuttal that the bags looked new and were in good shape. They did not appear to have been outside long enough to weather. Nor were they wet, despite the fact that it had rained the previous day. Walker and Honcek testified that the bags of copper alloy are not used in or stored in the hopper house. Thus, there was no reason for them to be there.

The company theorizes that grievant decided to steal the bags and that by the time Honcek got outside the lean-to building, he had already secreted them in an area of his car where they could not be seen. After Honcek confronted grievant in the parking lot, grievant realized that he would have to get rid of the bags. He could not drop them off on the way to the hopper house, the company argues, because there was a crane operator in the area who could have seen him. Thus, he took them to the hopper house and hid them under the pallet. The company points out that the area where the bags were hidden is remote from foot traffic. Moreover, given where grievant parked his car, it would have been easy for him to walk behind the hopper house without being seen by Standefer, since there are no windows on that side of the building.

Grievant acknowledged that he exited the lean-to building by walking down the ramp and using the stairs. He also agreed that he had on an RHOB style hard hat (though he said it was blue, not gray) and blue work clothes. However, he denied carrying any bags, other than his lunch bag. He said he went to the hopper house for lunch that day as he does everyday. He acknowledged that Honcek stopped him as he was leaving and asked about bags. Grievant said he denied having them and waited a brief time, but Honcek said nothing, so he left to go to lunch. Grievant also said that he could not have carried the bags to his car because of a back injury that limits his ability to lift.

The union argues that this case depends on the company's ability to prove that grievant took the bags of copper and hid them behind the building. It denies that he carried any bags from the lead-to building and, though it acknowledges that Galvan found two bags behind the hopper house, it says the company cannot prove that grievant put them there. It is not enough, the union argues, that two bags were found in proximity to grievant. Rather, the company has the burden of establishing that grievant took the bags with the intent to steal them and that he hid them after his encounter with Honcek.

Discussion

At the outset, I find that grievant was the man Honcek observed leaving the lean-to building by walking down the ramp to the stairs. Honcek, in fact, identified him to Walker when they went to the hopper house. It is true that Honcek did not know grievant's name. Nevertheless, the testimony established that very few employees wear blue work clothes and that even fewer wear RHOB style hard hats. Grievant wore both. It is true that Honcek described the hat as gray and that the hat brought to the hearing (and worn by grievant on the day in question) was blue. However, it was a pale shade of blue and, especially from a distance, could easily have been seen as gray. And, of course, grievant acknowledges that he left the building using the route observed by Honcek. Given the scarcity of employees wearing RHOB hard hats and blue work clothes, it is not possible to believe that two different employees wearing identical gear exited the building using the same route at almost exactly the same time.

The important question, then, is not whether Honcek saw grievant exiting the lean-to building, but whether Honcek saw him carrying two brown bags of copper alloy. Here, the testimony is in sharp conflict. There were only two witnesses -- Honcek and grievant -- and each tells a different story. Though resolution of such conflicting testimony is often difficult, I have little difficulty crediting Honcek's version in this case.<FN 3>

It is hard to imagine why Honcek would make up the story. He did not know grievant personally so it seems unlikely that he had any interest in framing him. Moreover, it is hard to understand why Honcek would follow grievant from the building and confront him if he had merely seen him leaving empty-handed. More persuasive is grievant's own testimony. At the hearing, he said that he was simply carrying

his brown lunch bag. However, he had not mentioned this at either the investigation or at the third step hearing, which suggests that this testimony wasn't true.<FN 4> In addition, it makes no sense to think that grievant took his lunch upstairs anyway. He testified that he always eats at the hopper house and that the atmosphere in his work area on the fifth floor makes it hard to breathe, much less eat. So why would he bother to carry his lunch upstairs only to carry it back down again later? I think grievant's testimony about the lunch bag was merely an after-the-fact fabrication intended to explain why Honcek thought he saw him carrying brown bags. I am also not persuaded by grievant's testimony that he would have been physically unable to lift the bags of copper. Grievant's work restrictions do not prevent him from lifting 50 pounds. They merely say that he could not do so on a frequent basis.

The finding that grievant took the bags from the building is important. I agree with the union's claim that the company would not have just cause to discharge grievant if it merely found the bags of copper at or near the hopper house. That might give the company cause to suspect grievant, but mere suspicion is not enough. Those, however, are not the facts here. This is not, as the union portrays it, a case of merely circumstantial evidence. The important fact is that Honcek saw grievant carrying two bags of copper away from the only area where they could possibly be used. What did grievant do with those bags? He did not have time to return them. He could not have used them between the stairs in the lean-to building and the hopper house. They were not in grievant's car. They had to be somewhere.

The inference is overwhelming that grievant hid the bags behind the hopper house where Galvan found them. He could easily have done so without detection by Standefer or anyone else.<FN 5> Of course, there is no absolute proof that the bags found behind the hopper house were the same ones grievant removed. But, again, the inference that they were is very strong. The bags were new and they had not been affected by the previous day's rain. Obviously they had been there only a short time. I can think of no other plausible explanation for how the bags got there and grievant was able to offer none. The lack of any other feasible answer to the question of how the bags got there, coupled with Honcek's credible testimony that he saw grievant with identical bags, and the fact that grievant left Honcek and went to the hopper house where the bags were found, points very strongly toward grievant as the person who hid them.

There are other factors that cause me to doubt grievant's credibility. Grievant failed to tell the truth about the reason for his sick leave in the spring of 1995. He said that it was due only to back problems, though the company's records indicate that he was hospitalized for cocaine dependence. In addition, after having testified that his car had an area where the bags could have been hidden, grievant later changed his story and said that he had taken that device out of his car, testimony that I thought was clearly false. If grievant's story about the incident had been true, there would have been no reason for him to lie about these details. In Inland Award 856, I ruled that it was not necessary for the company to actually catch someone in the act of removing company property from the premises in order to invoke rule 132-1. The key factors are whether it is fair to infer that grievant had the intent to steal the copper and whether he would have gone through with his plan, but for the intervention of Honcek. I think the answer to both questions is yes. There is no work-related reason why grievant would have removed the copper from the lean-to building. And, but for Honcek, grievant would have left the bags hidden in his car. He removed them and hid them from his supervisors only because Honcek approached him in the parking lot. If he had them for innocent reasons, there is no reason why he would have to hide them. Thus, the inference is inescapable that grievant intended to steal the copper.

I recognize that grievant is a long service employee and that discharge is the harshest industrial penalty. However, there are no mitigating circumstances. This was not an item of incidental value and it was not something that grievant could have done on impulse, without prior planning. Rather, the facts indicate that grievant chose his route out of the building -- and probably the parking place for his car -- with some care. He used a route that would make it likely he could escape detection and, but for the fortuity of Honcek's presence, he would have. Although the copper was not expensive, its value was not merely nominal. Despite his years of service, the company has the right to discharge an employee who plans and tries to execute a scheme to steal company property. Thus, I must deny this grievance.

AWARD

The grievance is denied.

/s/ Terry A. Bethel

Terry A. Bethel

January 14, 1997

<FN 1>There was some conflict in the testimony here. Grievant testified that he was already in the hopper house and that he had been there for some time when Walker called. However, Standefer -- who was grievant's witness -- said that grievant was not there yet when he got the telephone call.

<FN 2>In his opening statement, Mr. Jacque said that Galvan did not get to the hopper house until about two hours after grievant's confrontation with Honcek. The facts do not support this account. Indeed, it makes no sense to think that grievant would have still been at the hopper house on his lunch period had that much time passed. Based on the testimony, I find that Galvan got to the hopper house less than an hour after grievant left the lean-to building.

<FN 3>Of course, it would have been better if Honcek had searched grievant's car without letting him leave for the hopper house. Honcek was an inexperienced supervisor and testified honestly that he did not know what to do. That inexperience, however, has no impact on what Honcek saw.

<FN 4>When questioned about this, grievant said that no one had asked him about it before. That may be true. However, grievant surely understood that the investigation concerned serious charges and, even if he did not, he had to understand their gravity by the third step hearing, after he had already been fired. One would expect that he would have used those opportunities to explain how Honcek might have been mistaken in what he saw.

<FN 5>I credit the company's evidence that the labor gang and the truck driver were not at the hopper house when grievant first got there. The labor gang was at lunch and the truck driver did not arrive until later.