Award No. 926
IN THE MATTER OF THE ARBITRATION BETWEEN
INLAND STEEL COMPANY
and
UNITED STEELWORKERS OF AMERICA
LOCAL UNION 1010
Arbitrator: Terry A. Bethel
March 13, 1997
OPINION AND AWARD
Introduction
This case concerns the discharge of grievant Michael Rodgers for violation of Rule 132b. The case was tried at the company's facility in East Chicago, Indiana on February 10, 1997. Pat Parker 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 submitted the case on final argument.
Appearances
For the company:
P. Parker -- Arb. Coord., Union Rel.
D. Cox -- Section Mgr., Raw Materials
T. Kinach -- Section Mgr., Union Rel.
K. Allen -- Paramedic, Med. Dept.
W. Boos -- Senior Rep., Union Rel.
J. Bean -- Senior Rep., Medical Dept.
D. DeMichael -- Director, Medical Dept.
D. Madsen -- PhD, Psychologist
M. Teolis -- DO, Addictionist
For the union:
M. Mezo -- President, Local 1010
J. Robinson -- USWA Sub District Director
A. Jacque -- Chrm., Grievance Committee
L. Aguilar -- Vice Chrm., Grievance Comm.
D. Shattuck -- Secy., Grievance Committee
P. Wolski -- Grievance Committeeman
F. Deel -- Steward
M. Rodgers -- Grievant
T. McDonald -- M.D
B. Carey -- USWA Staff Representative
M. Misiukiewicz -- Griever
Background
Rule 132B provides that an employee can be suspended preliminary to discharge for "reporting for work under the influence of drugs not prescribed by a licensed physician. . . ." The events that caused the company to invoke this rule against grievant began on the morning of Friday, September 27, 1996. Grievant is an ore bridge operator who had been off work since December of 1995 because of a back injury. His first day back was Monday September 23, 1996 when, the company says, he was found to be asleep in the cab of the ore bridge, something that grievant attributes to his use of prescription pain medication, a matter that is not at issue in this hearing. Grievant reported off work the next two days (Tuesday and Wednesday) and was scheduled off on Thursday. He was scheduled to report at 11:00 p.m. on Friday. On Wednesday, Section Manager Cox called grievant and asked him to come in early Friday morning for a disciplinary meeting concerning the sleeping incident. Grievant agreed.
Cox said that he was concerned about grievant's demeanor during the meeting. He said that grievant is usually loud and "easily agitated," but that during the meeting he was "complacent and melancholy." Cox also noted that grievant's eyes were red, that he kept wiping his nose, that he wasn't sitting up straight, and that his speech was slurred. Near the conclusion of the meeting, Cox asked grievant if he had a problem with drugs or alcohol and grievant said he did not. Cox said he then asked grievant what was wrong with him and if he had a cold. He said grievant "smiled and giggled" (he later described grievant's response as a "snicker") and said that, yes, he had a cold. At that point, Cox decided grievant's behavior was so unusual

that he would send him for a fitness to work evaluation. As Cox said on cross examination, the snickering and the fact that grievant "didn't look right" made him "put it all together."

It is not entirely clear from the record what time this exchange occurred. Cox said the meeting started around 7 a.m. and grievant testified that he arrived at 7 a.m. However, the third step minutes say the meeting began at 8 a.m., and on cross examination, Cox said he could be mistaken about the starting time of the meeting. This discrepancy could be a matter of some importance because there are significant differences between the observations reported by Cox and those indicated on the fitness to work examination. The closer in time the two occurred, the harder it is to understand the discrepancies. In any event, it is clear that the medical department did not administer a fitness to work examination when Cox first sent grievant to the clinic, apparently because grievant told them he wasn't working. Grievant returned to the department, talked to Cox, and Cox then called the medical department and arranged for the exam.<FN 1>

Grievant submitted to the fitness for work examination at around 10:15 a.m., administered by paramedic Keith Allen, who was present at the hearing, but did not testify. However, the patient assessment form filled out by Allen was introduced into evidence. Allen's assessment notes that grievant's eyes and nose were clear, and that his pupils were equal and responsive, though his eyes were "slightly red." He did not notice the odor of alcohol. Grievant performed the heel-to-toe coordination test "well" and with "no unsteadiness." Unlike Cox, Allen's report found "no slurring [and] no abnormal speech." He also said that grievant "cooperates well." However, he also said that grievant was "visibly nervous and seems upset," that he constantly yawned, had a constantly runny nose, that he constantly moved his feet and wiped his eyes. Apparently based on this examination, as well as Cox's concern, Allen had grievant submit to a drug screen, the results of which, obviously, were not available that day.

Based on the observations reported above, Allen concluded that grievant had failed the evaluation and was unfit to work the balance of the turn. In addition, he deemed grievant unfit to drive. Frankly, it is not clear to me, and it could not be clear to any objective observer, how Allen reached these conclusions. It is true that grievant subsequently tested positive for cocaine metabolites, but that fact was not known to Allen at the time and, in any event, the mere presence of the metabolites would not indicate that grievant was impaired. Allen found that grievant's orientation was normal, that his perception was good, that his memory and judgment appeared normal, that his thought flow was within normal limits and that his thought content appeared normal. In addition, he found no problems with grievant's coordination. Essentially, all he found is that grievant appeared nervous, yawned, and had a runny nose. These findings hardly establish an inability to work, let alone an inability to drive himself home. Absent Allen's testimony, there is no way to find that Allen's conclusions are supported by the data he recorded on the form.

The company, however, does not rely merely on the fitness to work evaluation or on Allen's findings. As already noted, grievant's drug screen came back positive, showing 5685 ng/ml of cocaine metabolites. In addition, the company relies on the fact that, following his discharge, grievant submitted a claim for sickness and accident benefits which indicated that he had sought help for cocaine dependency, and had been diagnosed as cocaine dependent. Much of the hearing was devoted to the testimony of expert witnesses, two for the company, one for the union, about the effect of cocaine dependence (the current term for addiction) and about the effect of grievant's alleged dependence on his fitness to work on September 27, 1996. I will discuss the testimony of each witness, although it is not necessary to summarize their testimony in great detail.

The company's first witness was Dr. David Madsen, a psychologist who works principally in the area of chemical dependency. He testified about the effects of cocaine use and, with particular importance to this case, about the different effects for new and habitual users. Notably, he said as the use increases, a person's tolerance increases, so that he is required to ingest more and more of the drug. Those in a dependent state, he said, are constantly searching for cocaine. Madsen reviewed grievant's fitness to work forms and said there were several "red flags," including the runny nose and watering eyes. In addition, he referred to the fact that grievant was constantly moving his feet, which he said could suggest withdrawal. Of course, this observation from Allen is contrary to Cox's claim that grievant was calm and complacent, but Madsen said the observations were not necessarily inconsistent, since complacency can also be a stage of withdrawal. But I had trouble understanding how grievant could be complacent first and agitated later, since both of the company's experts said that the usual progression runs in the opposite direction.

Madsen said that based on the fitness to work evaluation and the subsequent diagnosis of cocaine dependency, he believed that grievant was under the influence of the drug on the morning of September 27 and that he would have been unable to work later that night. Madsen testified that he thought the positive

drug test was significant, but not sufficient to say a employee is under the influence, though the lab test combined with the fitness evaluation suggested that grievant was under the influence. This testimony was somewhat confusing since, in response to my question, Madsen said that he thought the presence of cocaine metabolites in the urine was, by itself, evidence of impairment and that evidence of any cocaine "in the body" would affect grievant.

With respect to the company's principal theory in this case, Madsen said that cocaine withdrawal, which is apparently what he thought was affecting grievant, could affect judgment and perception (matters found to be normal by Allen, the only one to examine grievant) and could have other effects as well, including irritability and fatigue. In addition, Madsen testified that a twenty day rehabilitation program -- like the one grievant attended -- would not lead to complete rehabilitation but was merely the start of abstinence and sobriety.

Madsen's conclusions about grievant's condition on the 27th were reinforced by Dr. Matt Teolis, an addictionist. Like Madsen, Teolis testified generally about the effects of cocaine, both for "naive" and habitual users. He also said that people who become dependent on the drug undergo irreversible changes in the brain. Like Madsen, Teolis testified about the cycle of cocaine use for those who are dependent. Initially, there is an acute effect, which he said users describe as being "geeked up." This is followed fairly shortly by periods of fatigue, sleeping, periods of hunger, remorse, and then a continued craving for the drug. It was Dr. Teolis who best articulated the company's principal theory in this case. He defined "under the influence" -- which are the relevant terms from rule 132b -- as meaning that someone's "thoughts, feelings, and behavior are impacted" by the drug. This is because someone who is cocaine dependent constantly has cravings for the drug, though the cravings may become less intense the longer they abstain. Even so, someone who is dependent is likely to have more intense than normal emotional reactions to stress. Recidivism is very high and the risk of returning to the drug does not drop off appreciably until someone has been clean for at least five years.

Essentially, both Madsen and Teolis testified that grievant could have been under the influence of cocaine as a result of either of two conditions: it is possible that he was suffering from cocaine intoxication or, if not, that he was at least going though cocaine withdrawal. The DSM IV recognizes both states as a substance induced disorder and either could render grievant under the influence of cocaine. There was significant testimony about whether grievant satisfied the criteria of either of these disorders, which I will refer to below. Not surprisingly, the company says he did and the union says he didn't.

Like Madsen, Teolis reviewed the evidence about grievant, which included the drug test, the fitness evaluation, and the dependency diagnosis. He noted the fitness evaluation, including the observation that grievant constantly moved his feet, and the positive drug test and said these were a "pretty compelling connection" leading toward under-the-influence. He said he thought grievant was not fit to work at the time of the fitness evaluation and that he would not have been able to work later that night. On cross examination, the union asked Teolis if he could distinguish between the signs that indicated grievant as suffering from cocaine intoxication and those that showed he was suffering from withdrawal. Teolis said it was a "moot point" since either would render him under the influence.

The union's expert, Anesthesiologist Dr. Timothy McDonald, drew different conclusions from the same data. He said that he often makes the equivalent of fitness to work evaluations when assessing whether patients can be given narcotics and also in assessing whether they can leave the hospital. McDonald used the DSM IV to demonstrate that grievant did not have the indicia of cocaine intoxication at the time of his fitness evaluation, principally because he did not have two of the criteria listed in part C of the diagnostic criteria. The company offered rebuttal that indicated that the criteria may have been present at some time, but, in any event, it claimed that grievant did satisfy the criteria for cocaine withdrawal. McDonald did not address those criteria directly, though he did disagree with the conclusions drawn by Teolis.

Unlike Teolis and Madsen, McDonald discounted the presence of cocaine metabolites in grievant's urine. He said the amount detected was very tiny and that it had "no bearing whatsoever" on whether any cocaine remained in grievant's blood. He said the old conventional wisdom that taught "if it's in the urine it's in the brain" has proven to be false and that people sometimes showed metabolites for as much as 30 days after ingesting the drug. He also criticized the finding that grievant was cocaine dependent or, at least, the use of that finding by the company's two expert witnesses without other medical information. This is a significant problem for the company though, as I will discuss below, it was not entirely of the company's own making.

McDonald disagreed with Teolis' assertion that someone who is dependent on a drug is always under its influence, which he characterized as a "great disservice." He said that dependency may mean that people have to modify their behavior, but that it doesn't mean they cannot work. In particular, he said there were

physicians working in operating rooms who have been chemically dependent. Even so, he acknowledged on cross examination that there is a stage of withdrawal when someone is under the influence of a drug.
Grievant does not deny that he used cocaine, though he was equivocal about whether he is dependent. He says that he smoked cocaine on the night of September 24, in order to enhance a sexual encounter with a woman in the Motel 6. This was two and a half to three days before the disciplinary meeting. And, while the company pointed out that grievant had been scheduled to work the next day, Wednesday the 25th, grievant said that he had called off indefinitely because of problems with the pain medicine his physician had given him. Grievant was talking Tylenol 3, which contains codeins, and Xanax, which is for anxiety.
Grievant said that counting his surgery and a previous medical leave by Cox, the two had not seen each other in about a year, prior to the 27th. Cox acknowledged that he had not seen grievant since grievant returned to work, though he had spoken with him by telephone. The union's point here is that it would be difficult for Cox to say what was abnormal for grievant since he hadn't seen him, especially since his back surgery and his treatment with pain killers.
Grievant said that he had used cocaine occasionally in the past, but did not think he was dependent. He said he decided to go to the rehabilitation program because, after losing his job over cocaine, he thought he might have a problem. His testimony about dependence was confusing. He said the counselors at the clinic wondered why he was there, though one of the counselors made him understand that he was in denial. However, he said he now couldn't say that he was or wasn't dependent. Grievant said he attends narcotics anonymous meetings twice a week in order to make sure he doesn't have a problem. He denied using cocaine or any other substance since his time in rehabilitation.
The union also called Frank Deel, who was present with grievant in the disciplinary meeting on September 27. He said that grievant was acting normally and that he was not complacent. In fact, he said that he had to kick grievant once or twice to keep him from speaking up. The union called other witnesses who supported its claim that the company did not articulate any dependency theory of under-the-influence until a few days before the hearing. Up until that time -- and all through the grievance procedure -- the company had relied only on the fitness evaluation and the drug test. It was for this reason, the union said, that it refused to furnish grievant's medical records about cocaine dependence.
Discussion
This case raises important issues about the way in which the company can prove that one of its employees is under the influence of a drug in violation of rule 132b. I was impressed by all of the expert witnesses. I have no doubt about their credibility, their competence, or the sincerity of their beliefs. Nevertheless, I have difficulty concluding that the under-the-influence conclusion drawn by Dr. Madsen and Dr. Teolis supports a rule violation in this case.
The logical extension of Teolis' theory is that, once an employee becomes cocaine dependent, he is always under the influence of the drug. Indeed, that is what he told me when I asked that very question. It may be, from the standpoint of an addictionist, that an addict is always influenced by a drug because part of his conscious life must always go toward avoiding it (assuming he is able to abstain). But I cannot find that this is what rule 132b means by "under the influence."
For the most part, an employee's private, internal struggles are none of the employer's business. Few of us, perhaps, have drug problems, but it is not uncommon for people to be burdened by problems that affect their lives and their response to the stimuli around them, including the work place. The employer cannot insist that employees come to work with a blank mind; they come warts and all. However, the employer does have a right to insist that employees come to work with the ability to perform the job. Whether it is drugs, or gambling, or illness, or marital problems, the employer has an interest in insuring that the employee can deal with those distractions and perform the job in a safe and competent manner. The question here, then, is not whether grievant's mind sometimes turned to cocaine but whether that affected him enough to interfere with his ability to work. There is almost no evidence that it did.
As I have already indicated, there is very little in the fitness to work evaluation that lends support to the company's theory. Grievant's orientation, perception, memory, judgment, and thought were found to be fine; his blood pressure was normal; his eyes were clear; he had good coordination; and he did not slur his speech. He yawned a lot, his nose ran and he was nervous. And he "constantly" moved his feet.<FN 2> It's interesting that both Doctors Madsen and Teolis (neither of whom had ever examined grievant) found this latter trait to be evidence of psycho-motor agitation. However, according to Cox, he sent grievant to the clinic because he wasn't agitated. In his view, grievant was slow and complacent. I have some question about how Cox and Allen could have had such different observations, but even if they're accurate, all Allen

really did was describe what Cox had wanted to see. I have to question whether, if grievant had been nervous and agitated in front of Cox, Cox would have decided to send him for an evaluation.

It is true that the patient assessment isn't everything, since grievant also failed his drug test. The company's evidence did not really rebut Dr. McDonald's assertion that the small amount of metabolites detected were not indicative of any cocaine in the brain, except to the extent of the assumptions they made about grievant's cocaine dependence. That is, Dr. Teolis was careful not to overstate the results of the drug test, except that he took it as evidence of recent drug use and, combined with the fact that grievant was later diagnosed as cocaine dependent, he thought that made it likely that grievant was in withdrawal.

The evidence of cocaine dependence is troubling. It is true that the company asked the union for the medical records and the union refused what was obviously a request for relevant evidence. The company could have subpoenaed the records, though these parties typically do not do that. It could also have asked me to order disclosure, which I might have done, absent good cause for the union's refusal. On the other hand, the union has a right to be concerned about this late surfacing theory when the company had previously processed the case exclusively on the basis of other evidence.

About all I can say is that, even though the evidence would have been helpful, I did not get it and I cannot speculate about what it is. I understand grievant's testimony that he was unsure about dependence and that he went for help because he was fired. But I also credit Dr. Madsen's testimony that people typically will not go through the rigors of such programs unless they really have a problem. In addition, I am aware -- and Dr. Madsen's testimony reinforced what I have heard previously -- that denial is a strong element of dependence. I think it is reasonable to believe, then, that grievant had some problem with cocaine and that the diagnosis of dependency must be taken seriously. But I cannot attribute to it the significance afforded it by either Madsen or Teolis.

Both of these experts work backwards. Their testimony about the fitness evaluation and about the drug test was not particularly compelling. They can draw inferences from those (though inferences from the fitness evaluation are difficult, at best) only because of the dependency diagnosis. But we have no details about that. Thus, there is no evidence about the frequency or quantity of grievant's use. More important, even if grievant is dependent (and I am willing to assume he is) that tells us virtually nothing about what Allen should have been able to detect about grievant's condition on the morning of the 27th. Allen, after all, was the only one who examined him and it is his evaluation that is most crucial here. The rule at issue does not ask whether grievant was cocaine dependent; rather, it asks whether he was under the influence on the 27th. Thus, Allen's observations that day are most relevant.

As I have already stated, I fail to see anything in Allen's report that justified a conclusion that grievant was not fit to work. Frankly, given the disparity between Allen's and Cox's observations, and the overwhelmingly positive tenor of Allen's observations, I have grave doubt that the company even had cause to administer a drug test. But even if it did, the positive test and the fitness evaluation do not establish that grievant was under the influence, meaning that his fitness for work was impaired. Even if I were to credit Dr. Teolis' claims that a dependent user is always under the influence, I could not find that grievant was unable to perform the work that he was directed to do on September 27. Grievant, after all, was only required to sit through a meeting and, presumably, Cox thought he was able to do so since he didn't question his fitness until the meeting was nearly over.<FN 3> I am not persuaded by the company's argument that grievant was scheduled to work later that night. In the first place, there is nothing in the fitness evaluation that indicated he would be unable to do so. There is only the testimony of the company's experts, developed after-the-fact on the basis of their speculation about grievant's dependence. And, of course, grievant did not work that night anyway, since he called off. Grievant's absences during that week are not cited here as a reason for the discipline. In addition, since he had just returned from an extended leave that involved surgery, there is no reason to suspect that his leave was induced by cocaine dependence.

At base, what the company advocates here is that I take a bare diagnosis of cocaine dependence and, because of that, assume that grievant was unable to work. The inescapable consequence of this assumption is that grievant will always be unfit to work, at least until he proves the that he is not. But this puts the cart before the horse. It is the company's responsibility to establish that grievant is not fit to work. It cannot do so merely because of the fact of dependence, since it has already agreed with the union that drug abuse is a treatable condition.<FN 4> Rather, it must establish that grievant was impaired and unable to work on September 27.

The company says, however, that even if grievant was not intoxicated on the 27th, he was still unable to work because he was suffering from the drug induced disorder of cocaine withdrawal, a condition

recognized by the DSM IV. I have trouble crediting the company's claims that grievant satisfied the DSM IV criteria. I will address each criterion in turn.

There is no direct evidence that grievant had recently ceased or reduced a heavy and prolonged use of cocaine, which is the criterion required by paragraph A of the diagnostic criteria. Grievant denied that he had used the drug extensively, though the fact that he sought help is, of course, some evidence to the contrary. Criterion B requires the presence of a dysphoric mood and two or more of five other symptoms. Frankly, neither Teolis nor Madsen could possibly know whether grievant had a dysphoric mood on the 27th since neither one saw him. This is not a case in which I must accept the opinions formed by experts based on their own observations. The fact is that they had no more information about grievant than I have. Their only evidence about grievant's mood was Cox's oral testimony and Allen's fitness report, which are simply not consistent, though the observations were only two or so hours apart. Nothing in Allen's report supports a finding of dysphoric mood. And even if grievant's mood changed after he left Cox, I was not convinced that Cox's description qualified as "dysphoric." All he said was that grievant was calm and melancholy. However, even if that satisfies the definition, the company still cannot establish the other two criteria.

There was no evidence of vivid dreams, insomnia, or increased appetite. There was evidence of psycho-motor agitation (at least if the foot shuffling qualifies), which leaves only fatigue. What is the evidence of that? The company cites grievant's demeanor in the discipline meeting, that is, Cox's description of grievant as calm and melancholy. But the DSM must mean two different things when it uses dysphoric mood and fatigue in the same list of criteria, or it would obviously be redundant. If that is the case, then the company cannot point to the same outward manifestations to prove both. There was, however, evidence that grievant was yawning, which is at least consistent with fatigue, though probably not enough to prove it standing alone.

But even if the company does meet the criteria in B, it cannot satisfy the ones in C, which require "clinically significant distress or impairment in social, occupational or other important areas of functioning." There was no testimony about social or other impairment, so this criterion hinges on the company's ability to prove occupational impairment. But I have already found that the evidence of that is inadequate. Other than backward speculation, there is virtually no evidence of occupational impairment. The company cannot prove that grievant was unable to work on the 27th and, because he had been on extended sick leave, there is virtually no other evidence available.<FN 5> And, frankly, I have to say that I find it troublesome that both of the company's expert witnesses ignored the word "clinically significant." One does not have to be a physician to understand that this term means more than a routine evaluation from a paramedic. No such finding could be made from the evidence that the doctors had here.

In sum, I find that the company has not proven a violation of rule 132b. I turn now to the question of remedy.

The Remedy

Because I have found that the company has not satisfied its burden of proving that grievant was under the influence of cocaine on September 27, 1996, I must order that he be reinstated. The company argued that though it would be "unconscionable" for me to reinstate grievant, any such order should be accompanied by a last chance agreement that includes random testing.

I disagree that the reinstatement remedy is unconscionable. I do not manage the company or make employment decisions. My sole responsibility is to determine whether the company had just cause to fire grievant. In that regard, it is not enough that a manager genuinely believes that grievant should not work. All I can do is react to the evidence of impairment, and here, despite the best efforts of the company's representative, he was left without sufficient evidence to defend his client's actions. If there is no cause to discipline, then there is no reason not to order reinstatement. I realize that grievant works without direct supervision in a dangerous job. That may put more of an obligation on the company to supervise him, but it is not a reason to deny him employment.

Nor do I think there is sufficient cause for me to order random drug testing. There is a bare diagnosis of cocaine dependence, coupled with grievant's testimony that he completed the program successfully, that he has not used drugs, and that he attends NA meetings. The company questions grievant's assertions about his treatment, but I am unable to find them to be less reliable than the company's evidence of dependence. The fact is that the company must have cause to give drug tests and, having failed to prove that grievant was ever unable to work, it has no such cause here.

That does not mean, however, that grievant is entitled to full back pay. At the time of his discharge, grievant had called off indefinitely because of continued problems with his back. Before the company pays back wages, it has a right to determine whether and when grievant would have been able to work.
The diagnosis of cocaine dependence is also relevant to the question of remedy, especially since the union refused to disclose information about it to the company. Grievant entered a rehab program two or three weeks after his discharge and he remained in it for about a month. Given his back problem and his rehabilitation, he should not be entitled to any back pay until the day after he completed the rehabilitation program. From that point, however, grievant is entitled to back pay, assuming his back problem was resolved. In addition, the company has the right to insure that grievant is free of the drug before he returns to work. Thus, the company may test grievant before he returns but it does not have the right to impose random drug tests thereafter.
AWARD
The grievance is sustained. The company will take the remedial action specified in the opinion
/s/ Terry A. Bethel
Terry A. Bethel
March 13, 1997
<FN 1>There was also testimony that Cox talked to a union representative at about this time who told him that he thought a test was inappropriate because grievant was not "at work." At that point, the union representative said, Cox indicated that he would pay grievant for his attendance at the disciplinary meeting.
<FN 2>One of the problems with the company's case is that the entire evidence of "psychomotor agitation" was Allen's notation that grievant "constantly moves feet." As I pointed out to Dr. Madsen at the hearing, I constantly moved my feet and, he noted, he was similarly fidgety. It is hard to understand, then, how this trait could be much evidence of anything, especially when almost all of the rest of the evaluation is normal. Allen did not testify, so it is not even possible to know what he meant by "constantly moving feet." Moreover, I am not willing to attribute great significance to the fact that grievant was nervous. In the first place, as I point out in the text, this was apparently his characteristic behavior. But grievant was also about to take a drug test that, he no doubt realized, he would fail
<FN 3>The union argues that I should deny the grievance since grievant was not actually "at work" as required by rule 132b. However, I am willing to assume that grievant was working within the meaning of the rule if he was paid for his time, even if the company did not acknowledge the obligation to pay until belatedly. Nevertheless, the fitness to work evaluation must bear a reasonable relationship to the work grievant was called on to do. He did not go in on the morning of the 27th to operate an ore bridge. All he had to do was attend a meeting. Cox did not claim that grievant was unable to do that. Thus, to the extent that grievant needed to participate in the meeting, he was apparently able to do so.
<FN 4>The union did not rely expressly on Article 14, section 8. Nevertheless it argued, and I agree, that the company's claims about drug dependence and "influence" are inconsistent with the parties' expression that drug abuse is a treatable illness. The parties cannot agree that the condition can be treated and then claim that someone, merely by virtue of an addiction, is always unable to work.
<FN 5>Actually, the company's evidence, principally though Madsen's rebuttal testimony, was circular. Thus, to the question of whether grievant is impaired, the company offers the criteria of cocaine withdrawal. One criterion specifies that grievant be occupationally impaired. What is the evidence of that? Only the company's claim that he was in cocaine withdrawal. But that was what it set out to prove in the first place.