

Award No. 929
IN THE MATTER OF THE ARBITRATION BETWEEN
INLAND STEEL COMPANY

and

UNITED STEELWORKERS OF AMERICA
LOCAL UNION 1010

Arbitrator: Terry A. Bethel

July 2, 1997

OPINION AND AWARD

Introduction

This case concerns the fifteen turn suspension of grievant Randy Karczewski for allegedly hitting another bargaining unit employee. The case was tried in the company's offices in East Chicago, Indiana on June 19, 1997. Pat Parker represented the company and Mike Mezo presented the union's case. Grievant was present throughout the hearing and testified in his own behalf.

Appearances

For the company:

P. Parker -- Arb. Coord.

C. Vargas -- Witness

P. Calloway -- Turn Supervisor, 4BOF

J. Medellin -- Contract Admin. Res.

For the union:

M. Mezo -- Local President

J. O'Donohue -- Griever, 4BOF

J. Strauch -- Asst. Griever, 4BOF

R. Guevara -- Plt. 1 Coated Prod. Griever

J. Karczewski -- Grievant

Background

The parties offer differing accounts of the incident that led to the discipline. Vargas, the complaining witness, was the hot metal pouter on April 28, 1996 and grievant was the helper. Both employees worked out of a pulpit which, among other things, contains a computer station that monitors the operation. The computer screen can be in at least two modes. Watch mode displays information about the operation, including the time when the hot metal pourer should begin to pour. Testimony indicated that this pouring time is sometimes updated as conditions change and the revised times are displayed on the screen while in watch mode. By contrast, the edit mode displays the time the pourer is to pour, but the time does not change as updates are made. Thus, if the screen is left in edit mode, the pourer may be unaware of changed conditions and may pour late or, presumably, early.

Grievant and Vargas were both scheduled on the morning of April 28. Vargas described the morning activities of both himself and grievant during which time, he said, the two never spoke to each other. This seemed to confirm the later testimony of griever Jim O'Donohue that the two had a history of not getting along and the he (O'Donohue) had tried unsuccessfully to get them separated. At one point early in the shift, grievant went to the computer and changed the screen from watch mode to edit mode. After he completed his work on the computer, he left the screen without changing it back to watch mode. Although the two describe Vargas' comments differently, they agree that Vargas asked grievant why he didn't put the screen back on watch mode. Vargas said grievant had a history of leaving the screen on edit mode and that it had sometimes caused problems for Vargas, who was unaware that it was on edit mode and who had therefore missed updates.

The disputants agree that changing the screen from watch mode to edit mode and back is not a significant task. It merely involves hitting a button on the keyboard. It is not hard to understand, however, how minor a minor annoyance like this can cause friction among employees, especially when they don't like each other. Vargas said after he asked grievant about the screen, grievant said it only involved "one button," and followed that comment by saying, "I've had enough of your shit," at which point he hit Vargas with his right hand, striking him on the left side of his face. Vargas said the blow knocked his glasses off. Vargas said he told grievant, "I can't believe you hit me," and that grievant said, "come on," meaning that he wanted Vargas to fight him. Vargas replied, "not here," to which grievant said, "anytime, anyplace." Vargas then called his foreman, Paul Calloway, who came to the pulpit and asked the two why they couldn't get along. Vargas said while they were waiting, grievant told him it was "your word against mine."

Calloway said that Vargas was visibly upset. Calloway then left the pulpit to call the section manager. By then, Vargas still had not found his glasses. He said he was on the verge of tears and that he wanted to retaliate so he left the pulpit and went to the locker room to calm down. Subsequently, the two were escorted to the clinic and Vargas later asked to go to the hospital.

Grievant's story was different, though he acknowledged that Vargas spoke to him about changing the screen. Grievant responded that he would do it, at which point he got up and started toward the keyboard. He said the two "came together, hands went up, and glasses went off." I asked grievant what he meant by "hands went up," and he demonstrated that both parties threw their hands upward when they apparently bumped into each other. Grievant said he didn't know whether his hand or Vargas' knocked off Vargas' glasses. Grievant denied that he hit Vargas or that he tried to engage him in a fight.

The company says that I should accept Vargas' account of the incident because Vargas has no reason to lie. Indeed, under the terms of the collective bargaining agreement, the company could not have forced Vargas to testify. The company says that grievant's attack on Vargas was unprovoked and serious enough to warrant a 15 turn discipline.

The union argues that Vargas fabricated the account of the fight as a way of trying to get off the same turn with grievant, something he had unsuccessfully sought in the past. It also notes that there is no evidence of an injury to Vargas and that even the company's supervisor, Calloway, saw no physical evidence that grievant had been hit. The union points out that there were no medical records introduced by the company, even though Vargas claimed to have been treated at the hospital for a contusion. The union also points to a discrepancy between Vargas' testimony and the third step minutes. The minutes say that grievant hit Vargas with his right hand on the right side of Vargas' face. However, Vargas testified that the blow landed on the left side of his face. This is further evidence, the union says, that Vargas' account of the incident is not worthy of belief.

Discussion

I recognize the importance these parties attribute to the third step minutes and, in an appropriate case, a discrepancy between the evidence recorded there and that offered at the hearing could be significant. However, I am unable to give great weight to the discrepancy here between the left and right side of the face. The third step minutes say that grievant hit Vargas with his right hand, which is what grievant also said at the hearing. Such a blow would almost certainly fall on the left side of the victim's face. Thus, it seems likely that the third step minutes are in error and may reflect the note taker's failure to account for the reversal of left and right sides when people face each other. I would have more difficulty if there was a discrepancy between which hand grievant had used. But Vargas' testimony was consistent on that score and, as noted, a blow from the right hand would almost certainly land on the left of the victim's face, though it would still be to the right of the attacker.

Nor do I find determinative the lack of any physical evidence on Vargas' face, assuming there was none. The issue before me is not whether grievant hurt Vargas, but whether he hit him. I understand the union's claim that the lack of physical harm also goes to the question of whether a blow was struck. But it is not determinative. Basically, the issue here is whether I believed Vargas' account of the incident or grievant's. If the matter were genuinely in doubt, the lack of physical evidence might be more significant. But I have no real doubt that Vargas told the truth.

Vargas' testimony seemed sincere, and it was consistent with Calloway's account of how upset Vargas was when he got to the scene. It seems unlikely that Vargas would have been so troubled merely by an accidental bumping. I also cannot credit the union's claim that Vargas merely wanted to get grievant off his turn, since the company separated the two before the arbitration hearing. Thus, if that was all Vargas wanted, he could have refused to testify and the company could have done nothing about it.

Most important, however, is the fact that grievant's story simply did not make sense. Even when I asked for clarification, I could not get him to describe the incident in other than the passive tense. All he said was "hands went up" and "glasses went off." His testimony was vague and unpersuasive. I do not understand why the two employees would have thrown their hands up under the scenario grievant described. Rather, I think the more plausible explanation is that grievant found Vargas' criticism irritating -- especially since the two had a history of antagonism -- and that he struck Vargas on impulse. He then tried to cover for his action by saying that "hands went up."

This was an unfortunate incident and one that grievant probably regrets. Nevertheless, I credit Vargas' account and I find that the company had cause to discipline grievant. Given the severity of the offense, I find that a 15 day discipline was appropriate.

The grievance is denied.

AWARD
/s/ Terry A. Bethel
Terry A. Bethel
July 2, 1997