Award No. 934
IN THE MATTER OF THE ARBITRATION BETWEEN
INLAND STEEL COMPANY
and
UNITED STEELWORKERS OF AMERICA
LOCAL UNION 1010
Arbitrator: Terry A. Bethel
December 23, 1997
OPINION AND AWARD
Introduction
This case concerns the discharge of grievant Ralph Edders for absenteeism. The case was tried in the company's offices on November 18, 1997. Patrick Parker represented the company and Dennis Shattuck 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.
A. Williams -- Sec. Mgr., T/M, 5&6 Anneals
P. Berklich -- Senior Rep., Union Rel.
For the union:
D. Shattuck -- Secy., Grievance Committee
L. Aguilar -- Vice Chrm., Grievance Comm.
R. Edders -- Grievant
Background
1. The Attendance Improvement Program
The company's Attendance Improvement Program (AIP) tracks an employee's absences over a rolling 90 day period. If an employee is absent for 6% or more of the scheduled turns in that period, he receives a reprimand. Subsequent violations of the guidelines warrant a one day discipline followed by a two day discipline. After the employee reaches the two day discipline level, the company reviews his attendance record when the employee is absent for 5% or more of the scheduled turns. That level of absence can lead to a three day discipline with a record review. A reoccurrence subjects an employee to a five day suspension preliminary to discharge.
As noted in its opening statement, however, and as explained in the guidelines themselves, the company cannot use the same rolling 90 day period once an employee has already been disciplined for absenteeism. For example, if an employee receives a three day discipline for an absenteeism rate in excess of 5% for the previous 90 days, and is then absent again the day following the discipline, the company would not look back to the previous 90 days. Doing so would obviously count some absenteeism for which the employee was already disciplined the day before. Thus, the guidelines provide for what the company calls "Acceleration Guidelines," which the company says mean that it looks back only to the last disciplinary action under the guidelines (unless, presumably, the last disciplinary action occurred more than 90 days ago.)
When it applies the Acceleration Guidelines, however, the company no longer uses the percentage approach applied above. Instead, the guidelines say that if an employee is still at the 6% level, he can have four days of absence; if he is at the 5% level, he is allowed three days of absence since the last disciplinary action. The word "acceleration" is appropriately descriptive in this context. An employee scheduled five days a week over a 90 day period would typically be scheduled for sixty- four turns. A 6% absenteeism rate during this period would allow four absences and a 5% rate would allow three absences. What the accelerated guidelines do, then, is look to see whether an employee has missed since his last discipline the maximum amount typically allowed in a 90 day period during which an employee is scheduled five turns a week.
The Accelerated Guidelines are relevant here because the incidents that led to grievant's discharge were judged on that standard. That is, once grievant accumulated three days of absence from the time of his three day discipline, the company evaluated his attendance record and decided to suspend him preliminary to discharge. This evaluation was necessary because the AIP is not a no-fault program. Employees are sometimes given passes for certain absences. The AIP functions as a signal to management. Once the employe reaches the appropriate 5% or 6% absence level, the computer, as the parties say, "kicks him out."

That is, the computer alerts management that the employee's absence is above the AIP guidelines and it causes management to investigate the reasons for the absence.
The union has not agreed to the AIP, though it typically has not objected to the company's use of the guidelines. However, the company does not contend that a violation of the AIP guidelines automatically warrants disciplinary action. Rather, the parties agree that the issue in this case is whether there was just cause to discharge grievant for his record of absenteeism.
2. Grievant's Record
No one doubts that grievant has had problems with attendance. By the time of his suspension preliminary to discharge, grievant had been reprimanded and had received one day, two day and three day disciplines for absenteeism. He had also received a one day discipline for failure to report off (FRO). All of this action occurred in a period of about two years, beginning in January, 1995. On January 15, 1997, following his three day discipline for absenteeism, grievant received a record review from management. The letter memorializing that meeting says that "it was emphasized to you that excessive absenteeism may result in suspension preliminary to discharge. You must come to work on time and as scheduled."
On March 14, 1997, about two months from the record review, grievant was tardy, which counts as a half day of absence. He missed a full day of work on March 25 due to transportation problems. He was tardy again on March 28 and he missed a day due to sickness on April 10. These four incidents added up to three days of absence and, under the Acceleration Guidelines, grievant's record was triggered for review. Section manager Andre Williams testified that he looked over grievant's previous record as well as the most recent occurrences. In his view, grievant's record showed no improvement and demonstrated that he did not have a "good work ethic in terms of coming to work." Thus, Williams decided to suspend grievant preliminary to discharge.
The company stipulated that, viewed over the turns worked since January 15, grievant's absenteeism rate was below 5% at the time of his suspension preliminary to discharge.<FN 1> Nevertheless, the company says that the Acceleration Guidelines applied and that, while the guidelines themselves do not mandate discharge, it was appropriate for Williams to act when he did. Grievant's attendance had been poor for some time and, in the period since his record review, he had missed the maximum typically allowed in a ninety day period. Although Williams had discretion to excuse one or more of grievant's absences, the company says there was no reason to do so given grievant's continuing pattern of absenteeism.
Grievant offered some excuses for his previous attendance record, though the union does not claim that any discipline prior to the discharge is at issue in this case. Nevertheless, the union urges that there is some mitigation for grievant's record and that it is appropriate to consider the reason for the absences in determining whether there was just cause for discharge. Grievant said that he was laid off in the early 90's and was able to gain employment at U.S. Steel's Gary Works. When he was called back, grievant wanted to return to Inland, presumably because of his seniority and pension. However, he was also concerned about the possibility of another layoff. Rather than abandon the U.S. Steel job, grievant testified that he tried to work both jobs for a period of about eight months.
Grievant said that schedule conflicts and exhaustion caused him to build a poor attendance record at both Inland and U.S. Steel. Ultimately, he quit the U.S. Steel job. However, his attendance record did not improve, he said, because he started drinking heavily. Grievant testified that he voluntarily admitted himself to a rehabilitation program which, apparently, included inpatient treatment. On cross examination, he acknowledged that he still drinks sometimes, but he says that he no longer has the binge drinking problem that caused his absenteeism.
Grievant also talked about the four incidents in March and April, 1997, that ultimately led to his discharge. He did not deny any of the incidents, but he offered explanations for three of them. On March 14, grievant swiped in two minutes late. He acknowledged on cross examination that this did not tell the whole story, because grievant was expected to be on site ready to go to work at the start time, and after swiping in, he still had to travel to the work place and change clothes. This apparently did not take all that long, however, since the company only docked him for 1/10 of an hour that day. More important than the few minutes he was late, the union says, is the lack of consequences on that day.
In his testimony, company witness Williams stressed that a tardy is very much like an FRO, since the company does not know whether the late employee will come to work and is unsure whether to release the employee he is to relieve or make arrangements to cover the turn. But there could have been no such uncertainty on the day in question, the union points out, because grievant was on a training assignment and was not scheduled to relieve any other employee. Moreover, the fact that he was a few minutes late did not

affect the day's training activity. The union does not necessarily claim that grievant's tardiness should be entirely overlooked, but it does say that it was not serious enough to contribute to his discharge.
Grievant had no explanation for his other tardy, on March 28. He said he was absent on April 10 because he was sick with flu symptoms, and the parties stipulated that, if she had been available to testify, his wife would have supported that claim. More significant is grievant's claim of car trouble on March 25. He testified that he experienced trouble with the transmission on the way to work and that, given the poor neighborhood between his location and the mill, he turned around and went home rather than risk a breakdown. The next day he drove the car to a friend's house, a mechanic, who serviced, but did not make extensive repairs to, the transmission. Grievant tendered a statement from his friend outlining the work he did, as well as receipts for about $20 worth of parts. The company's representative spoke with the friend by telephone prior to the hearing.
The company says I should not take this incident seriously. Grievant admitted that he knew about the transmission problems, yet he continued to drive the car. If he did have a problem, then, the company says he was at fault. But, the company questions whether there was really any significant problem with the transmission since grievant drove the car almost as far to get it fixed as he would have driven it to get to work. And the friend did make any significant repairs to the car.
The company argues that there are no mitigating factors in this case. It was grievant's decision to work two jobs, the company points out and, even if alcohol was a factor in his attendance, grievant admitted on cross examination that he is still drinking. The company says it has done everything it can for grievant and that his discharge must be upheld if the AIP is to have the intended effect. The company also tendered an arbitration award (Inland Award 913) in which I pointed out that long service itself is not a reason to overturn a discharge. It also cited Award 816, in which a discharge was upheld and in which, the company says, the employee's record was comparable to grievant's.
The union points out that grievant's attendance record did improve, even if it did violate the Acceleration Guidelines. Also, unlike Award 913, where I noted that the employee's attendance was bad even while he worked under Justice and Dignity, grievant's attendance was perfect during that time. This, the union says, demonstrates that the progressive discipline scheme of the AIP has worked in grievant's case. The union also questions the fairness of applying the Acceleration Guidelines, which discipline an employee after three occurrences, no matter how many turns the employee has worked. This is inconsistent, the union says, with the parties' general understanding that the benchmark for absenteeism problems is a absence rate in excess of 5%.
Discussion
I understand the company's argument that current staffing levels demand that all employees work as scheduled and report to work on time.<FN 2> And there is no doubt that grievant failed that obligation here, at least for much of the past two years. There are, however, some mitigating factors that are not often present in such cases. The fact that grievant worked at U.S. Steel while also retaining his Inland job after recall from layoff does not excuse his failure to come to work. But unlike the case with many employees with problem absenteeism, it does tend to show that grievant was not indifferent about his employment. Any one who would work double shifts in two different steel mills over an eight month period wants to work, though admittedly his efforts turned out not to benefit either company.
I also note that grievant voluntarily went through an alcohol treatment program and, unlike many of the cases I see, he did so voluntarily before he was discharged. Again, this does not excuse his previous attendance record and it does not excuse the fact that he again missed work after the program. But it seems to indicate that his interest in controlling his drinking was genuine and was not motivated merely as an attempt to win back an already lost job. And, while he ultimately ran afoul of the company's attendance guidelines, his attendance after the alcohol program did improve, at least if it is measured in terms of percentage of turns missed.<FN 3>
Finally, I note that grievant's attendance was quite good during the time he worked under the agreement's Justice and Dignity provisions.<FN 4> This is consistent with his interest in maintaining his job, his effort to defeat his alcoholism, and the improvement shown after he completed the treatment program. Despite his attendance problems, this grievant has made some effort to keep his job by addressing his problems before his discharge. To that extent, then, the union's claim that the progressive discipline scheme has worked on grievant has some merit.
I do not mean to suggest that the four occurrences that led to grievant's discharge should be overlooked entirely. It is true, however, that grievant's tardiness on March 14 caused none of the problems Williams mentioned in his testimony. Grievant was not assigned to relieve any other employee and the training

assignment that day was not central to the company's production requirements. In addition, I thought grievant's claim about his transmission was credible. I recognize, as the company's advocate argued, that the transmission repairs were not extensive. However, if grievant's transmission was slipping, as he claimed, the work done by his friend (including tightening the belts) may have alleviated the problem, at least for a short time. In short, I think these two events might have been viewed more favorably by supervision than they were.

I recognize that Williams was unwilling to give grievant the benefit of the doubt because of his prior record. I was impressed by Williams, and it is not hard to sympathize with his concerns about employee attendance, given the pressures on him to maintain production. But grievant is a long service employee and, as I have already noted, there are some mitigating factors and some reason to believe, contrary to Williams' belief, that grievant had shown some improvement. Because of those factors, I am persuaded that the company did not have just cause to discharge grievant and that he should be reinstated. I am not willing, however, to grant a make-whole remedy. Though his conduct did not warrant discharge, it was far from faultless and grievant must accept some responsibility for his actions.

The more difficult issue is whether the company may reinstate grievant subject to the terms of its standard last chance agreement. There is no particular controversy over the company's desire to make grievant subject to the attendance portions of that agreement. Even though I have found that there was not just cause for discharge, grievant's record is not enviable and the company has a legitimate interest in subjecting him to special scrutiny for a period of time. The harder question is whether grievant should be subject to the alcohol related provisions of the agreement, which typically call for complete abstinence and random testing.

The union argues forcefully that the alcohol provisions should not be included because, even though he acknowledged having a drinking problem, there was no evidence that grievant had ever been drunk at work or that he had used alcohol on the job. It may be that most of the individuals who end up with last chance agreements have had such experiences. But in the typical case -- at least the ones that go to arbitration -- it was such conduct that alerted the company to the problem with alcohol in the first place. It cannot be the case that the company has to wait until an intoxicated employee endangers himself and coworkers in order to act. Here, grievant himself testified that the attendance problems that led to his discharge were caused in large part by alcohol abuse. The company has a legitimate interest in insuring that such conduct is not repeated. Thus, I find that it can fairly subject grievant both to the typical absenteeism provisions and to the typical alcohol-related provisions of its last chance agreement.

There is, however, one caveat. Grievant testified that, while he had gotten his binge drinking under control, he was still drinking on occasion. If grievant needs additional treatment in order to learn to avoid alcohol, then his reinstatement should be delayed until he receives it. It would make no sense to reinstate grievant and require that he abstain from alcohol if he has not progressed in his treatment to the point where abstinence is possible.

AWARD

The grievance is sustained in part. The company is ordered to reinstate the grievant, subject to the conditions explained in the last three paragraphs of the opinion.

/s/ Terry A. Bethel

Terry A. Bethel

December 23, 1997

<FN 1>It seems anomalous to say that grievant's 90 day rate could have been below 5% when three absences in a 90 day period would typically yield a 5% absenteeism rate -- and grievant had three absences since his last discipline, which was less than ninety days before. This apparently occurred because grievant was scheduled to work more than the normal number of turns over that period.

<FN 2>I have read and considered the arbitration awards tendered by the company. Unlike the company, I think the employee at issue in Award 816 had a significantly worse record than the grievant in this case. Even so, as I said in Award 913, it is sometimes difficult to make comparisons on an occurrence by occurrence basis. There are also other matters, like mitigating factors, that must be taken into account.

<FN 3>Though the union has questioned the use of the Accelerated Guidelines in this case, I do not understand it to be challenging the company's right to maintain that portion of the program. In any event, given my conclusion that there are mitigating factors and that grievant's discharge was not for just cause, I need not resolve this issue.

<FN 4>I find this fact relevant because I used a bad record during the Justice and Dignity period as part of the rationale for my refusal to reinstate the employee in Inland Award 913.