Award No. 939
In the Matter of Arbitration Between:
Inland Steel Company
and
United Steelworkers of America
Local No. 1010.
Gr. Nos. 7-V-061
Appeal No. 1550
Arbitrator: Jeanne M. Vonhof
April 15, 1998
REGULAR ARBITRATION
INTRODUCTION
The Undersigned Arbitrator was appointed according to the rules of the applicable collective bargaining agreement. This hearing was held on March 6, 1998 at the Company's offices in East Chicago, Indiana.
APPEARANCES
UNION
Advocate for the Union:
A. Jacque, Chairman, Grievance Committee
Witnesses:
S. Wagner, Griever
J. Allen, Grievant
J. Cadwalader, Members' Assistance Committee, Local 1010
Also Present:
S. Dunlap, Assistant Griever, (2A/21" Mill)
R. Eberle, Assistant Griever (80" Hot Strip)
K. Mayor, Chairman, Gr. Ev. Corn. 1010-4
COMPANY
Advocate for the Company:
P. Parker, Section Manager, Arbitration and Advocacy
Witnesses:
M. Palacios, Sick & Accident Benefits/Health Care Benefits Administrator
J. Bean, Coordinator, EAP Program
C. Lamm, Senior Representative, Union Relations
J. Sadler, Section Manager, 2A/21" Mills
BACKGROUND:
The instant case involves the discharge of a long-term employee for failing to work as scheduled and for violating Rule 132 m of the Company's General Rules for Safety and Personal Conduct. Rule 132m prohibits falsification of any Company records. The discharge letter, dated August 26, 1997, stated that the Company considered either charge, standing alone, as sufficient grounds for discharge.
The Grievant had twenty-one (21) years' seniority at the time of his discharge. His disciplinary record for the five (5) years preceding his termination was as follows:

Date	Infraction	Action
08/26/96	Absenteeism	Discipline -- 2 Day
03/13/97	Absenteeism	Discipline -- 3 Day
06/30/97	Work Performance	Reprimand
07/01/97	Absenteeism	Code 8 - Final Warning Pass
07/15/97	Absenteeism	Record Review

The third step minutes report that the Grievant was laid off in 1993, 1994 and the first 127 days of 1995. The minutes also report that subsequent to his return to work, the Grievant had the following absences, tardies and early quits:
1995 -- 46 days absent, 2 tardies, 1 early quit
1996 -- 117 days absent, 1 tardy, 1 early quit
1997 -- 34 days absent, 1 tardy, 1 early quit.
According to the third step minutes, included in the totals for days absent cited above were an extended absence of 35 days in 1995, extended absences of 4, 8, 22, 4, 9, 18 and 37 days in 1996, and extended absences of 3, 5, and 14 days in 1997.

Mr. John Sadler, Section Manager of the 2A/21" Mills, testified about the Grievant's past record and absences. He testified that the Grievant was working as a Die Stamper at the time of his discharge, and that if he did not report to work, he had to be replaced with someone on overtime. He reviewed the Grievant's disciplinary record, which showed that the Grievant was personally interviewed regarding his absenteeism on August 26, 1996, on March 13, 1997, and on July 15, 1997 and indicated on those dates that drug and alcohol abuse were not affecting his performance. The Grievant testified that he did not believe at the time that his drinking and drug use were a problem, and also was concerned about the possibility that such an admission could be used against him.

Mr. Sadler also testified that at the record review on July 15,1997 the Grievant was told that any future violations would subject him to discharge. In addition Mr. Sadler testified that the Grievant was given a "pass" on a number of occasions when stricter discipline could have been imposed.

The Grievant missed work on July 25th, due to transportation problems. The record shows that on July 26, 1997 the Grievant was sent to St. Catherine's Hospital from work, along with another employee, and treated for heat exhaustion. The Grievant testified at the arbitration hearing that in retrospect part of his problems on July 25th and July 26 resulted from his drinking alcohol, as well as the stated reasons. He was not treated for drug or alcohol problems at the hospital on July 26th.

The Grievant returned to work on July 28, 1997. He did not report for work on July 29, 1997. He testified that he was drinking that morning, and that he reported to the Union Hall to seek help for his drinking problem. He testified that he spoke to a Union representative, who told him to call into work. The Grievant testified that he called the call-off service, speaking to a person, rather than leaving a message on the machine, and reporting off indefinitely at that time. He testified that she gave him a number, but that he no longer has it.

Mr. John Sadler testified that employees in the Department have been instructed to use the automated call-off service and leave their call-off message on the machine. Mr. Steve Wagner, Griever, testified that some employees use the automated call-off service, but that others prefer to call in and speak directly to someone. He testified that this method has been accepted by Management and that no one has been told not to report off to a person. The Grievant testified that he had been told, because of his many prior absences, to speak to a person when he called in to report off. The Company's records indicate that the Grievant called off only on July 25, 1997, and only for that day, not indefinitely.

The Grievant also testified that on July 29th he called several drug and alcohol rehabilitation centers in the area from the Union office. He determined that one could take him right away but could only guarantee three days in the hospital. The Grievant testified that he believed he needed a longer period of time in the hospital, and therefore continued to look for another program. He testified that another rehabilitation center told him that they might be able to put him in the hospital for a longer period of time, and he made an appointment with them for August 8, 1997.

On August 4, 1997 the Company issued a suspension pending discharge letter to the Grievant for violations of the attendance policy. Section Manager Sadler testified that, after issuing the letter, he was called by Mr. Craig Lamm in Labor Relations, who told him that there was a procedural problem with issuing a suspension letter at that time. Mr. Lamm testified that the letter could not be issued at that time because the Department had not conducted an investigation into the reasons for the Grievant's absences. Mr. Lamm testified further that he contacted someone in the Union on August 5th or 6th and told them that it was unlikely that a hearing would be held, because the suspension letter would probably be rescinded due to the procedural problem. He testified that he did not believe that any suspension hearing was ever set for August 8th, and that suspension hearings usually are postponed when an employee is in the hospital on the date set for the hearing.

The Grievant testified, however, that he canceled his appointment with the rehabilitation clinic set for August 8th because that was the last day of the five day suspension period, and he believed that the hearing was set for that day. The suspension letter was rescinded via letter dated August 8, 1997.

The Grievant also testified that he called into the office to call off again on or about August 5 and spoke to "Renada," the Department Clerk. The Grievant testified that he called the rehabilitation center on August 11, 1997 and reset his appointment. He was admitted to the hospital on August 15, 1997, first seen by a doctor on August 16, 1997, and released from the hospital on August 19, 1997. He testified that upon his release from the hospital he was released into rehabilitation, until he was told he was able to return to work on August 27.

The evidence indicates that on August 20, 1997 the Grievant filed a Sickness and Accident claim form in person at the mill. He testified that he had filled out similar claim forms in 1995 and 1996 for absences

related to treatment for alcohol and drug abuse. He testified that he had filled out the top part of the form, but had meant to write "7-26-97" as the first date of the disability due to illness, instead of"7-29-97," which appears on the form. The form also lists 7-29-97 as the first date of treatment.

The Grievant also testified that he had given the form to his doctor to fill out the bottom portion, which is labeled "Attending Physician's Statement." The Grievant testified that after receiving the form back from his doctor, he changed several dates in the doctor's section. He added "7/29/97" to the line which stated "All dates of treatment," and on which the doctor had listed "8/16/97, 8/17/97." He also changed the "date of admission" to "8/1/97." He testified that he made the changes not in order to defraud the Company, but because he believed that he was due benefits from those dates onward.

Ms. Palacios, Sickness & Accident Benefits Administrator, noticed the changes to the form immediately, and checked the dates with the doctor. She then called the Grievant, who at first denied making the changes. He testified that he denied "forging" the form, because he believed that "forging" meant signing someone else's signature. Both the Grievant and Ms. Palacios agreed that later in the conversation the Grievant did admit that he had changed the dates. Ms. Palacios testified that he was upset and asked her not to report it; the Grievant testified that he asked her for another form to correct the mistake. Ms. Palacios testified that the benefits for the entire claim were worth about $1,300.

The Grievant denied on cross-examination that he ever had changed any other Company forms. The Company introduced his release to work dated 8/19/97, signed by his doctor. The form, signed by Dr. Arshad, states that the Grievant was under his care from 8/5/97 through 8/19/97. The Company contends that the date "8/5/97" was clearly changed from "8/15/97."

The Grievant testified that he has had problems with drinking and drug abuse since he was 15 years old. Company records were introduced to indicate that he had been treated for drug dependency and received Company benefits in 1989, 1991, and twice in 1996. Mr. Sadler testified that he might not have suspended the Grievant for his absenteeism alone on August 26, had he known the Grievant was in the hospital for alcoholism treatment. However, he testified that he would still have suspended the Grievant, given the claim form problem, and the fact that he was absent and not under a doctor's care from July 29 to August 15.

Mr. John Bean, Coordinator of the Employee Assistance Program, testified that usually arrangements can be made to get someone into a rehabilitation program within 24-48 hours. Mr. J. Cadwalader, Union Assistance Committee, testified about the Grievant's attendance at Alcoholics Anonymous and Narcotics Anonymous meetings. The Grievant also presented other documentation showing meetings he attended in September, 1997.

THE COMPANY'S POSITION:

The Company notes that the Grievant was put on notice on July 15, 1997 that he could no longer fail to report to work or he would be discharged. According to the Company he missed a day ten days later, and also on July 25th. The Company argues that the Grievant has not presented any good reason for his absence on July 25, or on July 29-August 15, when he was first admitted for treatment. According to the Company, the evidence indicates that the Grievant's belief that there was a suspension hearing scheduled for August 8th is not credible and was not a good reason for him to avoid going into rehabilitation on that day. According to the Company the Grievant's attempt to claim benefits for this period mounts to an attempt to defraud the Company. The Company relies upon arbitration awards upholding discharge for theft and others for absenteeism. The Company also notes that the theft was caught here before it was consummated, only through the diligence of Ms. Palacios, and that arbitrators have upheld discharge in similar situations.

The Company also disputes the Grievant's claim that he thought that he was due the money, arguing that, if that were the case, the Grievant would have argued his position with the Company instead of asking Ms. Palacios not to report it. In addition, the Company claims that the Grievant's credibility is weakened by the change on the return to work form. Furthermore, the Company contends that it is not credible that the Grievant would have believed that he was due benefits for the whole period on the basis that he was drinking on July 25th, and then went into the hospital for alcohol treatment three weeks later.

The Company also disputes the Union's reliance on certain arbitration awards, contending that no arbitrator has found that insurance fraud is not a basis for discharge. Here the evidence indicates that the Grievant intended to file a fraudulent claim, the Company contends, which sets this case apart from others where the discharge has been overturned.

THE UNION'S POSITION:

The Union argues first that some of the arbitration awards regarding theft submitted by the Company are not similar because in those cases the grievants denied stealing. Here the Grievant admitted changing the form.
The Union contends that the Grievant sincerely believed that he was entitled to benefits for the entire period. The Union argues that the past arbitration awards between the Parties indicate that if there is a doubt about whether the grievant' fraud was willful, the discharge should be overturned. Even if the Grievant were guilty of some offense, it was not serious enough to warrant discharge, the Union argues.
The Union also points to the testimony of Mr. Sadler at the third step hearing that if he had known that the Grievant was hospitalized for alcohol treatment when he issued the suspension letter here, he might not have issued it. By the time of the investigation regarding the claim form on August 25th, the Union contends, everyone knew that the Grievant had been in the hospital. The Union argues that the Grievant should not have been discharged for failing to attend work when he was on sick leave seeking treatment for his alcoholism.
In addition, the Union contends that if the Company had not suspended the Grievant in error on August 4, 1997, he would have been in the hospital on August 8, 1997. The Union also contends that if the Company did not have grounds to discharge the employee on August 4, they did not have grounds to discharge him on August 26, since he did not work in between those dates.
The Union also argued that alcohol abuse goes in cycles. The Grievant had a relapse, but he is now able to return to work, according to the Union.
OPINION:
In the instant case the Grievant, with twenty-one years' tenure with the Company, was discharged for falsifying a Sickness & Accident claim form, and for failing to report to work as scheduled. The Company argues that the discharge is supported by either one of these charges standing alone.
The Grievant filed for Sickness & Accident benefits on a form on which he altered dates submitted by his doctor. There is no question that the Grievant changed the dates on the part of the form clearly marked "Attending Physician's Statement." Nor is there any question that the Grievant knew that his doctor was supposed to fill out this part of the form. The Grievant had submitted the same form on a number of earlier occasions when he had applied for benefits for absences related to alcohol and drug abuse treatment.
The Grievant contends that he changed the form not because he intended to defraud the Company for benefits not due to him, but because he honestly believed that he was entitled to benefits continuously from July 26, 1997, when he was taken to the hospital for heat exhaustion. He contends that part of the reason for his hospitalization on that date was alcohol-related. However, he was not treated for substance abuse problems on July 26, and there is no evidence that he reported such problems to the hospital on that day. In addition, he did not put "July 26" on the form as his first day of disability and treatment, but rather "July 29." The Grievant testified that he meant to put down July 26, not July 29, on the form but that he got his dates mixed up. However, the Grievant changed the "date of admission" to the hospital to "8/1/97" on the doctor's part of the form (presumably from 8/15/97). Clearly he was not admitted to the hospital on 8/1/97, he did not claim that he thought he was admitted that day, and in fact, gave no reason for using this date.
The documentary evidence does not support the Grievant's claim that at the time he changed the form he did so because he believed he was due benefits for illness related to alcohol or drug abuse from July 26. July 29 was the first day of the Grievant's final long absence from work, and it is likely that that is why "July 29" appears on the form as the first date of illness and treatment. It also seems likely that the Grievant used the date of "8/1/97" as the date of his admission because it was close to the first date of his long, final absence and because it was easy to change from "8/15," without making the form appear too obviously altered.
If the Grievant truly believed that he was legitimately off work from July 26, it is not clear why he felt he could or had to alter the form at all. He could have just argued to the Company that he was due benefits from July 26, even though he was not admitted to the hospital until August 15. <FN 1> The evidence suggests that his motive for altering the form was to explain his absences during those two weeks <FN 2> and/or to seek benefits for that period even though he was not able to prove that he was under care for a sickness or disability.
The Grievant had no right to alter the part of the form filled out and signed by his doctor, whatever his motive, and certainly no right to suggest that he received medical treatment for his alcohol and cocaine abuse problems in August some two weeks before he actually did obtain such treatment. Whether his primary motive was to explain his absence for those two weeks or to seek disability benefits for that period, the Grievant knew that if the Company accepted the form, the Company would pay him benefits for two

weeks when he was not under medical care. His past experience with the program and the way he filled out the form this time indicate that he knew he had to be under medical care in order to claim the benefits, and therefore the evidence supports the view that he intended to defraud the Company by altering the form.
The Union argues, however, that some lesser penalty than discharge should be imposed upon the Grievant for changing the dates on the form. I have considered the cases put forth by the Union and conclude that they are not controlling. I have concluded that the Grievant's actions were intentional and were intended to have the effect of defrauding the Company. In contrast, in Inland Case Nos. 608, 609 and 686, the arbitrators found that although the grievants' conduct was not completely exemplary, there was substantial doubt in each case that the grievants' conduct amounted to deliberate misrepresentation or willful fraud. In Inland Award 910, I overturned the discharge largely because of the evidence regarding disparate treatment of the grievant compared to other employees who had engaged in changing records regarding incentive pay. Evidence of disparate treatment is not present in this case, and I have concluded that the Grievant should have known that his conduct would result in a fraudulent claim for benefits, which amounts to theft. Thus, his violation of Rule 132m is very serious, and would probably provide grounds for discharge in itself.
This discharge, however, also involves the Grievant's absenteeism, including his last series of absences. The Union suggests that the Grievant should not be discharged for missing work over the period after July 26 because he was seeking treatment for his drug and alcohol problems. The Grievant did seek treatment for his alcohol and drug problems on his own, beginning on July 29. He was on the brink of discharge at that time, of course, but his situation is still somewhat better than an employee who waits until after being discharged to seek treatment for drug or alcohol abuse problems.
If absences due to treatment for alcohol and drug abuse were all that were involved in this case, discharge might not be the appropriate penalty. Mr. Sadler testified that he might not have terminated the Grievant at that time if he had known that he was in the hospital for alcohol abuse, and if the other charges in this case were not present.
The Grievant was absent for two weeks, however, when he was not under treatment. The Union argues that if the Company had not wrongly suspended the Grievant on August 4, he would have been in treatment by August 8, 1997. However, there is not clear evidence that the hearing ever was set for that day. In addition, the evidence suggests that if the Union had informed the Company that the Grievant was entering rehabilitation on August 8, a suspension hearing scheduled for that day would have been postponed.
The Grievant turned down the opportunity to enter rehabilitation immediately on or about July 29, when he first sought care, because he did not think that the program provided a sufficiently long hospital stay. The Grievant testified about his reasons for making that choice. Having made that choice, however, the Grievant had to live with its consequences, which in this case meant that he did not enter rehabilitation for more than two weeks after he stopped going to work. There is no evidence that the Grievant did anything to seek treatment during those two weeks, other than making phone calls to rehabilitation centers on July 29 and resetting the appointment on August 11. There is no evidence that he went to see his own doctor to obtain proof that he was disabled by his substance abuse problems during this period or even attended AA or NA meetings. Thus, I cannot conclude that the Company's faulty suspension alone explains the Grievant's failure to obtain treatment during the two weeks for which he claimed benefits.
The evidence suggests that the Company often tolerates several days of absence while an employee is setting up treatment for alcoholism or drug abuse. But here the absence was much longer. The Grievant knew that his job already was in serious jeopardy from absenteeism. He was an employee who already was on the brink of discharge, who had been told that one more absence could lead to discharge. His actions here indicate that because of his absenteeism problems he knew that probably he would have to document the reason for his absences. <FN 3> Yet, during a two-week period he neither went to work nor actively engaged in treatment for his alcohol and drug problems. This does not demonstrate the kind of concern over one's job that the Employer should be able to expect.
I am also not convinced that there is sufficient evidence that the Grievant's rehabilitation efforts have produced the kind of commitment necessary for a successful long-term rehabilitation. The Grievant already has engaged in at least three prior attempts at rehabilitation, at the Company's expense. I know that the process of real rehabilitation often takes more than one attempt, but the Grievant's attitude seems to be that he can just go into rehab whenever the problems with his drug and alcohol abuse become too difficult to address by himself. I know that the decision to seek treatment can often be painful and difficult and I am not faulting the Grievant for seeking help. But I also am not convinced that he has realized the seriousness

of his problem yet and made the real commitment to stick with that help, so that he can achieve long-lasting sobriety, and provide sufficient assurance to the Employer that he will attend work regularly.
Thus, because of the Grievant's fraudulent conduct in altering the form, his absence for two weeks without treatment, his past absenteeism record, and the lack of solid evidence of rehabilitation, the discharge must be upheld.
AWARD
The grievance is denied.
/s/ Jeanne M. Vonhof
Jeanne M. Vonhof
Assistant Umpire
Dated this 15th day of April, 1998.
Acting Under Umpire Terry A. Bethel
<FN 1> Although the Grievant contends that he did ask Ms. Palacios for another form, she did not remember this request. Even if he did ask for it, he did so only after she noticed the changes he had made on the original form. And she testified convincingly that he asked her not to report the incident, which suggests that he knew he did something wrong, rather than that he had made an error which he could explain to the Company.
<FN 2> The Grievant's credibility also is undercut by the return to work form he submitted, signed by his doctor, on which the starting date for medical care clearly appears to have been altered.
<FN 3> In addition, the Grievant's testimony regarding his reporting off is not credible. His testimony regarding calling off indefinitely on July 29 would be more credible if the Company had any record of him calling off at all on that day. In addition, his calling again on August 5 doesn't make sense if he truly called off indefinitely on July 29.