

Award No. 944
In the Matter of Arbitration Between:
Inland Steel Company
and
United Steelworkers of America
Local Union No. 1010.
Gr. No. 7-V-060

Arbitrator: Jeanne M. Vonhof
July 9, 1998

INTRODUCTION

The Undersigned Arbitrator was appointed according to the rules of the applicable collective bargaining agreement. This hearing was held on May 22, 1998 at the Company's offices in East Chicago, Indiana.

UNION

Advocate for the Union:

J. Gutierrez

Witnesses:

E. Cook, Grievant

Also Present:

A. Jacque, Chairman, Grievance Committee

COMPANY

Advocate for the Company:

P. Parker, Section Manager of Arbitration and Advocacy

Witness:

J. Grattan, Section Manager of Steelmaking, No. 4 BOF

Also Present:

W. Boos, Senior Representative, Union Relations

BACKGROUND:

The Grievant had been employed by the Company for twenty-one years at the time of his discharge. He was assigned to work as a Laborer at the No. 4 BOF in the period leading up to his discharge. The Grievant worked at the No. 4 BOF until July, 1997, but actually spent his last month or so before discharge at the No. 2A21 department.

The Section Manager of Steelmaking at the No. 4 BOF, Mr. J. Grattan, testified that the Grievant was assigned to one of two jobs in the labor group during this period: as a member of the bull gang, performing housekeeping services on walking and working surfaces; and assisting in the ladle relining process, helping the masons by moving and mixing mortar and performing clean-up functions.

The Company presented evidence concerning the Grievant's disciplinary record. The Grievant has the following record of discipline:

06/07/94	Absenteeism	Discipline-one day
02/14/97	Absenteeism	Discipline-two days off
06/24/97	Absenteeism	Discipline-three days off
07/08/97	Absenteeism	Record review

The record shows that the Grievant had 25 instances of absenteeism or tardiness in 1994. In 1995 he had 57 days of absence or tardiness, although the Union presented information at the third step meeting that 42 days of that period involved a single extended absence. The nature of that absence was not specifically disclosed.

The Grievant was laid off from his job in December, 1995 when the 76" hot strip was closed. He was laid off for all of 1996. In January 1997 he returned, assigned to the No. 4 BOF department. By February, 1997 he was disciplined at the two-day discipline level. The evidence indicates that many of the absences forming the basis of this discipline occurred between October and December, 1995, just before the Grievant was laid off. There were three absences in January, 1997 as well.

In June, 1997 the Grievant received a three-day discipline, based upon seven instances of absenteeism from February 21 through June 21, 1997. At that point the Grievant informed the Company that he had psychiatric problems with which he felt he needed assistance, and stated that he would go to the Union for assistance.

On July 8, 1997 the Company held a record review with the Grievant. The written record of the record review indicates that the Company discussed with the Grievant that his attendance problems had not

improved and that he had been absent twice during the eleven days since his last discipline. The record review also stated that the Grievant was to make an appointment for psychiatric counseling no later than July 10, 1997 and was expected to keep all scheduled counseling sessions. He also was told, according to the document, that the next time he "kicked out" for absenteeism he would be suspended (pending discharge). There is no evidence in the record that the Grievant did make appointments for the counseling sessions.

The attendance computer "kicked out" the Grievant's name again on August 16, 1997, causing him to be interviewed by Mr. J. Sadler on August 21, 1997. He had seven absences since his record review in late June. Mr. Sadler's notes from that session indicate that the Grievant stated that psychiatric problems and transportation problems had caused his absences. The notes indicate that the Grievant stated that he had been treated for alcohol abuse in March through May, 1997 and that his absences since May 28, 1997 were not due to alcohol. There was no evidence that the Grievant had sought counseling for psychological problems, since he had been ordered to do so at his record review.

Via letter dated August 22, 1997 the Grievant was suspended preliminary to discharge for continued failure to work as scheduled and for his overall attendance record. The suspension was transformed into a discharge.

Mr. Grattan testified that the No. 4 BOF is a heavy industrial setting, where molten metal is usually present. According to him an employee who comes to work under the influence of alcohol or drugs presents a substantial danger to himself and to other employees. He stated that he was aware of the fact that the Grievant never had completed an alcohol treatment program.

According to Mr. Grattan, the Grievant's absences were important because the labor group at No. 4 BOF was understaffed in 1997 as there were a number of people on extended absences in the department. When the Grievant did not show up for work, Mr. Grattan testified, someone had to be pulled off the bull gang, resulting in necessary safety work not being completed. Mr. Grattan testified that many of his department's accidents in the last few years were the result of unsafe conditions on the floors and work surfaces.

The Grievant testified that he began working at Inland right out of high school and that he intended to make his career with the Company, as had his mother. According to his testimony, he had worked at the 76" Hot Strip Mill for eighteen (18) years, and became a little depressed when he began hearing rumors of its closing in 1995. The Grievant stated that although he had been a casual drinker until that point, he began drinking more seriously as the closing of the 76" neared.

He entered an alcohol abuse treatment program in 1995 because he believed that he was having difficulty controlling his drinking, he testified. After his department shut down he was laid off and on the street and began drinking a lot.

The Grievant testified that he was glad when he was called back to work in 1997, but that his drinking continued. He went into a rehabilitation program at Charter in the Spring of 1997. He testified that he checked out of the program about a week prior to his scheduled release date, because he believed that he was fine.

The Grievant testified that he began drinking again through the time of his discharge and until January 13, 1998. He testified that he had been drinking heavily throughout the holidays and decided in January that if he were going to turn his life around, he would have to do it now. He testified that he realizes now that alcoholism is a controllable lifelong disease and that he must do what he can to be responsible about it. On cross examination the Grievant acknowledged that he also had been hospitalized and treated for substance abuse in 1990. He testified that he was told to enter the Inland or the Union program for problem drinkers at that time, and again when he was treated for alcoholism in 1995, but had failed to do so on either occasion.

On cross-examination the Grievant also acknowledged that the Charter program refused to release him to return to work in May, 1997 because they believed that he needed to do more work in the program, even though he thought he was ready to return. The Grievant was released to return to work by his family doctor. He testified that he did not participate in the Inland or the Union's program after this time, even though it was recommended. He did testify that he does attend the Union's program almost every Thursday now; he did not indicate when he had begun to do so.

The Grievant presented testimony and documentary evidence of attending Alcoholics Anonymous meetings in 1998. The evidence indicates that he attended about fourteen (14) meetings in January, fifteen (15) meetings in February, fifteen (15) meetings in March, and eleven (11) meetings in April, 1998. He testified that he was told at that time that he should attend five (5) meetings per week.

He also testified that he has not been going to meetings locally since about April 15, because he has been in Indianapolis caring for a sick cousin. He testified that he did attend some meetings in Indianapolis; he had no attendance sheets from those meetings.

The Grievant also acknowledged that he had used alcohol after being treated for substance abuse in 1990, 1995 and 1997. He also testified that if he keeps going to meetings they help reinforce his resolve not to abuse alcohol or drugs, and that he feels that his mind and his resolve is now clear.

COMPANY'S POSITION:

The Company argues that discharge is appropriate, for a variety of reasons. According to the Company, the Grievant's attendance record for the past five (5) years is abysmal. He has missed more than 150 days of work in that period, the Company notes, and he was laid off for two of those years. Even between his suspension and the third step meeting, when most employees model very conscientious attendance behavior, the Grievant missed work three (3) times and was tardy six (6) times, the Company argues. The Company also argues that the Grievant has consistently denied that he has a substance abuse problem, even after being treated repeatedly for it. The Company contends that the Grievant lied at the arbitration hearing about his voluntary departure from the Charter treatment program, and that in fact he was thrown out of it for non-compliance. The Company also notes that the Grievant has been through three (3) treatment programs and has continued to drink. In addition, the Company argues that the Grievant has been gone from employment for eight (8) months, and has done very little to establish true rehabilitation. The Company relies upon other arbitration awards between these Parties in which arbitrators have upheld the discharge either because the employee has been given enough chances, or because the record of rehabilitation is not sufficient. According to the Company, both problems exist in this case, and therefore the discharge should be upheld.

UNION'S POSITION:

The Union notes that no one was present from the department out of which the Grievant was discharged, and argues that the Section Manager of the 4 BOF who did testify did not know the Grievant well. The Union also contends that there is not any evidence that the Grievant ever was sent home under the influence of alcohol or drugs; nor is there any evidence of accidents caused by the Grievant.

The Union notes the Grievant's testimony that he was hired at 18 years old, and intended to make his career at Inland. The Union also argues that a lot of the Grievant's drinking problems resulted from the shutdown of the 76" Hot Strip, and his depression and layoff as a result of that shutdown. The Union suggests that the Company has a special responsibility to employees in this situation.

The Union argues that the Grievant suffers from alcoholism, which can be a recurring illness. He has demonstrated, however, that he has overcome that addiction sufficiently for the Company to give him another chance, according to the Union.

The Union disputes the Company's characterization that the Grievant lied about certain facts in this case. According to the Union the Grievant didn't lie about being kicked out of the Charter program; he did voluntarily leave it.

The Union argues that the Grievant's absences after being suspended were related to his alcohol addiction, relying on his testimony that he had a problem which was still ongoing at that time. The Union argues that he has testified convincingly, however, that January, 1998 was the last time he had a drink, and that he is now recovering. The Union contends that the Grievant should at least be afforded a Last Chance

Agreement.

OPINION:

This is a case involving the discharge of the Grievant for failure to attend work as scheduled. The Grievant has been employed by the Company for many years. The Grievant also has had serious attendance problems since at least 1994. The Company applied progressive discipline in regard to the attendance problems, imposing increasingly severe penalties, talking to the Grievant about his problems, and warning him that he would be discharged unless he improved his record.

There is no evidence that the Grievant ever did improve that record. If anything, the Grievant's record worsened during the period immediately preceding his discharge. Even in the period following his suspension and discharge the Grievant continued to have not just one or two, but multiple absences and tardies.

The Union attributes the Grievant's absences to two causes: his layoff when the 76" Hot Strip closed and his alcoholism. I can understand how the closing of the 76" Hot Strip, the Grievant's long layoff, and the worry over his long-term financial security could shake up the Grievant, or anyone in his position.

However, the Grievant already had a history of both serious absenteeism and alcoholism before the 76" Hot Strip shut down. The record shows that the Grievant was already at the one-day discipline level in June of 1994 for attendance problems, long before the 76" closed down. And the Grievant already had been treated for alcohol abuse as far back as 1990. Furthermore, although the Grievant contends that his drinking did not become a problem again until 1995, when he began hearing rumors of the shut-down, the attendance problems leading up to the June, 1994 discipline suggest otherwise. I can understand how the circumstances surrounding the shutdown of the 76" Hot Strip might have contributed to the Grievant's drinking problems, but the problems already existed prior to that action, and after his recall as well.

The Grievant's contention that his most recent absences, including the ones after his suspension, were due to an addiction to alcohol and to a lesser extent, cocaine, contradicts what he told Mr. Sadler at the time of his suspension, when he stated that none of his absences after his participation in the Charter program in May, 1997 were related to alcohol or drug abuse. The Grievant's denial that alcoholism was a cause for his absenteeism raises questions about his alcoholism defense or at least suggests a denial of the seriousness of his drinking problem at that time. Furthermore, even if all of his absences were related to alcohol or drug abuse, he must still show that he is sufficiently rehabilitated to be returned to work.

The Grievant here has undergone intensive treatment for alcoholism on three separate occasions while employed by the Company. On at least two of those occasions the Grievant was absent from work for extended periods of time while in treatment. Yet none of those three treatments "worked," in the sense that the Grievant was able to give up alcohol altogether. And the 1995 and 1997 attempts at rehabilitation did not result in even a substantial period of abstinence.

Anyone familiar with alcoholism knows that some kind of relapse, after a person initially seeks treatment, is not uncommon. However, the Company has a right to expect the Grievant to manage his alcoholism so as to maintain regular attendance.

The Grievant here does not have a good record of following through with the steps recommended to him in the alcohol treatment programs. In 1990 and 1995, for example, it was recommended in treatment that he continue with the Inland or the Union programs for problem drinkers after completing a concentrated rehabilitation program. He did not do so. In 1997 he failed to complete certain requirements in the Charter program, and then failed to complete the program at all. Although he contends that he voluntarily left the program because he believed that he was ready to leave, his failure to complete the recommended steps meant that Charter would not release him to return to work.

It is easy even for the Grievant to see in hindsight that he was not ready to leave that program, or to go back to work without the support of a strong follow-up program like the Company's or the Union's programs for problem drinkers, or even Alcoholics Anonymous. Yet the Grievant did not seek to use any of those programs in 1997. He has a pattern of not using the resources alcoholics often need to sustain real long-term recovery.

Self-delusion and denial are part of the disease of alcoholism. However, the Company and the Arbitrator may evaluate the Grievant's most recent efforts at rehabilitation in light of his prior history. Unfortunately his history shows several failed attempts at rehabilitation, and a repeated failure to pursue a long-term approach towards his addiction. <FN 1>

Unfortunately the Grievant's most recent efforts do not demonstrate a pattern which is significantly different than his pattern in the past. He did not stop drinking or become serious about his rehabilitation until more than four months after his discharge. It is always more difficult to determine the sincerity of a rehabilitation effort when it occurs after the employee has been discharged, since it is reasonable to wonder whether the employee has undertaken a program of rehabilitation primarily to regain his or her job.

Nevertheless, the loss of a good job may propel a person into real rehabilitation. When even an employee's discharge does not jolt him immediately into rehabilitation, the evidence suggests that the employee is having a very difficult time coming to grips with his problem. When he waits four months after his discharge to enter rehabilitation, I have to consider the possibility that he did so only in order to make some record of rehabilitation for the arbitration.

I can't tell for certain whether that is the case here, of course. I hope that the Grievant is on the road to true recovery. However, I can only rely upon the evidence presented to me to evaluate whether his rehabilitation is so clear that it is very likely that he can maintain regular attendance.

It was not clear from the evidence exactly what contact the Grievant has had with the Union program. It did not appear from the evidence, however, that he has had the kind of steady contact and evaluation which would clearly support substantial rehabilitation.

Thus, the only real evidence I have of the Grievant's rehabilitation are his testimony that he has changed and the records that he attended AA meetings at the beginning of this year. He attended very frequently in the latter half of January, just after he contends that he finally stopped drinking. However, beginning in February, he attended only about every other day, even though he acknowledges that he was told to attend five (5) days per week at that point.

Furthermore, there is no record of attendance after April 15th. The Grievant contends that he continued to attend meetings in Indianapolis where he had gone to care for a sick cousin. However, there is no evidence of attendance at those meetings. It is not clear why the Grievant would have gone to the meetings and not obtained proof of attendance, which he had been doing up until that point in time. This factor significantly weakens his testimony that he has attended meetings after April 15th. And even he acknowledged that attending meetings keeps him on the right track with his recovery.

Viewed as a whole, and in light of his past failed efforts at rehabilitation, the evidence presented by the Union of the Grievant's current rehabilitation is just too little, too late. The Grievant's attendance record continued to worsen over a period of time, despite the application of progressive discipline. The Parties have agreed in their collective bargaining agreement that alcoholism is a treatable condition. However, an employee in the Grievant's position who has been discharged for attendance, and has gone through rehabilitation several times, must demonstrate that he has taken very substantial steps to make sure that this time is different, and that there is a very good likelihood that he is sufficiently rehabilitated to be able to maintain good attendance. In spite of the Union's strenuous arguments in his behalf, there is simply not sufficient evidence here for the Arbitrator to reach that conclusion, so as to justify overturning the Company's decision to discharge.

AWARD:

The grievance is denied.

/s/ Jeanne M. Vonhof

Jeanne M. Vonhof

Labor Arbitrator

Approved by Umpire Terry A. Bethel

Dated this 9 day of July, 1998.

<FN 1> In addition, there was evidence that the Grievant was directed to seek counseling for unstated psychological problems, and there is no evidence that he ever did so.