

Award No. 945
In the Matter of Arbitration Between:
Inland Steel Company
and
United Steelworkers of America
Local Union No. 1010.
Gr. No. 1-V-081
Appeal No. 1556
Arbitrator: Jeanne M. Vonhof
August 31, 1998

INTRODUCTION

The Undersigned Arbitrator was appointed according to the rules of the applicable collective bargaining agreement. This hearing was held on June 2 and June 16, 1998 at the Company's offices in East Chicago, Indiana.

APPEARANCES

UNION

Advocate for the Union:

A. Jacque, Chairman, Grievance Committee

Witnesses:

T. Sullivan, Grievant

I. Agosto

M. Carrasaquillo, Griever

J. Cadwalader, Members Assistance Committee

COMPANY

Advocate for the Company:

P. Parker, Section Manager, Arbitration and Advocacy

Witnesses:

D. Cox, Section Manager, Raw Materials & Sinter Plant

W. Boos, Senior Representative, Union Relations

Also Present:

R. Allen, Human Resources Manager, Iron & Steel Products

BACKGROUND:

The Grievant, T. Sullivan, had been working for the Company for nearly twenty-five (25) years at the time of his discharge. He was established as an ore bridge operator, assigned to help unload raw materials from the ships at Inland's dock and to perform other tasks in that department. The ore bridges are seventy (70) feet high, with a 225-foot base.

The Grievant was discharged for failure to work as scheduled. The evidence indicates that the Grievant was disciplined as follows in the period leading up to his discharge:

DATE	INFRACTION	DISCIPLINE
08/05/95	Failure to Work as Scheduled	Reprimand
06/10/96	Failure to Work as Scheduled	One Turn
10/02/96	Failure to Work as Scheduled	Two Turns
01/08/96	Failure to Work as Scheduled	Three Turns
01/15/97	Failure to Work as Scheduled	Record Rev.
10/09/97	Failure to Work as Scheduled	Suspension

The record indicates that the Grievant missed 27.5 days in 1994, leading up to his first reprimand, 32 days in 1995, 16 days in 1996, and five (5) days in 1997. The evidence indicates that the Grievant had no absences between the time of his record review in January, 1997 and August 16, 1997. He then missed August 16-17 and August 23-24, 1997.

The Section Manager testified that absences are important in his department because of the need to unload boats quickly when they come in. He also stated that safety is very important, because the ore bridge operator lifts very heavy loads of raw materials and lifts tractors into and out of the boats, and because other employees work near or on the ore bridge.

The Section Manager stated that the Grievant's absences showed a pattern of missing days just before or after scheduled days off. The Grievant was asked about drug or alcohol problems throughout the disciplinary process and consistently denied any problems. The Grievant stated that he had been using

drugs increasingly for several years prior to his discharge, and that his absences in August, 1997 resulted from this drug use. He testified that at this point he realized that he had a serious cocaine dependency problem, which he discussed with his immediate supervisor, Mr. A. Velasquez. His supervisor contacted Mr. I. Agosto, Union Griever, who took the Grievant down to the Union hall to discuss his problem. The Grievant expressed concern that admitting his drug problem to the Company might get him into more trouble, but Union officials assured him that the Company could not take any action against him for admitting his problem.

The next day the Grievant contacted Mr. J. Bean, the Director of the Inland Alcohol and Drug Program, and he entered the program immediately. He testified that the last time he did drugs was the day before he entered the program. The evidence shows that Mr. Cox, the Section Manager, knew that the Grievant had admitted a drug dependency problem at this time and that he had begun attending the Inland program. Mr. Cox testified that he did not discipline the Grievant because of his drug problem, but rather for his absences.

The Grievant stated that before entering the program he was a "weekend user," who never came to work drunk or high. Mr. Bean testified that weekend drug use still has consequences beyond the weekend, often leaving a feeling of lassitude or depression in the user. The Grievant acknowledged on cross-examination that he might have been more tired at work on days after those on which he used drugs. He stated that any days he missed before or after scheduled days off were coincidental, not intentional.

The Grievant attended many meetings in the Inland program in August, 1997 through April, 1998 and "was in satisfactory compliance with the program" at the time his involvement was terminated (due to his discharge), according to a letter from Mr. Bean. Mr. Bean testified that this did not mean that the Grievant completed the program; rather he was discharged first. The Grievant testified that he has continued to attend Narcotics Anonymous or Alcoholics Anonymous meetings after that time. He did not have proof of attendance at NA or AA meetings.

The Grievant testified that on September 4, 1997, he injured his back at work by picking up a concrete block. He went to the Company's medical clinic in an ambulance, was told that he had a strained back, went back to work on limited duty, and was given physical therapy over the next ten days. He attended physical therapy on September 5, 9, 11 and 15th. The Grievant was absent on September 7, 1997. The excuse listed by the Company for this absence is "sickness." By the third step meeting the Grievant claimed that the absence on the 7th was due to his work injury on the 4th.

The Company presented testimony that the Grievant actually was injured on September 3rd, and worked the next few days, including a double turn on the 4th. The absence on the 7th caused the Grievant to exceed the Company's absenteeism guidelines and he was suspended pending discharge via notice dated October 9, 1997. He was discharged via letter dated October 24, 1997. The Grievant also was absent on four days after he was discharged, when he continued to work under the Justice and Dignity clause (January 4, 5, March 28 and May 3, 1998). He provided written doctors' and dentist's excuses for those absences.

The Grievant and the other Union witnesses testified that he is considered a very good ore bridge operator. There is no record of any accidents or poor work performance attributed to the Grievant. The Grievant testified that he was called upon as the expert operator to help write the ore bridge training manual, and has been asked to help test rebuilt ore bridges. His Section Manager testified that he could not be considered a good employee, however, if he did not maintain regular attendance.

The Union raised the claim that the Grievant has been treated differently than two other employees in his department, whose suspensions were revoked because final absences were excused. The Union argued that the Grievant's absence on September 7th should have been similarly excused. The hearing was adjourned for the Company to review those cases. When the hearing resumed, the Company argued that those two cases were different. In one case the employee's absence was excused because his schedule was changed without his knowledge. In the second case the employee had an extended absence for treatment of substance abuse, which was excused.

Mr. Cadwalader of the Union Members Assistance Committee testified that the Company normally offers Last Chance Agreements in cases involving substance abuse, regardless of the employee's past record. He also testified that the Grievant's record was not bad enough to justify discharge, and the Union would not seek to place an employee in that position under the strict terms of a Last Chance Agreement.

THE COMPANY'S POSITION:

The Company contends first that it is highly unlikely that the absence on September 7th was work-related. The Company relies upon evidence that the Grievant worked the several days between the injury and the

7th without incident, worked a double shift on one of those days, and called off sick not injured on the 7th. The Company also notes that even after the Grievant's discharge he continued to miss days.

The Company argues that if the Grievant's substance abuse was the cause of his absences, as he claims, then his only proof that he has been rehabilitated was his participation in the Inland Program months ago. He should have brought in attendance sheets showing current participation in Narcotics or Alcoholics Anonymous, the Company argues, and it is unheard of in such cases not to do so. In addition, the Union Members Assistance Committee is not in a position to testify about the Grievant's suitability for reinstatement because the Grievant has not been in recent contact with the Committee.

The Grievant has been addicted to cocaine for years, and free from that addiction for only a few months, according to the Company. His record of rehabilitation is not sufficient to prove beyond a reasonable doubt that he is free from drugs. The Company cites other cases between the parties in which arbitrators have found that a discharge should be upheld, even when the employee has made a claim of alcoholism or drug dependency, because the employee had been given numerous opportunities to reform, or because the record of rehabilitation was not sufficiently long or convincing.

According to the Company the cases offered by the Union as comparable cases are not comparable because the other employees had valid excuses. It would not have been reasonable for the Company to discipline an employee for being tardy when his scheduled starting time had been changed while he was on vacation, or to discipline the other employee when he was hospitalized for trying to address his alcoholism problems, according to the Company. In addition, the Company disputes the Union's suggestion that an employee must be afforded more than one record review or suspension prior to discharge.

THE UNION'S POSITION:

The Union argues that the Grievant's record simply was not serious enough to warrant discharge. This was the first time the Grievant ever was suspended, and the Union argues that in other arbitration cases relied upon by the Company the employee was afforded more steps of progressive discipline, such as several record reviews, before discharge.

The Grievant had substantially improved his record, the Union notes, over the previous several years. The Union relies upon Award 827, in which the arbitrator overturned the discharge in part because of a substantial improvement in the Grievant's record. The Union argues that this Grievant's record is much better than the records of employees in Inland Award Nos. 827 and 868.

The Union also argues that the Company should have given the Grievant a pass on his four absences in August, 1997, because he admitted that they were due to substance abuse, and he began seeking treatment for the problem before he was disciplined.

The Grievant was a good worker, the Union argues, one who helped train others and who had no record of safety violations. In regard to the safety issue, his job is no more dangerous than other crane operators, or others in the plant, according to the Union. The Union requests that the Grievant be reinstated and awarded backpay for all money lost.

OPINION:

This case involves the discharge of a long-term employee for failure to work as scheduled. The Union argues that the discharge should be overturned because the Grievant's last absence should not have been counted, his overall record was not bad enough to warrant discharge, and his absences were due to substance abuse, which he now has under control.

The Grievant claims that his last absence on September 7, 1997 was due to his work-related injury several days earlier. I credit the evidence that he did not go home early even on the day of the injury, that he worked several days after the injury, and that the Company's records show that he reported off "sick" on the 7th. However, the record shows clearly that he was injured at work several days prior to the 7th and that he was undergoing physical therapy for that injury throughout this whole period. While I understand Management's skepticism regarding the reason for the Grievant's September 7th absence, I cannot conclude that the Grievant was not absent on the 7th as a result of his work-related injury several days earlier, as he claims. It is difficult to understand why an absence caused by a work-related injury would be treated differently than the final absences of the other two employees in the Grievant's department whose suspensions were revoked.

Even if Management were justified in counting that last absence, however, the evidence also indicates that the Grievant had made a very substantial improvement in his attendance record before his discharge. He cut his absences in half during 1996 from his 1994-95 level and he went for at least seven months in 1997 without a single absence. The Grievant backslid for several days and was "kicked out" by the Company's attendance computer program. However, a violation of the attendance guidelines, standing alone, does not

establish that there is proper cause for an employee's discipline or discharge. The purpose of progressive discipline is to improve an employee's behavior, and the evidence suggests that in this case progressive discipline was working.

The Union also argues that the Company did not give sufficient consideration to the Grievant's drug addiction as a factor causing some of his absences. The Company argues that the Grievant was not discharged for admitting his drug problems, but it appears that the Company may have treated the drug dependence as an aggravating factor which supported discharge, considering the significant improvement in his absenteeism record. The Company also argues that the Grievant's record of rehabilitation does not support his reinstatement. Because the Union raised the substance abuse problem and the Grievant's rehabilitation in defense of his attendance record, <FN 1> it is appropriate to examine the substance abuse issues. In addition, the Company has a legitimate concern regarding the safety of permitting someone with a long-term cocaine problem to operate heavy equipment.

The Grievant denied having a problem throughout the prior disciplinary steps, and he was on the brink of discharge after his August absences when he entered Inland's program. Nevertheless, he did come forward on his own, and stands in a better position than an employee who does not admit a problem and enter a rehabilitation program until after discharge, when the sincerity of his or her effort is more questionable. The Union cites Umpire Bethel's reference to the quotation that, "Wisdom too often never comes and so one ought not reject it because it comes late." It is even better to find the wisdom to seek help earlier rather than later, before rather than after discharge, because it appears more voluntary and real at that time. The Grievant successfully completed seven months of the Company's substance abuse program, which ended when his discharge became final.

Given the uncertainty over the Grievant's final absence and the substantial improvement in his overall attendance record prior to discharge, the Company has not demonstrated that there was just cause for the discharge based upon the Grievant's absenteeism. The parties have agreed in their contract that substance abuse is a treatable condition and the Grievant voluntarily pursued a course of treatment and complied with the Company's program for seven months. The Company has raised a reasonable concern, however, over the long-standing nature of the Grievant's drug use as compared with his time in rehabilitation, and his lack of records of recent attendance at NA and AA meetings. Because of these factors, the tenacity of this disease and the potential safety risk here, I conclude that the Company is entitled to further assurances that the Grievant has not and will not relapse into cocaine use. Therefore the Grievant's reinstatement shall be conditioned upon his successful completion of a drug and alcohol test. In addition, the Grievant must maintain satisfactory compliance in the Inland program for substance abuse for a period of one year after reinstatement. Furthermore, recognizing that certain absences may be the result of substance abuse does not wholly excuse those absences and the Grievant's record over the past several years, including the August absences, placed him on the brink of discharge. Therefore, the Grievant's discharge will be reduced to a two month suspension.

AWARD:

The grievance is sustained in part. The Grievant's reinstatement shall be conditioned upon successfully passing a drug and alcohol test. Upon reinstatement, the discharge shall be reduced to a two-month suspension, and the Grievant shall be made whole for all other lost wages and other benefits. The Grievant shall remain in satisfactory compliance with the Inland substance abuse program for the period of one year after his reinstatement.

/s/ Jeanne M. Vonhof

Jeanne M. Vonhof

Labor Arbitrator

Approved by Umpire Terry Bethel

Dated this 31st day of August, 1998.

<FN 1> Even though the Grievant's attendance record has improved, it is still not a good record overall.