

IN THE MATTER OF THE ARBITRATION BETWEEN

INLAND STEEL COMPANY

and

AWARDS 955 and 956

UNITED STEELWORKERS OF AMERICA
LOCAL UNION 1010

OPINION AND AWARD

Introduction

These cases concern disciplinary action taken against two grievants, Jeff Gorby and Vance Worix, for fighting at work. The cases were tried in the Company's offices on September 15, 1998. Patrick Parker represented the Company and Alexander Jacque presented the case for the grievants and the Union. Both grievants testified. The parties submitted the case on final argument. There are two grievances at issue. Inland Award 955 concerns the discipline of grievant Gorby. Inland Award 956 concerns the discipline of grievant Worix.

Appearances

For the Company:

P. Parker.....Sec. Mgr., Arb and Advocacy
C. Hansotte.....Manager, Section 2 BOF/CC
W. Boos.....Sen. Representative, Labor Relations

For the Union:

A. Jacque.....Chairman, Grievance Committee
E. Harvey.....Griever
D. Nagy.....Witness
J. Gorby.....Grievant, Case No. 955
V. Worix.....Grievant, Case No. 956

Background

There are two separate grievances filed on behalf of two different grievants. The case, however, arose out of a single set of events, which occurred at about 10:00 p.m., on February 4, 1997. Because there is only one incident at issue, albeit with two participants, the Company put on one witness who was common to both cases. No. 2 BOF Manager Charles Hansotte testified about the report of the alleged fight and about the investigation he conducted subsequently. He also explained the reason the Company originally suspended each employee for five days pending discharge and why the Company subsequently decided to reinstate both employees with no reimbursement for lost time. At issue in these cases, then, is the thirteen day discipline that each employee received. The Union, too, called a witness who was common to each case. Employee David Nagy saw part of the incident at issue and testified about what he observed and what he did. The Union give different opening statements for each grievant and called each to testify. Neither grievant, however, was present when the other testified.

The facts are in dispute, a scenario that employers often encounter when they charge employees with fighting. Actually, there are three different versions of the facts. The Company offered a version that was based on it investigation, including grievant Gorby's original report. In addition, each grievant offered a version of the facts that differed from the other and from what

the Company believes happened. The Company says that it received a telephone call from Gorby at about 2:00 a.m. on February 5. Gorby spoke with supervisor Peterson and said that he had been accosted by grievant Worix as he left work the previous evening. Peterson, in turn, told the section manager, who reported the matter to Hansotte. Hansotte set an investigation for the next day. Although the record is somewhat confusing, apparently the investigation was originally scheduled for the 5th and was put off until February 6 so Gorby could go to the clinic. In any event, the investigation meeting occurred on February 6. During the meeting, Hansotte testified that Gorby claimed he had been walking down the West Caster stairway at the end of his shift. When he was about four steps from the second landing, someone pushed him from behind. Gorby said he nearly fell, but was able to maintain his balance. However, he did hit the wall. Immediately after that, he said Worix hit him and pushed him into the wall again. The two exchanged words, although Gorby said he could not remember exactly what was said, except that Worix told him he had been waiting seventeen years to do this. At the investigation, Worix claimed that he did not push Gorby, but merely approached him to ask a question when Gorby took a swing at him. Worix said he deflected the punch and the two of them then grappled with each other in the corner, where they stayed until Nagy came and told them to separate.

Gorby's story at the hearing was, for the most part, consistent with what he said during the investigation, though he said he could not remember if Worix actually hit him, as he had said at the investigation. Gorby testified that as he entered the stairwell, he saw Worix sitting in a telephone booth at the stairwell entrance. Worix was not talking on the phone and, typically, would have already been gone since he relieves a half hour earlier than Gorby. Gorby said Worix followed him down the stairs and, when he was three or four steps from the bottom, pushed him

hard. Gorby said he went into the wall with his shoulder and then half turned and threw his arm up as a shield. Worix then shoved him into the corner and the two held each other off at arm's length. Gorby demonstrated that the two grabbed each other's shirts with one hand and pushed the other away with the other hand. After a few seconds, Gorby saw Nagy coming down the stairs and asked him to get Worix off him. Nagy stepped between the two and the incident ended. Gorby said he did not strike Worix and that he did not retaliate in any way. On cross examination, Gorby said he couldn't remember whether Worix had hit him.

Gorby said he did not report the incident immediately because of the unwritten code in the plant that one does not turn in a coworker. However, he said after he got home and thought about the matter, he decided it could have had serious consequences. And, apparently, because the dispute between the two of them had been ongoing for some time, he said he decided to protect himself and his family by calling supervisor Peterson and reporting the incident. In addition, Gorby filed criminal charges against Worix. Ultimately, the judge apparently directed a verdict of not guilty in favor of Worix. Gorby also offered a report from the Inland Clinic which indicated that he had some bruises and superficial lacerations, a contusion of the left shoulder, and a hairline fracture of a rib.

The version of events Worix offered at the hearing was significantly different from Gorby's. Worix said he had received a letter from Gorby which he interpreted as a threat to his family (to be discussed below) and that when he saw Gorby go by the telephone booth that night, he decided to catch up to him and ask about it. Worix acknowledged that he usually gets relieved earlier, but said he was relieved late that night and that it was just a coincidence that he happened to see Gorby go by. Worix said he was making a call from the telephone booth, though he

refused to say who he was calling. Worix said he did not run down the stairs, but merely walked down behind Gorby. When Gorby reached the landing, he swung around and threw out his arm. Worix said it probably was not a punch (though he had claimed otherwise at the investigation meeting) and that Gorby was probably just defending himself. Worix did not say what Gorby would have been defending himself from, since, according to Worix, he did not push or otherwise hit Gorby from behind. According to Worix' demonstration at the hearing, he and Gorby had each other in a bear hug in the corner.

Nagy did little to cast light on either story. He said he did not see anyone hit or pushed. He simply came down the stairs and found the two employees holding onto each other in the corner. Gorby asked for help and Nagy told them to stop it and tried to push them apart. Nagy's testimony did support Gorby's version of the two employees' posture in the corner. He said they each had hold of the other's shirt and that each was pushing the other employee away with the other hand.

The incident on February 4 does not tell the entire story between Gorby and Worix. Although there has apparently not been a previous physical confrontation, the two have not gotten along for many years. Gorby testified that Worix had been sent home five years before this incident for threatening him. Although Worix' account of that incident differed from Gorby's, it apparently is true that the Company took action against Worix and not Gorby. Gorby said he had not spoken to Worix at all in the five years between that incident and the one at issue here. Gorby said that about four weeks before the February 4 incident which led to the discipline, he found an anonymous note on his locker that said he was a "dead mother fucker." Later, Gorby said he heard Worix use the same terminology, though it is not clear from the record whether that

comment was directed at him. In any event, Gorby said he put "2 and 2 together" and decided that Worix had written the note. Apparently, at about the same time, Gorby learned that Worix believed Gorby had scratched his car. Gorby said there was also an incident in the parking lot in which he thought Worix threatened to run over him by gunning his motor. Thus, Gorby said he decided to confront the matter by writing a letter to Worix.

The letter was introduced into evidence. It reads as follows:

I guess I found out who the balless idiot was writing on my locker and in the bathroom, real class act! I guess you really are as stupid as you act if you think I would waste my time & energy& risk my job to scratch your caddy (I guess that's what you were saying).

I don't give a shit about you, your wife, kids, house, why would I care about your car? I don't mess with people's stuff; I only mess with their small minds!

If you want to continue this threatening behavior, then I will have to go upstairs and see C. Hanscott (sic.) or Jerry M. I won't put up with stupid shit. I don't expect an apology because you are not man enough to admit when you're wrong; but you are!

The letter was signed by Gorby and included the postscript, "I sign my stuff I write."

Worix said that some weeks before the incident on February 4, he had received an anonymous letter that Gorby had been hanging around his car. Worix said he took the car home and removed the snow and discovered it had been scratched and that the vinyl top had been cut. Worix said he mentioned it to Gorby, who simply gave him a "smart look." It was after this that Gorby had the letter delivered to Worix through another employee. Worix said he was concerned about the letter's reference to his wife and kids, so he wanted to talk to Gorby about it. That led to Worix's claim that he followed him down the stairs on the night of February 4.

The Company described its position as a "conundrum." It received two versions of the story, with each grievant essentially claiming that the other one had attacked him. Hansotte said

that, based on his investigation, he could not determine exactly what had happened that night, though it was clear that there had been some sort of altercation involving the grievants. Moreover, the incident had occurred in a particularly dangerous place, since one or both of them could easily have fallen down the stairs. Finally, Hansotte said that although he could not determine who the aggressor was, it was clear that there had been a fight and, even if one was guiltier than the other, there was "some culpability on each side." Thus, he determined that the appropriate discipline was to reinstate both employees with 13 lost turns. In his final argument, Mr. Parker acknowledged that the Company could not know exactly what happened, though he suggested that a fight had been brewing between the two grievants for a long time and that they simply seized on February 4 as the time to have it.

The Union is obviously in a very difficult position. Ideally, the Union would like to argue that nothing ever happened. The problem is that the two grievants -- each of which the Union is required to represent -- won't cooperate with this claim. Prior to the hearing, at least, each claimed that something happened and that it was the other side's fault. During the arbitration hearing, Gorby continued to insist that Worix assaulted him by pushing him down the stairs and then pushing him into the corner, though he could no longer remember whether Worix actually hit him. For his part, Worix had decided that Gorby didn't really swing at him, though he acknowledges that the two of them grappled into the corner. The Union is left with the position, then, of claiming that the Company cannot prove that either employee was at fault or that there was, in fact, a fight. It also says that, even if there was a fight, the Company's disciplinary action was too harsh, pointing to another incident in which employees were caught fighting and only given a three day discipline.

Discussion

The Union is right to suggest that the Company cannot merely discipline employees based on suspicion and then put the burden on them to prove their innocence. That, however, does not accurately describe what happened here. Gorby reported an alleged assault to the Company and, after investigation, the Company was able to determine that some sort of altercation did occur. Each grievant testified in the investigation that he was attacked by the other. And, though he claimed not to have seen the start of the incident, Nagy was able to offer testimony that the two were involved in some sort of tussle on the landing. Given the background of incidents between the two, the Company was justified in deciding to take disciplinary action against both grievants. The issue before me is whether the Company had just cause for the disciplinary action it took. In deciding that issue, I am not confined to the statements the grievants had made during the investigation. In addition, I am entitled to consider their sworn testimony at the hearing.

Like the Company, I can never know for sure exactly what happened on the landing on February 4. I am, however, inclined to give more weight to Gorby's claim than to Worix'. In the first place, Gorby submitted evidence of actual physical injuries, including a cracked rib.¹ It is hard to understand how those could have happened if the two simply slid into the corner in a brief tussle. The injuries, including the bruises and the cracked rib, are consistent with Gorby's claim that Worix pushed him from behind, that the momentum took him into the wall, and that Worix then pushed him into the wall again. I also note that Nagy's version of events is consistent with Gorby's testimony. Finally, I have trouble understanding why Gorby would have called his

¹ In Worix's part of the case, the Union said that it had never heard of this evidence before. This is not a convincing claim, since the evidence actually came from an exhibit the Union tendered into evidence in Gorby's case.

supervisor to complain about the incident if he had been the aggressor. He had no reason to believe that Worix would report the incident. However, in his letter to Worix four weeks before, Gorby had said that he was willing to report Worix' behavior if he did not drop the matter. That appears to be exactly what he did after the incident on the stairwell on February 4.

What I am inclined to think happened, then, is that Worix was angered by the letter Gorby wrote, that he waited for Gorby in the telephone booth because he knew Gorby would pass that way, and that he accosted Gorby on the stairs to confront him about it. It may be that Worix did not intend to push Gorby so hard or that he did not intend to inflict injury. However, I simply did not believe his testimony that he did nothing at all. I find that he pushed Gorby down the stairs, a dangerous and foolish act that could have had disastorous consequences. Given this conduct, the Company had just cause to discipline Worix and I find that a thirteen day discipline is not unreasonable. I have no way of knowing whether the instant case is similar to the one in which the Company imposed a three day discipline. However, I note that in Inland Award 906, I upheld a 30 day discipline against the aggressor in a fight. The discipline at issue in this case is considerably less severe.

Even though I have found that Worix was the aggressor, it does not follow that Gorby was free from blame. The letter he wrote to Worix was, to say the least, ill advised. That is not to suggest that he had no interest in trying to defuse the dispute by communicating with Worix. But the mention of Worix' wife and children was gratuitous. The letter does not actually seem to be a threat against them, but it is not hard to understand Worix' concern. The Company chastises the employees for actions it describes as childish. However, it is not uncommon for employees who work together to harbor petty disputes, which can be exacerbated over time, especially when


the employees work in a hot and unpleasant environment. But that does not justify having them act out their anger at work. I have found that Worix was the aggressor and that he was principally at fault in this case. But Gorby was not an innocent bystander dragged into the confrontation against his will. His letter precipitated Worix' conduct and, to that extent, he shares in the blame. I find that the Company had just cause to discipline Gorby, but that his conduct did not warrant the same level of discipline as Worix. I will, then, order the Company to reduce Gorby's discipline to a 3 day discipline, and to restore to him all earnings lost in excess of that amount.

INLAND AWARD 955

The grievance is sustained in part. The Company had just cause to discipline grievant Gorby by imposing a three day discipline. The Company will modify the records to reflect a three day discipline and will make grievant whole for all time lost in excess of three days.

INLAND AWARD 956

The grievance of Vance Worix is denied.


Terry A. Bethel
September 22, 1998