

IN THE MATTER OF THE ARBITRATION BETWEEN

ISPAT INLAND STEEL COMPANY

and

Award 965

UNITED STEELWORKERS OF AMERICA  
LOCAL UNION 1010

OPINION AND AWARD

Introduction

This case concerns the discharge of grievant Robert Taliaferro, a mechanic in the Plant 4 maintenance department. The case was tried in the Company's offices in East Chicago, Indiana on September 15, 1999. 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 agreed that the case is properly before the arbitrator and submitted the case on final argument.

Appearances

For the Company:

P. Parker.....Section Mgr., Arbitration and Advocacy  
J. Jones.....Section Mgr., Maintenance, Elec. Furn.  
T. Kinach.....Section Mgr., Union Relations

C. Lamm.....Staff Rep., Union Relations  
J. Bean.....EAP Counselor

For the Union:

D. Shattuck.....Grievance Committee Chairman  
A. Jacque.....International Union Staff Rep.  
D. Reed.....Grievance Committee Secretary  
J. Rosas.....Griever  
R. Taliaferro....Grievant  
N. Taliaferro....Witness  
L. Emmons.....Witness  
V. Daniels.....Witness  
S. Daniels.....Witness

Background

Most of the facts are not in dispute. Other than some problems with absenteeism, grievant had no significant disciplinary record over the previous five years until September, 1996, when he received a three day discipline for failing to submit to a fitness to work evaluation. Subsequently, on October 31, 1996, grievant was suspended pending discharge for sleeping on the job. Ultimately, the parties agreed that grievant would be returned to work with a three day discipline and subject to certain conditions. Those conditions are at the heart of the dispute in this case. In the third step minutes, the Company's position states its belief that grievant had been sleeping and continued:

Notwithstanding, the Company will reinstate the grievant under the following conditions:

A) The suspension discharge action will be reduced to 3 turns off for sleeping in the plant.

B) Mr. Taliaferro is encouraged to make an appointment with J. Bean, Inland clinic Counselor, for the purpose of enrolling in the Inland Problem Drinker/Substance Abuse Program. He should also contact the Union Alcohol and Drug Committee and is encouraged to cooperate with their recommendations.

C) Mr. Taliaferro will not use or permit himself to be exposed to any mood altering substances (alcohol, illicit drugs, or any drug not prescribed by a physician). The Company may randomly test Mr. Taliaferro for a period of 2 consecutive years following his return to work and the detection of any of the aforementioned substances, regardless of amount, will be grounds for his immediate suspension preliminary to discharge.

D) ...

Company witness Tim Kinach testified that he agreed to reduce the discharge to a three day discipline because he was convinced that grievant was sincere about his desire to control his drug problem. He also said that he reviewed the Company's offer in the third step minutes with grievant and his Union representative and that they both understood it, including paragraph C. Both grievant and the Union signaled their acceptance of this settlement offer with signatures.

Following his discipline in 1996, grievant participated in a drug rehabilitation program and then returned to work. He was tested for drugs several times pursuant to the terms of his reinstatement agreement, and passed each test until June, 1998. The failure of the test at that time led to his suspension pending discharge and, ultimately, to this arbitration. The Company cites paragraph C of the reinstatement agreement in support of its action.

Grievant testified that he began experimenting with cocaine in 1985 or 86. Subsequently, he progressed to using heroin, which was his drug of choice. He said he would often use speedballs, or a mixture of cocaine and heroin, so that the heroin would not "take me down too far." Ultimately, he said his life became unmanageable, so he enrolled in a rehabilitation program in 1986. Once it was completed, however, he began using drugs again "very shortly" and was soon using more than he had been before rehab. Grievant said he became withdrawn and out of control and, in 1992 or 93, again entered a rehabilitation program, "searching for a miracle cure." Unfortunately, he found no such relief. He began using drugs again after completing the program and, he said, his drug use "was becoming a problem on the job." It was also starting to cause physical ailments, which caused him to miss work. He said he tried to quit on his own without success. He had lost faith in the rehab centers and was again "out of control." In 1996 when he was found sleeping on the job, he said it was because of "withdrawal symptoms." He again tried rehabilitation and, when he left the program, discovered that the Company wanted to discharge him. He said he agreed to the reinstatement agreement and to random testing because he thought it would give him an incentive to stay clean. That worked for a while, but he started using again and, though he said his drug use was less frequent, he would still have "binges." Fortunately, the Company did not test him during one

of his periods of drug use, at least until the test that led to his termination.

At around the time of his reinstatement in 1996, grievant said he was arrested for possession of drug paraphernalia. The court offered him an opportunity to enter its "Drug Court" program, which he accepted. However, grievant said he was not able to stay off drugs and that he still used "sporadically." He said he knew that he had not "come to terms" with his addiction and that he left the program and his drug use continued. Grievant said he tried to stay clean, but without success. Then the Company asked for the drug test that led to this arbitration. Grievant said he thought about refusing, which he had done once prior to his initial discharge when he knew he would fail the test. However, "something," - which grievant now thinks was God - told him to go ahead with the test, which he knew would be positive. He failed the test and was discharged.

Grievant said his life "crashed" after his discharge. He said he was depressed and tried to get off drugs alone by going "cold turkey." His pastor and her husband - who had once defeated a drug problem - visited and grievant said he had a "revelation." He started going to church and ultimately lost the desire for drugs. He then re-entered the Drug Court program, served the required 15 days in jail and, since that time, has stayed in the program. Grievant credits his religious conversion for his success. In addition, grievant has been attending Narcotics Anonymous meetings.

Grievant's pastor, the Reverend Sarah Daniels, testified in his behalf. She said she had never seen anyone struggle as grievant did during his withdrawal. She said she has provided spiritual counseling and that she believes in grievant's commitment to stay off drugs. Grievant's Drug Court counselor, Rev. Leonard Emmons, also testified in his behalf. Rev. Emmons recounted that grievant's initial effort had been unsuccessful, but that he had willingly reentered the program in May 1999 and had been clean since that time. He said grievant had undergone a change and was a "different man." Emmons acknowledged that most people in the program don't make it, but he said grievant is a "success story." On cross examination, Emmons said he sees his clients for 3 or 4 hours a week. However, that has to include group time, since Emmons has 50 clients. He also characterized grievant as "one of the very rare few."

The Company argues that it agreed to reinstate grievant only because of his commitment to stay off drugs, a bargain he was unable to keep. It also says that even if I were to take post discharge conduct into account (which it does not concede I should do), grievant's history suggests he is a poor risk. He has been through rehabilitation numerous times and has relapsed each time. Indeed, by the time of the hearing, grievant had only been off drugs for about four months. The Company says this is not enough to insure that grievant will not fail again. Moreover, the Company says a relapse could be catastrophic, since grievant works around molten metal.

The Union argues that grievant is a changed man who deserves another chance. It points out that the reinstatement agreement was not a last chance agreement. Thus, the Union has never agreed that grievant's original discharge was for just cause and, indeed, the Union says that sleeping on the job would not have warranted discharge. The point of the Union's argument is that, since the reinstatement agreement was not a last chance agreement, the Union says I have more discretion to resinate grievant. The question, the Union says, is whether I believe grievant's effort at rehabilitation is sincere and whether he has a good chance to succeed. If so, then the Union says that I can give him another change, as I have done in other cases, including Inland Award 888.

#### Findings and Discussion

The Union is obviously correct when it asserts that the reinstatement agreement at issue here is not a last chance agreement. In the typical last chance agreement, the Union concedes that the Company has just cause to discharge an employee, and it agrees with the Company that the employee should be given one last chance at employment. The nature of the agreement is clearly spelled out to the employee, who could not fail to understand that his job is in serious jeopardy. The Union correctly points out that some of the features of such agreements are lacking in this case.

Nonetheless, it is also true that the parties agreed to a conditional reinstatement of grievant and I am not free simply to ignore it. Moreover, grievant testified that he understood the restrictions he would be under and that, in fact, he hoped to use them as an incentive to remain drug free. Unfortunately, he was not successful. It may be, as the Union claims, that I have more discretion in this case than I would have if grievant had violated a typical last chance agreement. But even if that is correct, that does not mean the slate is clean. Grievant, after all, acknowledged that two of his previous disciplines - for failure to take a fitness to work evaluation and for sleeping - were directly related to his drug use. He also acknowledged that he continued to use drugs intermittently after his reinstatement, though he was fortunate enough not to be tested at those times, at least until the last test. Even if the reinstatement agreement is not to be taken at face value, as the Union claims, there would still be an issue of whether grievant was likely to remain drug free.


I was impressed by grievant and by his new found commitment to remain off drugs. However, I note that he apparently made the same impression on the Company at the time of his reinstatement. It may be, as grievant and his advisors claim, that grievant's religious conversion will make a difference this time and that he is, indeed, a changed man. For his sake, I hope that is right. But grievant has repeatedly failed in his attempts at rehabilitation and I cannot find the likelihood of success



necessary to justify his reinstatement. In that regard, I note that grievant continued to use drugs even after his discharge and that by the time of the hearing, he had been drug free for only four months. I hope this period of sobriety will be the start of a new life for grievant. But it is not sufficient to warrant reinstatement. Thus, I must deny the grievance.

AWARD

The grievance is denied.

  
Terry A. Bethel  
October 8, 1999

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OCT 12 1999

GRIEVANCE COMM. OFFICE