ARBITRATOR'S AWARD

In the Matter of the Arbitration
Between

Mittal Steel USA
Indiana Harbor
East Chicago, Indiana

and

Larry Jones, represented by
United Steelworkers of America, AFL-CIO-CLC
and its Local Union 1011

Mittal Steel Award # 3
Grievance No. SP-05-007

David A. Dilts
Arbitrator

March 24, 2006

APPEARANCES:

For the Company:

Patrick David Parker, Manager of Labor Relations

For the Union:

Rick Bucher, Staff Representative

Hearings in the above cited matter were conducted on February 24, 2006 at the offices of Mittal Steel Company, 3210 Watling Street, East Chicago, Indiana. The parties stipulated that the present matter is properly before this Arbitrator pursuant to the requirements of Article Five, Section I of their 2002 Collective Bargaining Agreement. The record in this matter was closed upon completion of the hearing on February 24, 2006.

ISSUE

Was Larry Jones (herein the Grievant) discharged for just cause? If not, what shall be the remedy?

BACKGROUND

The grievant is an operating technician in the Steel Producing Division of the Company's Indiana Harbor Works. The grievant has a seniority date of July 22, 2002.

The grievant reported off work indefinitely for a serious health condition. The record shows that the grievant saw a physician on June 28, 2005 who released him to return to work on July 3, 2005. On July 3, 2005 the grievant reported for work, without a return to work physical, and then reported off work for the next two turns. On July 7, 2005 the grievant submitted a claim for sickness and accident benefits. On July 11, 2005 the grievant appeared for a return to work physical and was returned to work on July 12, 2005. On August 12, 2005 the grievant was suspended preliminary to discharge for unauthorized absence. On August 19, 2005 the grievant submitted a claim for sickness and accident benefits for the period June 5, 2005 through July 5, 2005. The Company rejected that claim for benefits.

The Grievant was issued a notice of pre-discharge suspension dated August 12, 2005 for "Being Absent without Authorization." The pre-discharge suspension was converted to discharge on August 19, 2005. The Union filed a timely step 1 grievance which was denied on

August 22, 2005 as were subsequent appeals through the parties' negotiated grievance procedure. The parties stipulated that the present matter is properly before this Arbitrator pursuant to the requirements of Article Five, Section I of their 2002 Collective Bargaining Agreement.

COMPANY'S POSITION

It is the Company's position that there is just cause to discharge this grievant. Clearly there is no dispute that the grievant was off work for the periods of time charged by the Company. The absence of an employee works a hardship on the Company and those employees who report for work. Employees in the grievant's area work twelve hour shifts four days per week and there is no pool of on-call employees to replace those who do not report for work. Either overtime must be worked, or if nobody is available to work the overtime, the remaining employees must do extra work to cover for the absent employee.

The grievant has an extensive record of discipline for attendance problems. This latest round of absenteeism left the Company with no alternative save to discharge the grievant for his inability to attend work. The Company's attendance policy is written (Union exhibit 3) and is well known to the workforce.

The grievant placed himself at jeopardy of losing his job by being absent in violation of the Company's policy. By the time he obtained the absences of June and July of 2005 the grievant had reached his fifth occurrence. By absenting himself from June 6 to July 3, 2005 accumulated several occurrences of absenteeism thereby making the application step of discipline applicable, in this case, he was at his fifth occurrence, when he accumulated more than

four consecutive shifts, thereby earning two more occurrences, and the requisite step of discipline – discharge.

The Union contends that the grievant's absences was covered by the Company's sickness and accident benefit program, which is exempted from being counted as occurrences for discipline. The clear requirement for coverage under this program is that the grievant be under the care of a physician, and he was not. The record shows he did not see his physician until June 28, 2005 over three weeks after he reported off work. This clearly does not entitle him to exemption as being covered by the sickness and accident program.

The Union makes a hyper-technical argument concerning the grievant's eligibility for sickness and accident benefits. It is the Company's position that the grievant did not qualify for sickness and accident benefits because he did not see a physician until June 28, 2005 and he is required to be under a physician's care to receive those benefits. Therefore, the Union's contentions in this regard ring hollow. Further, even if there was merit to the Union's contentions, the grievant still absented himself from work because he did not present himself for a return to work physical as required. He attempted to short-circuit the return to work process and sneak-in under the radar. As a result he was absent on July 5 and July 6 and then again on July 7, 2005. He did not clear the clinic and report officially back to work until July 12, 2005. These absences are not covered by the physician's statement in Union exhibit 1.

The grievant violated the Company's attendance control policy, he was not entitled to sickness and accident exemption under this policy, and he was discharged for proper cause. Therefore the Company respectfully requests that this grievance be denied in its entirety as being without merit.

UNION'S POSITION

It is the Union's position that the Company did not have just cause for the discharge of this grievant. Section K of the Program of Insurance Benefits (p. 98 of Joint exhibit 2) states, in pertinent part:

3. Eligibility

An Employee is eligible for Sickness and Accident benefits:

a. if s/he is totally disabled as a result of sickness or accident and prevented from performing employment duties as certified by a physician.

Under paragraph 4 of this same section of the contract, it is described how benefits are determined, apart and separately from whether or not an employee is eligible for Sickness and Accident Benefits. In the case of disability resulting from sickness an employee does not receive benefits until the eighth day of the disability.

Union exhibit 1 is a certificate from Benjamin Calayag, M.D., the grievant's physician, which states:

Name Larry Jones Age ____
Address_____ Date 6-28

℞
This is to certify that Larry Jones is under my care because of acute bronchitis.
Authorized to be off work from June 5, 05 to July 3, 05.

S/Benjamin Calayag

It is clear that Benjamin Calayag, M.D. has certified that the grievant is to be off work from June 5, 2005 to July 3, 2005 and the reason for this certification was that the grievant was under the physician's care and was suffering from acute bronchitis. This is consistent with the requirements of the contract language from Section K of the Program of Insurance Benefits. This contract language is clear and unambiguous and is binding upon the parties and is instructive for the Arbitrator. Further, Company exhibit 2 contains a series of U.S. Department of Labor WH 380 and WH 381 forms which not only corroborate the physician's certification in Union exhibit 1, but extend the period of incapacity of the grievant to July 12, 2005. These documents were caused to be created by requests from the Company and are also signed by the grievant's attending physician.

Union exhibit 3 is the Company's attendance control policy. This policy provides for the discipline which has befallen this grievant in the case before the Arbitrator. However, this policy also contains exceptions for charging employees with occurrences of absenteeism, which states in pertinent part:

> Any failure of an employee to work a scheduled shift, or accepted overtime shift, is counted as an absence with the exception of:
>
> Vacations
> Jury Duty or subpoenaed as a witness
> Funeral Leave (as defined in Funeral Leave Policy)
> Disciplinary Suspension
> Military encampment
> Qualified Union Business
> Approved leave pursuant to Family and Medical Leave Act
> Qualified Sickness and Accident
> Qualified Workers Compensation

When an employee has an absence, except as listed above, an occurrence will be created.

Again, this language is not reasonably subject to competing interpretations and is therefore clear. When an employee has a qualified sickness or accident under Section K, that employee's absence is excepted from being charged as an occurrence under the Company's attendance policy. Clearly the grievant's absences from June 5 through July 3, 2005 are excepted as occurrences and cannot form the basis for just cause for the discipline of this grievant.

The grievant reported for work and should not have been charged with any occurrences for the period he was absent. The Union contends that this grievance must be granted, and that the grievant be ordered reinstated to his former position with the Company. Because the grievant was permitted to continue his employment as this grievance was processed, there is no issue of back pay or benefits before the Arbitrator.

ARBITRATOR'S OPINION

The is little factual disagreement to be found in this record. What is at contention is how these facts are to be applied to the parties' contractual requirements concerning the attendance control procedures and its interface with the parties agreement in Section K of the Program of Insurance Benefits (Joint exhibit 2, page 98). It is left to this Arbitrator to interpret and apply the relevant portions of the Company's attendance control policy and the parties' Collective Bargaining Agreement with respect to the facts developed in this record.

Preliminarily, it is also worth noting that the parties negotiated a narrow arbitration clause

into their grievance procedure. The language of the charge to Arbitrators under this Collective Bargaining Agreement is clear, and is standard narrow arbitration clause language, to wit: *"The arbitrator shall not have jurisdiction or authority to add to, detract from or alter in any way the provisions of this Agreement or the Insurance Agreement."* It is therefore incumbent upon on the Arbitrator to apply the clear language of the Agreement into which the parties have entered in this matter.

Occurrences for Purposes of Attendance Control Policy

The Company has promulgated an Attendance Control Policy which is contained in Union exhibit 3. The language of that policy was not the subject of collective bargaining, and in every respect appears to have been unilaterally promulgated by ISG management, of which Mittal is the successor employer. This policy is clear concerning the steps in the disciplinary process for attendance irregularities. The policy is also clear concerning exceptions to the policy for charging occurrences which accumulate for purposes of the disciplinary progression.

> Any failure of an employee to work a scheduled shift, or accepted overtime shift, is counted as an absence with the exception of:
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> .
> .
> .
>
> Qualified Sickness and Accident
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> When an employee has an absence, except as listed above, an occurrence will be created.

Clearly there are several exceptions for absences which may be charged as occurrences for purposes of the attendance control progression of discipline. Included in these exceptions is "Qualified Sickness and Accident." Qualified sickness and accident is addressed under the Contract's Appendix, Section K concerning Program of Insurance Benefits (page 98, Joint exhibit 2) and as the Union argues it is clear, unambiguous and has language which speaks to the eligibility and to the receipt of benefits in two different paragraphs of the Section. This language requires:

> 3. Eligibility
>
> An Employee is eligible for Sickness and Accident benefits:
>
> > a. if s/he is totally disabled as a result of sickness or accident and ***prevented from performing employment duties as certified by a physician***. [emphasis added]

Clearly and unequivocally the parties contemplated that an employee would be eligible to receive benefits if "prevented from performing employment duties" and that the evidence for this situation was simply that "as certified by a physician."

This record contains several certifications by the grievant's physician. Those certifications are: (1) two hand-written notes on prescription pads, (2) a medical certificate from St. Catherine's Hospital, and (3) U.S. Department of Labor WH 380 and WH 381 forms. In the case of the prescription pads, one states the grievant has acute bronchitis and is "authorized to be off work" from June 5, 2005 through July 3, 2005. This is medical certification and clearly meets the requirements spelled out in paragraph 3 of Section K cited above. Therefore, in this

Arbitrator's considered opinion further evidence concerning whatever the Company's insurance provider decides with respect to benefits is irrelevant for purposes of these proceedings. The grievant presented medical certification, as required to be eligible for benefits, and that is all the attendance control policy requires. For the Arbitrator to find otherwise would be to add to the parties' agreement, and this the Arbitrator is barred from doing by clear language in Article Five, Section I.

The record shows that the grievant returned to work without having cleared the Company's medical unit for his return to work, and thereby missed two turns – according to the Company's own arguments. Therefore, the worst offense this grievant committed was to have missed two turns due to improper reporting for work. He was released to return to work on July 11, 2005 (St. Catherine's Hospital medical certificate, Company exhibit 2). However, these absences are not cited in the August 12, 2005 notice of pre-disciplinary suspension, nor are these absences argued in the supporting documentation for the meetings between the Company and Union concerning this discharge (Joint exhibit 1). These issues first arise at hearing, and this Arbitrator may not consider such issues which were not part of the relevant disciplinary action as an add-on at hearing. Discharge must rise or fall on the charges and there specification at the time of decision to discharge. A grievant or Union cannot be expected to defend against a moving target, nor can an Arbitrator fairly and reasonably be expected to aggravate the specifications after the steps of the grievance procedure have been exhausted before the arbitration step.

The Arbitrator's authority is limited to resolve the matter of the specifications of the discharge issued this grievant. The Notice of Pre-Discharge Suspension effective 08/13/05 dated

August 12, 2005 (Joint exhibit 1) cites the period June 5, 2005 through July 3, 2005 as the absences which form the cause for the grievant's discharge, to wit:

> .
> .
> .
>
> You [the grievant] were absent from work from June 5, 2005 through July 3, 2005 without authorization. Fort Dearborn Life has made repeated requests for documentation in order to qualify you for an authorized leave under S & A (Sickness and Accident Disability Leave). To date, you have not responded. Accordingly, there is currently no reason to exempt you from the Company Attendance Policy.
>
> Therefore, you are hereby issued an initial pre-discharge suspension, effective August 13, 2005, for "Being absent without authorization."
> You are entitled to a hearing within 5 days of your receipt of this document. Your Union representative will be notified. You are entitled to continue working under the Justice and Dignity provision of the Labor Agreement, as long as your Union representative requests it immediately.
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> .
> .
> .

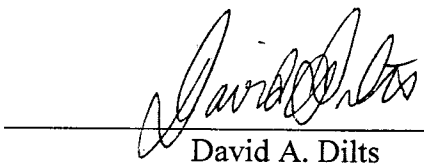
It is therefore this Arbitrator's considered opinion that the contract is clear. It is also clear from the testimony of Mr. Trinidad that additional negotiations concerning the Summary Plan Description of the Insurance Program described in Section K are still pending and underway. Paragraph 2 of Section K makes clear it is the joint responsibility of the Union and Company to prepare such a description, and not that of a contractor responsibility for administration of what is agreed upon by the Union and Company.

The Arbitrator has no alternative save to sustain this grievance in its entirety and order the aggrieved discharge rescinded, and expunged from the grievant's records.

AWARD

The grievance is sustained. There is no just cause for the discharge of this grievant. The aggrieved discharge is ordered rescinded and expunged from the grievant's records.

At Fort Wayne, Indiana
March 24, 2006



David A. Dilts
Arbitrator