BEFORE

ARBITRATOR BARRY E. SIMON

In the Matter of the Arbitration Between	)	
	)	
UNITED STEELWORKERS, LOCAL 1010,	)	
	)	
Union,	)	
	)	Grievance No.: PW-2024-07
	)	Grievant: Mark Koliboski
CLEVELAND-CLIFFS STEEL INC.,	)	
	)	
Employer.	)	Case 152

OPINION AND AWARD

The above identified matter was heard before the undersigned Arbitrator, selected mutually by the parties, on May 14, 2025 in the offices of Cleveland-Cliffs Plant 1, East Chicago, Indiana. Representing Local 1010 of the United Steelworkers, hereinafter referred to as "the Union," was:

Jacob Cole
Staff Representative, District 7

Representing Cleveland-Cliffs Inc., hereinafter referred to as "the Company" or "the Employer," was:

Stepfon R. Smith, Esq.
Senior Labor Relations Representative

Sworn testimony was given before the Arbitrator, at which time the parties were afforded a full and complete opportunity to introduce any evidence they deemed appropriate in support of their respective positions and in rebuttal to the position of the other, to examine and cross examine

witnesses, and to make such arguments that they so desired. The record was closed at the conclusion of the hearing.

Background: At all times relevant to this dispute, Mark Koliboski, hereinafter referred to as "Grievant," has been employed by the Company for twelve years as an Electrician at the 80" Mill at the Company's Indiana Harbor facility. As such, he is a member of the bargaining unit represented by the Union pursuant to a collective bargaining agreement effective September 1, 2022 through September 1, 2026, hereinafter referred to as "the Basic Labor Agreement," "the BLA," or "the Agreement."

On November 13, 2024, Grievant was discharged from a medical facility and given a "Return to Work/School" document indicating he had been instructed to "Return to work or school for full duty on November 14, 2024." On November 14, 2024, Grievant presented this document at the Company's Indiana Harbor Medical Clinic, where he was told to sign a release for his medical records. Grievant declined to sign the release and, on November 18, 2024, the Union filed the instant grievance on his behalf. The grievance alleged the Company had violated Article 3, Section F,[1] and Article 5, Section J of the Agreement. As a remedy, the grievance requested:

> Mr. Koliboski be allowed to return to work immediately, based on the initial releases provided by his independent treatment provider. The Company compensate Mr. Koliboski for any additional medical costs incurred due to this requirement, including co-pays, fees, and lost wages resulting from the delay. The Company recognize the medical releases provided by external, qualified professionals as valid documentation in future cases, to avoid duplicative evaluations and preserve employee privacy.

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[1]Article 3, Section F refers to "The Right to a Proper Medical Program for Workplace Injuries and Illnesses." The parties have stipulated that Grievant was not the subject of an occupational or workplace injury or illness. Consequently, the Arbitrator need not consider the reference to that provision.

The grievance was denied by the Employer and was then progressed to arbitration when no resolution could be reached.

Issues Presented: The Union describes the issue before the Arbitrator as follows:

> *Was the Company proper in withholding work and other contractual benefits from Grievant from November 14, 2024 through March 24, 2025? If not, what is the appropriate remedy?*

The Employer proposes the following Statement of Issues:

> *1.) Is this Grievance subject to the grievance procedure and therefore arbitrable where there is no provision in the Basic Labor Agreement specifically governing the Company's refusal to return the Grievant to work when Grievant refused to provide a release for his medical records and failed to provide objective documentation of his diagnosis, treatment and restrictions, if any?*
>
> *2.) Whether the Company violated the collective bargaining agreement when it refused to immediately return Grievant to work after Grievant was hospitalized for ten days and failed to provide the Company with any objective medical documentation, which included diagnosis and treatment?*

The parties being unable to agree upon a Statement of Issues, they have authorized the Arbitrator to define the issues before him. Upon consideration of the parties' positions and the record of the hearing, the Arbitrator describes the issues as follows:

> *1.) Is the grievance arbitrable?*
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> *2.) If so, did the Employer violate the Agreement by not permitting Grievant to return to work following his hospitalization until he satisfied the Employer's requirement regarding documentation of his diagnosis and treatment? If so, what is the appropriate remedy?*

Relevant Contract Provisions:

ARTICLE THREE – HEALTH, SAFETY AND THE ENVIRONMENT

Section A. Employee and Union Rights

1. Employees have the right to a safe and healthful workplace, to refuse dangerous work, to adequate personal protective equipment, to safety and health training, to a proper medical program for workplace injuries and illnesses, and to a reasonable alcoholism and drug abuse policy.

* * *

Section B. The Right to a Safe and Healthful Workplace

1. The Company will provide safe and healthful conditions of work for its Employees and will, at a minimum, comply with all applicable laws and regulations concerning the health and safety of Employees at work and the protection of the environment. The Company will install and maintain any equipment reasonably necessary to protect Employees from hazards using the hierarchy of controls as a guide.

* * *

Section O. No Union Liability

The Company has the exclusive legal responsibility for safety and health conditions in the plant and for environmental matters. Neither the Union nor its representatives, officers, employees or agents will in any way be liable for any work-related injuries or illnesses or for any environmental pollution that may occur.

ARTICLE FIVE – WORKPLACE PROCEDURES

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Section I. Adjustment of Grievances

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2. Definitions

   a. Grievance shall mean a complaint by the Union which involves the interpretation or application of, or compliance with, the provisions of this or any other Agreement between the Company and the Union.

* * *

6. Board of Arbitration

* * *

b. The member of the Board (arbitrator) chosen in accordance with Paragraph 7(a) below shall have the authority to hear and decide any grievance appealed in accordance with the provisions of the grievance procedure as well as disputes concerning the Insurance Agreement. 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.

* * *

d. The decision of an arbitrator shall be final and binding upon the Company, the Union and all Employees concerned.

* * *

Section J. Management Rights

The management of the plants and the direction of the working forces, including the right to hire, transfer and suspend or discharge for proper cause, and the right to relieve employees from duty, is vested exclusively in the Company.

In the exercise of its prerogatives as set forth above, the Company shall not deprive any Employee of any rights under any agreement with the Union.

Position of the Union: The Union insists Grievant provided the necessary documents to the Clinic to indicate he was able to return to work. The doctor's release, says the Union, noted that there were no restrictions placed upon Grievant as a result of either his diagnosis or medications. It denies he ever received any indication as to what specific documentation he needed to present before he could return to work.

The Union complains that the delay in getting him back to work created both mental and financial hardships for Grievant. It explains that Grievant took it upon himself to receive treatment,

and suggests that the Company's actions may discourage other employees from doing so. The Union denies it needs to negotiate these procedures into the BLA, but insists it is a part of basic due process to which employees are entitled under the Agreement.

The Union asserts the Company's requirements were unnecessary inasmuch as it permitted him to return to work without his having given a release for his medical records or getting a second medical opinion.

The Union concludes the demands made by the Company improperly deprived Grievant of work opportunities and income. It asks, therefore, that the grievance be sustained, and that Grievant be made whole for wages and benefits lost for the time he was withheld from service. It further asks that the Employer be directed to issue clear criteria as to what is required from employees to allow them to return to work after medical absences. Finally, it asks that the Employer be ordered to cease and desist from holding employees off work when they present an unrestricted release from a licensed medical provider.

Position of the Employer: The Employer commends Grievant for obtaining the medical treatment he needed, but insists it has duties, obligations and responsibilities to Grievant and all employees to ensure it is safe for them to return to work. It contends the Company's doctor was in the best position to determine whether it was safe for Grievant to return to work in the Plant because he has knowledge of the requirements of the job to which Grievant was assigned.

The Employer asserts it provided the Union, during the handling of the grievance, with clear criteria as to what documentation would be acceptable to allow Grievant to return to work. It

contends it did not receive the required information from Grievant. Any delays in returning to work, according to the Employer, were under Grievant's control. It notes that he continued to receive medical treatment after he had returned to work.

The Employer argues that the Union has the burden of proving a violation of the BLA, but has not done so. Because there is no provision in the BLA governing this issue, and the terms of Article 5, Section J reserve the issue to management, the Employer also argues the grievance is not arbitrable. It asks, therefore, that the grievance be either dismissed or denied in its entirety.

Discussion: The Employer's objection to the arbitrability of the grievance is substantive, rather than procedural. It is a question as to whether the subject matter of the grievance is within the scope of the BLA's arbitration clause. The burden of proving the grievance is not arbitrable is upon the Employer. As the Arbitrator sees the grievance, the Union is asserting that the Employer's exercise of its Management Rights (which it cites in its grievance) deprived Grievant of any rights under the Agreement.

Management Rights clauses typically have a limitation upon the exercise of such rights. In many collective bargaining agreements, these limitations are framed as allowing the exercise of the rights so long as doing so is not in conflict with any other provisions of the contract. Although worded differently, the last sentence of Article 5, Section J is the same, in that it restricts the Employer from exercising its rights if such exercise deprives employees of their contractual rights. The gravamen of the Union's grievance is that the Company, by requiring additional documentation, deprived Grievant of his contractual right to work. The grievance's reference to Article 5, Section J

is sufficient to allege the Employer has violated the last sentence of that provision. Thus, the grievance must be considered to be substantively arbitrable.

When Grievant reported to the Company's Clinic on November 14, 2024, he presented a computer-generated "Return to Work/School" form that indicated he had been under the care of the medical facility, having been admitted on November 3, 2024, and discharged on November 13, 2024. The note stated, "The patient has been instructed to return to work or school for full duty on: 11/14/24." It had the printed name of a doctor. That was all it said.

A "Return to Work Evaluation Form" was then completed by the Clinic. It contained a medical history as reported by Grievant, and listed medications. It shows the results of a basic physical exam, *e.g.*, blood pressure, pulse, respiration, general appearance, etc. The form indicates that more information might be needed to release him to return to work. It further indicates he spoke to Dr. Ted Niemiec, the Indiana Harbor Medical Director, who did not release him at that time. Although the Employer's opening argument asserted Grievant was told at this time what documentation he would need to provide in order to be released to return to work, the form completed on that date gives no indication that Grievant was so informed. Dr. Niemiec did not testify whether he gave Grievant these instructions or not.

Grievant testified he was directed to sign a release for medical information from the treating facility. He testified he declined to do so because people lose their jobs when personal information such as this is used against them.

On January 22, 2025, Senior Labor Relations Representative Stepfon Smith wrote to Grievance Chair Charles Switzer stating that the Company was proactively attempting to return

Grievant to work as soon as possible. He asked Mr. Switzer to direct Grievant "to have his treating physician provide the Company with a revised release to return to work that is signed by his treating physician and includes Mr. Koliboski's diagnosis, treatment, follow-up care (if any) and any restrictions (if any)." In response, the Company was provided with a letter from a Program Therapist Social Worker at the hospital, stating Grievant's diagnosis and treatment. The letter concluded by stating, "There are no restriction [*sic*] for him due to his medication and he is able to return back to work." The Employer did not consider this document to be sufficient because it was not signed by a physician. The name of the Therapist who signed the letter was not printed on the letter, and cannot be determined because the signature is not legible.

Grievant returned to the Clinic on March 24, 2025. He apparently presented a "Nursing Discharge and Transition Record" and a "Discharge Medication Summary for Patient" from the hospital. Both documents indicated they were printed and given to Grievant on November 12, 2024. Because the Discharge Record gave a specific diagnosis and code, Dr. Niemiec determined Grievant's return to work would not present a danger to himself or other employees, and permitted him to work. Grievant started work the following day.

Even if it were not addressed in the BLA, the Company has a duty to provide its employees with a safe and healthy workplace. To that end, it has a right to determine whether an employee is physically and mentally fit to return to work. To do so, the Company must take the employee's job duties into consideration. That is a factor that may not be known by the employee's physician, but is known by the Company's Medical Director.

It was not unreasonable for the Medical Director to require Grievant to provide more information about his hospitalization, diagnosis, and treatment, or to provide a release so he could obtain the information from the hospital. Dr. Niemiec had basic information about why Grievant was hospitalized, but needed more specific information before he could confidently release him to go back to work in the Plant. Because of the nature of Grievant's hospitalization, this requirement was not unreasonable. That information was not available to Dr. Niemiec until March 24, 2025, at which time Grievant was promptly released. The record reflects, though, that Grievant had received the documents upon his discharge from the hospital. The Arbitrator has no doubt that Grievant would have been cleared to go to work when he first went to the Clinic on November 14, 2024, had he presented those documents.

In a similar case at this location, involving the Employer's predecessor, ArcelorMittal USA, and USW Local 1011, Grievance No. UT-2016-15 (November 21, 2019), Arbitrator Ronald F. Talarico wrote:

> The narrow issue presented within is whether the Employer was obligated to accept the Grievant's doctor's note at face value and immediately return him to work, or would it be inappropriate to look into all of the attendant circumstances before deciding whether it was safe for all concerned to allow him to return to work? There is nothing in either the collective bargaining agreement or the Program of Insurance Benefits that mandates the Employer leave its common sense at the Plant gate and accept the Grievant's questionable request at face value without inquiry.
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> * * *
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> Based upon all of the above , the evidence is clear that at no time did the Company interfere with or hinder the Grievant from returning to work. Moreover, under the within circumstances it was eminently reasonable for the Clinic to do their own evaluation to make sure it is safe for the Grievant to return to work. . . . What it required of him was reasonable and necessary for him to be able to safely perform his job duties. Any delay in his return to work cannot be attributed to the Company. The grievance must, therefore, be denied.

Although the identity of the Employer has changed, the relevant terms of the Agreement with the Union have not. While Arbitrator Talarico's decision may not necessarily be binding upon the parties (the Arbitrator makes no judgment as to that question), it is certainly strongly persuasive.

As was the case in the dispute before Arbitrator Talarico, the Company in the instant case cannot be faulted for delaying Grievant's return to work. Because he could have gone back to work had he given the Clinic the information he had at the time of his first visit, he must bear the full responsibility for any time lost. The Arbitrator can understand Grievant's reluctance to release his medical information, but he must also accept the consequences of standing his ground.

Award: The grievance is arbitrable and is denied.

Barry E. Simon, Arbitrator

Dated: June 18, 2025
Arlington Heights, Illinois