

ARBITRATION No. 63

Inland Steel Company

:

and

:

Grievance No. 19-C-91

United Steelworkers of America, CIO  
Local Union 1010

:

:

The Submission

By joint letter the parties requested the services of the arbitrator as follows:

"Mr. John Day Larkin  
3300 S. Federal  
Chicago, Illinois

October 8, 1952

Dear Mr. Larkin:

Re: Grievance No. 19-C-91

The Management of the Indiana Harbor Works of the Inland Steel Company and Local Union 1010 of the United Steelworkers of America, C.I.O., have been unable to settle the above numbered grievance, and in accordance with step number 5, under Section 2, Article VIII, entitled 'Adjustment of Grievances,' of the Agreement between the Company and the Union, dated May 7, 1947, the matter is now to be submitted to an impartial umpire for final determination.

The question to be decided in the subject case is whether or not the Company was in violation of Article III, Sections 1 and 2, and Article IX, Section 1, of the Collective Bargaining Agreement when it denied the union's request to reinstate Mr. G. Bougie. A copy of the Collective Bargaining Agreement is enclosed so that you might familiarize yourself with its provisions as regards this particular dispute.

You have been agreed upon by the undersigned to act as arbitrator. If you are available, will you be kind enough to submit a possible date for the hearing in the week of October 27, preferably, October 30.

The hearing is to be held in the Labor Relations Meeting Room, Plant 1 Clockhouse of the Indiana Harbor Works Plant of the Inland Steel Company in East Chicago, Indiana, at a time and date mutually acceptable to all concerned. When a date is finally agreed upon, we will advise you with respect to the type of transportation to take from Chicago, and arrange to meet you if necessary. The expense and salary incident to the services of the umpire shall be shared equally by the Company and the Union.

Very truly yours,  
INLAND STEEL COMPANY

S/ By Herbert C. Lieberum  
Assistant Superintendent  
Labor Relations

UNITED STEELWORKERS OF AMERICA

S/ By Joseph B. Jeneske  
Representative"

By mutual agreement the hearing was held at the Company's offices, Indiana Harbor Works, East Chicago, Indiana, November 6, 1952. The following appearances were made:

For the Union --

Mr. Joseph Jeneske, International Representative  
Mr. Peter Calacci, Chairman, Grievance Committee  
Mr. Fred Gardner, Vice Chairman, Grievance Committee  
Mr. James O'Connor, Grievance Committeeman  
Mr. Gilbert Bougie, Aggrieved

For the Company --

Mr. T. R. Pikalsky, Divisional Supervisor, Labor Relations  
Mr. H. C. Lieberum, Assistant Superintendent, Labor Relations  
Mr. A. L. Schroeder, Superintendent, Field Forces  
Mr. D. N. Evans, Assistant Superintendent, Field Forces  
Mr. J. F. Stapleton, General Foreman, Field Machine Shop  
Mr. G. Michelberger, Foreman, Field Machine Shop  
Mr. J. Guadagno, Foreman, Field Machine Shop  
Mr. G. F. Starke, General Foreman, Field Boilermaker Shop  
Mr. T. P. Murnane, Divisional Supervisor, Labor Relations

Mr. O'Connor made an opening statement for the Union, and Mr. Lieberum read a statement into the record explaining the Company's reasons for terminating Mr. Bougie. This was rebutted by Union witnesses and Representative Jeneske, and the record was closed at the conclusion of the hearing (Tr. 101-102).

Factual Background

This case arises from the suspension and discharge of Gilbert Bougie, following a work stoppage which occurred with the Field Forces employees on May 7, 1952. The initial difficulty arose from the Court's ruling to the effect that the government's seizure of the steel industry was unconstitutional. Judge Pine's opinion was released in the afternoon of April 29, 1952, which was Tuesday. A strike was called immediately thereafter. Employees left on Tuesday afternoon. On the following day, April 30, the Court of Appeals in Washington stayed the anti-seizure order and the strike ended Friday, May 2, 1952.

In getting the plant back into operation the schedule for the Field Forces was not posted until 2:00 PM, Monday, May 5. A dispute arose over the scheduling of certain of these employees for the 8 to 4 shift and others for the 4 to 12 shift. Grievance Committeeman, J. O'Connor, claimed that there had been a prior schedule which had all employees working steady and that such prior arrangements had been changed. Because of this a demand was made that the Field Forces employees who had been put on the 4 to 12 turn must first work the 8 to 4 turn, thus permitting them to have a double shift with time and one-half for the second eight-hour shift (Tr. 4, 5, 20).

On the morning of May 7, this demand was put to the Assistant Superintendent, D. N. Evans, by Mr. O'Connor. Evans' reply was that the Company felt no obligation to work the 4 to 12 turn employees a sixteen-hour turn, nor to pay them for sixteen hours continuous work. Within a half hour General Foreman Lewy of the Continuous Annealing Department reported that the Field Forces employees in his department were ceasing to work (Tr. 20). Among the sixty-three Field Forces employees involved was Gilbert Bougie. It is the Company's contention that for approximately two hours, between 8:30 AM and 10:37 AM, Bougie was busy urging other employees to cease work and leave the plant (Tr. 21; Company Exhibits "G" and "F").

By 11:00 AM on the same day all but three of the Field Forces employees assigned to the Continuous Anneal job, together with certain other shop men, had left the plant. By this time 89 men were out. Grievance Committeeman O'Connor called Superintendent of Labor Relations, R. E. Hoover, and requested a meeting to discuss the situation (Tr. 21). Mr. Hoover called to his attention Article III, Section 4 (a) and (b) of the Agreement, and refused to discuss the matter until the men were back at work. The pertinent language follows:

"Section 4. (a) The Union agrees that neither it nor its officers, agents, representatives or members will authorize, instigate, cause, aid, sanction or take part in any strike, work stoppage, sitdown, stay-in, slowdown, or other interruption or impeding of work.

"(b) Should there be a violation of sub-paragraph (a) of this Section 4, there shall be no discussion or negotiation regarding the difference or dispute during the existence of such violation, or before normal work has been resumed."

Since Management refused to discuss the matter under the circumstances, other members of the Field Forces began to walk off. Riggers, machinists, boiler-makers, carpenters, and pipe fitters joined in the work stoppage. By 2:00 PM, 169 Field Forces employees had left the plant (Tr. 22). At 3:10 PM Grievance Committeeman O'Connor again called Mr. Hoover to see if he was prepared to discuss the situation. Mr. Hoover once more reminded him of the provisions of Article III, Section 4 (b). It was further pointed out that no grievance had been filed and no First or Second Steps followed (Tr. 23). After some discussion Mr. O'Connor asked if a grievance would be accepted if the men returned to work. When reassured, a full crew reported for the 4 to 12 turn (Tr. 23). Grievance No. 19-C-89, involving this matter, was filed May 8, 1952. At the date of the hearing in the case now before us, the 19-C-89 grievance had been processed through the Fourth Step but had not been appealed to arbitration (Tr. 21).

When the 169 employees of the 3 to 4 turn returned to work the following day, May 8, all were disciplined. But the discipline was not the same for each. It was varied according to circumstances in individual cases. And the Company very frankly took individual records into account (Tr. 23). None was paid beyond his actual hours worked on May 7. Of those on the Continuous Anneal job, where the difficulty started, sixty-one were given two days off. The Grievance Committeeman, Jim O'Connor, was given five days off. And Gilbert Bougie was suspended for subsequent discharge. Of the remaining employees who joined the walk-out later, 105 were given one day off. And in this latter group Anthony Burches was suspended and discharged after five days (Tr. 24).

Grievances were filed in the cases of the two suspended employees, Gilbert Bougie and Anthony Burches. These grievances alleged violation of Article III, Sections 1 and 2, and Article IX, Section 1, which are as follows:

"ARTICLE III

Section 1. Each employee, regardless of whether he is a member, non-member, officer, grievance committeeman, agent or other representative of the Union, shall observe and abide by the terms and conditions of this agreement. All representatives of management shall observe and abide by the terms and conditions of this agreement.

Section 2. The Company recognizes and will not interfere with the right of its employees to become members of the Union, and there shall be no discrimination, interference, restraint or coercion by the Company or any of its agents against any employee because of membership in the Union."

"ARTICLE IX

Section 1. In the exercise of its right to discharge employees for cause, as set forth in Article IV, the Company agrees that an employee shall not be peremptorily discharged, but in all instances in which the Company may conclude that discharge is warranted, he shall first be suspended for five (5) calendar days and notified in writing that he is subject to discharge at the end of such period. During this period, if the employee believes that he has been unjustly dealt with, he may request a hearing and statement of his offense before the Superintendent of Labor Relations, or his designated representative, with the employee's grievance committeeman and officers of Union present if the employee so chooses. At such hearing, the facts and circumstances shall be disclosed to and by both parties.

If a hearing is requested, the Company shall, within two (2) days after such hearing decide whether such suspension shall culminate in discharge, or whether it shall be modified, extended or revoked, and the employee and the Union shall be notified in writing of such decision. If no hearing is requested within the five-day period, the discharge shall become final at the end of such period without further notice or action by the Company, unless the Company shall modify, extend or revoke the suspension for discharge.

If the action taken is revoked, the employee shall be returned to his regular occupation and shall receive full compensation at his regular rate of pay for the time lost. In the event a hearing is requested and the disposition shall result in the discharge of the employee or the modification or extension of the suspension, the employee or his authorized Union representative may, within five (5) days after such decision, file a grievance in writing which shall be disposed of in accordance with the grievance procedure of Article VIII hereof, beginning with Step 3. If the arbitrator determines that the action taken should be modified rather than revoked or affirmed, such grievance shall be disposed of upon such terms and conditions as may be deemed proper under the circumstances."

As provided in Article IX, Section 1, these two grievances were accepted in the Third Step. By agreement the Third and Fourth Steps were combined (Tr. 24). At the hearing no agreement was reached; the request for reinstatement was denied. In accordance with the provisions of Article VIII, Section 2, Step 5, the two grievances are now being arbitrated as separate cases, with two different arbitrators.

The pertinent language of Step 5 is as follows:

"Where two or more grievances are processed to arbitration, separate arbitrators shall be selected for each grievance, unless otherwise mutually agreed."

Therefore, the grievance involving Anthony Burches (No. 19-C-90) was submitted to a different arbitrator; and that of Gilbert Bougie is the one which concerns us here.

#### The Union's Position

The Union's contention is that the Company discriminated unfairly in its treatment of Gilbert Bougie. It is claimed that his participation in the walk-out of May 7, was no greater than that of others who were given much lighter discipline. As to the written statements of General Foreman George Starke and Field Machine Shop Foreman George Eichelberger to the effect that Bougie passed the word along that the machinists were striking, and urged others not to do any work that day, (Company Exhibits "D" and "G") Bougie has signed statements of denial. He admits having used the telephone, by permission, but insists that it was to try to reach his father, also employed in the plant, in an effort to get a ride home.

The Union also rebuts much of the personnel record data submitted by the Company as being immaterial and irrelevant to the issue now before us. In response to the Company's charge that Bougie has been a poor employee, it is pointed out that the Company not only reemployed him repeatedly but also promoted him; therefore, the Company could not have regarded him as such a poor employee prior to the incident of May 7. There was no cause for discipline before that. The action taken must rest upon Bougie's part in the cessation of work on that date; and the Union is firm in its insistence that Bougie only did what all the others did who left the plant during working hours.

#### The Company's Position

The Company contends that the action taken in the suspension of Gilbert Bougie was not in violation of Article III, Sections 1 and 2, as charged by the

Union. Nor was it in violation of Article IX, Section 1. In fact, it is claimed that Article IV, Section 1, does reserve to the Company the right to "...suspend for cause, discipline and discharge employees for cause ... provided, however, that in the exercise of such functions the Company shall not discriminate against employees because of membership in or legitimate activity on behalf of the Union."

#### Discussion

In asserting its right to terminate Gilbert Bougie, the Company has made two principal charges: Bougie was one of the two men chiefly responsible for the work stoppage of May 7; and he has been what the Company terms a poor employee. Unhappily the record is cluttered with a good bit of data on the latter point which is not pertinent to the issue before us. The personnel record of Bougie does not support the claim that Bougie has been a bad actor in the plant. He apparently started out by working only during the summer months and returning to school in the fall, which is both understandable and perhaps commendable in a young man wishing to get ahead. After being employed in electrical in the fall of 1948 he was dropped as unsatisfactory before the end of his probationary period; but he was rehired thirteen months later, December 14, 1949, and received a rating of satisfactory January 20, 1950. He has had no previous reprimands or disciplinary action and has apparently been advancing steadily since January 1950 (Company Exhibit "E").

This being the case, we think Bougie's suspension and discharge must stand or fall on the basis of his conduct on May 7, 1952, and not on his prior record with the Company. The grievance (Joint Exhibit 2) reads as follows:

"The aggrieved is requesting reinstatement for the Union feels his discharge was unmerited and he conducted himself in the same manner as the other employees who took off work to attend the Union meeting. The below aggrieved employee left the plant in the same manner as the other employees left work to attend this meeting.

Relief Sought: The aggrieved receive the same treatment as other employees. Suspension and discharge be revoked and the aggrieved to be restored to the regular occupation and receive full compensation for his regular rate of pay.

Violation is claimed of Article	III	Section	1	of Agreement."
	III		2	
	IX		1	

As the aggrieved sets forth his claim, he is only asking that he be the same discipline as others who left work "to attend the Union meeting." The Company deliberately exercised discretion in what it regarded as a let-the-punishment-fit-the-crime approach. Two employees thought to be most responsible for instigating and encouraging the stoppage were suspended for discharge. Bougie was one of them. The Grievance Committeeman, J. O'Connor, was suspended for five days only. Others among the first to leave were suspended for two days without pay. And those who walked off later were given one day without pay.

Our first consideration should be the question of fairness and equity in such an approach. It must be admitted that in a situation such as that in the New Construction Department on May 7, 1952, the Management had a problem which might call for the exercise of reasonable discretion. Such attendance at "union meetings" in the midst of scheduled production hours does not occur without active initiation and leadership. Since the work stoppage was in open violation of Article III, Section 4(a) somebody assumed responsibility for getting this movement under way. In the language of George Starke, General Foreman,

"At approximately 8:45 a.m., Wednesday, May 7, 1952, at the South End of the #1 Continuous Annealer in the Tin Mill, a group of approximately twelve employees, most of whom were Field Machinists, were standing around.

Gilbert Bougie, #14089, told them, 'Don't you touch any work today. We are all going home regardless; and don't do anything, leave everything as it is.'

When the men did walk off the job later, none of the tools were put in the tool boxes, the burning equipment was left out and no attempt was made to put any of the tools or equipment in the tool buggies."

Bougie flatly denies that he used any such language (Union Exhibit 2).

But it is not denied that the men left the plant at the time specified by Starke.

Nor is it denied that the equipment was left out as Starke described it.

George Michelberger, Foreman of the Field Machine Shop submitted the following statement:

"At approximately 9:30 a.m. on Wednesday, May 7, 1952, I was contacted by a clerk in the Field Machinist office who told me that Mr. Gilbert Bougie, check no. 14089, was in the Field Machinist office using the telephone to call other Field Machinists off the job.



"I walked into the office and heard Gilbert Bougie make the following statements on the telephone, 'the Machinists are all striking; all machinists are to get off the job as soon as possible and come into the Field Machine Shop right away.'"

Bougie has submitted the following statement in rebuttal:

"On May 7, 1952, I am accused of making this statement on the Machine Shop telephone, 'The Machinists are all striking; all Machinists are to get off the job as soon as possible and come into the Field Machine Shop right away.'"

I am accused by George Eichelberger, Foreman, Field Machine Shop.

As I am accused, I used the Company telephone to make several calls, but to my father. One of these calls requested by a fellow employee, was to our grievance steward to alert him as to the situation prevailing. I did not utter the statement I am accused of."

Here we note the acknowledgement of the use of the Company telephone "to make several calls, but to my father." Then Bougie goes on to say that at the request of a fellow employee, he called the grievance steward "to alert him as to the situation prevailing." Even though Bougie denies having made the specific statement attributed to him by Foreman Eichelberger, it is quite obvious that the two hours which he spent between 8:30 AM and the time he allegedly left the plant, about 10:37 AM, was not all spent in trying to reach his father to get a ride home. We must read the statements of the parties in the light of the "situation prevailing!"

In short, the question as to whether Mr. Bougie's conduct warranted a more severe penalty than Mr. O'Connor, and others who were disciplined with a short lay-off, turns upon the credibility of the statements of Foreman Starke and Eichelberger, the truth of which statements Bougie has denied. Where such conflicting statements are introduced the arbitrator must decide which is nearest the truth after viewing the situation as a whole. Why should either Mr. Starke or Mr. Eichelberger single out Bougie as the man in the department who was "spreading the word" unless they actually saw and heard what they claim? There is nothing in the record or in the situation which would lead us to suspect that they had reason to misrepresent the facts. But now that Bougie has been disciplined he has a self-seeking interest in denying the charges.

Somebody was responsible for the work stoppage which violated the Agreement. Even though questioned by Bougie, the evidence points strongly to his guilt in the matter. Admittedly he did not work after approximately 8:30. It is also clear that he did not leave the plant for approximately two hours, during which the walk-out got underway. He admits using the telephone to make "several calls." While he claims that his reason for using the telephone was to contact his father, this could not have been his only objective. It would not take him two hours and several telephone calls to reach his father, whose location in the plant must have been familiar to him. He admits having talked to the grievance steward "to alert him as to the situation prevailing." If he was in a position to inform the steward, it seems quite evident to us that he was taking a heavier hand in this affair than he is willing to admit. In view of this evidence and the situation then prevailing, we are frankly inclined to accept the statements of the two foremen who claim to have heard Bougie urging others to leave the plant. In short, we are convinced that he was one of the instigators of the illegal strike.

That activity of this sort is a dischargeable offense is now so well established that we need not argue the point (American Brake Shoe Company, 13 LA 294; 4 LA 4; and South Side Die House, Inc., 10 LA 533). In a situation of this kind, someone must bear the responsibility. The Management found two employees to be assuming a role of leadership in the work stoppage. Bougie was one of these. Since we are convinced that Bougie was active in urging his fellow employees to leave their jobs on the morning of May 7, 1952, we see no basis for ordering his reinstatement. We find no basis for sustaining his claim that the Company has violated Article III, Sections 1 and 2. Nor do we find any basis for sustaining the grievant's claim that the Company violated Article IX, Section 1.

Award

The grievance of Gilbert Bougie (No. 19-C-91) dated

May 15, 1952, is denied.

December 9, 1952

*John Day Larkin*  
John Day Larkin, Arbitrator