710 #121

IN THE MATTER OF ARBITRATION BETWEEN :
:
INLAND STEEL COMPANY :
:
-and- :
:
UNITED STEELWORKERS OF AMERICA :
CIO Local No. 1010 :
- :

ARBITRATION AWARD

Grievance No. 6-E-1

PETER M. KELLIHER
Arbitrator

APPEARANCES:

FOR THE COMPANY

MR. HERBERT LIEBERUM, Superintendent, Labor Relations
MR. THOMAS G. CURE, Assistant Superintendent, Labor Relations
MR. LEROY B. MITCHELL, Divisional Supervisor, Labor Relations

FOR THE UNION:

MR. CECIL CLIFTON, Staff Representative
MR. FRED GARDNER, Chairman Grievance Committee
MR. WILLIAM YOUNG, Vice-Chairman Grievance Committee
MR. EUGENE JACQUE, Griever, Power and Steam
MR. ISIDORE GLICKER, Grievant

STATEMENT

The Parties were unable to satisfactorily adjust a certain grievance and in accordance with the terms of their Contract determined upon arbitration as a means of final settlement. PETER M. KELLIHER was jointly designated by the Parties to serve as Arbitrator.

Pursuant to proper notice a hearing was held in INDIANA HARBOR, INDIANA on November 15, 1954. At the hearing the Parties were afforded an opportunity to present oral and written evidence, to examine and cross-examine witnesses and to make such arguments as were deemed pertinent. Both Parties submitted Briefs at the hearing. A full transcript of the proceedings was taken.

THE ISSUE

In its Submission Agreement dated October 25, 1954 the Parties define the issue as follows:

> "The question to be decided in this subject case is whether or not the Company was in violation of Article IX, Section 1 and Article VII, Section 2 of the Collective Bargaining Agreement when it discharged the employee for falsification of his employment application."

DISCUSSION and DECISION

The evidence in this case is that the Grievant, Isidore Glicker, made application for employment on November 6, 1953. This employee was suspended subject to discharge on July 11, 1954 on the grounds that he had falsified his employment application.

The Union contends that the employee was engaged in many jobs since 1943 and that the errors committed by the Grievant were not deliberate in nature. It is the Union's further contention that the Company is now discriminating against this employee because of his engaging in Union activity, which led to his discharge by the Republic Steel Company in September of 1953. It is the Union's claim that this employee was in dire need and believing that his record at Republic Steel Company would be verified by the Inland Steel Company omitted making any reference to such employment in his application. The Union argues that no employee should be penalized indefinitely with reference to opportunities for employment because of a mistake that he might have committed in the past on some earlier job. It is the Union's position also that the Inland Steel Company should have found these errors and taken action within the sixty (60) day probationary period. The Union further argues that evidence taken from the records of other Companies should not be used as the basis of discharge action under this Contract. The Union states that if the Company's position were upheld, this might seriously affect the job security of numerous other employees, who have committed errors in making application for employment. The Union also cites the good record that this employee had had with the Inland Steel Company.

It is the Company's position that the Grievant, in placing his signature on the application, certified that the answers were true and correct and that any falsification would

be cause for termination of his employment. The Company also states that it has universally followed its established rule that deliberate falsification of an employment application is cause for discharge. The Contract gives the Company the right to establish such a rule and this rule, according to the Company, has never been challenged by the Union. The Company states that there are six (6) discrepancies in the employee's application and that the evidence presented by it clearly shows that the falsifications were deliberate. The Company was diligent in its investigation of the employment application. The Grievant's deliberate falsification, particularly in listing a bankrupt Company and furnishing other inaccurate information required considerable time and expense to this Company in completing its investigation. The Company contends that in the case of two (2) of the references supplied by the Grievant, the alleged employers denied ever having hired the Grievant. While the Company urges that the only reason for the discharge was the falsification of the employee's application, it does assert that the Grievant was not discharged from Republic Steel for Union activity but was in fact discharged because he refused to accept an agreement that had been negotiated by the Union. The record of his employment during the period from 1949 to 1953 was deliberately falsified. The Grievant failed to mention important employers in whose hire he had been for a considerable period of time and instead listed employers where he had worked for merely a short period of time or had not in fact worked at all. The Company also cites a prior Award at this Plant in support of its position.

The Arbitrator is required to analyze the evidence in the light of the language of this Contract. In this case the Grievant does admit that he intentionally failed to list his approximately eighteen (18) months employment with the Republic Steel Company. The Employment Application required him first to list his present or last place of employment and then his second to last, third to last, and fourth to last. The Grievant stated at the hearing that his employment at the Hollywood Fruit Market and Crossroad Screw Machine Products Company was only on a part time basis. Clearly the employee must be presumed to have known that the Inland Steel Company was not interested in knowing of his part-time

alleged employment at these two companies when he had worked full time for Republic Steel Company, International Harvester Company, and Continental Can Company during this period. Giving full credence to the testimony of Mr. Glicker, it must be found that he did deliberately falsify his Employment Application in several material instances.

It is a universal rule of contract construction that a contract that has been entered into on the basis of fraudulent misrepresentations is voidable. The offer and the acceptance of employment with this Company was founded upon fraud. The fundamental basis for the employee's discharge was not his conduct with any other employer but his fraudulent misrepresentations on his Employment Application. The Arbitrator does, however, note in passing that the Republic Steel contract with this same International Union does have a provision for the arbitration of discharge cases and provision is made for the reinstatement of employees who have been discharged without proper cause.

The Grievant was working at another Company at the time he made application for employment. The record does not show that he was a Union official while working at Republic Steel Company or at this Company. His period of employment with Inland Steel Company lasted for not more than nine (9) months and the intricate pattern of employment falsification did require an extended investigation. It is to the interest of all concerned that the investigation be as complete as possible in order that no employee shall be removed from his job without substantial evidence. In the absence of limitation in a Collective Bargaining Agreement an employer has the sole judgment as to the employees it hires.

This Arbitrator cannot usurp Management's function in this matter by, in effect, finding that Management should hire employees who falsify their applications and who have been discharged for presumably proper cause by other employers. If employment is obtained by fraud the relationship is void from the very beginning and none of the provisions of the Contract including the sixty (60) day probationary period can be obtained as a matter of right by such an employee. There is no language in this Contract that would require the Company to determine whether an application is fraudulent within a sixty (60) day period. It is general industrial practice that employees list their former employers

so that some verification of records can be obtained. An investigation to determine whether, in fact, an Applicant did work for the listed employers is certainly proper and this right has not been surrendered or limited by the Collective Bargaining Agreement.

No showing has been made that the Company has been engaging in a program of seeking out minor and inconsequential errors in Employment Applications. The case before this Arbitrator is one involving substantial and deliberate misrepresentations. Any decision reinstating this employee would have the effect of granting complete immunity to any employee who falsified his Application for whatever reason he might do so. Arbitrators are extremely sensitive to any possibility of discrimination because of Union activity. This employee, however, did not hold an official position in this Union and there is no evidence that his Union membership was a factor in the Company's determination to discharge him. The deliberate falsification is admitted. The Contract, the Company rule, and the principles of contract interpretation are so well settled that no other decision is possible in this case.

The Union cites three decisions in its brief. The Arbitrator has made a careful check and has been unable to locate the Black vs. Cutter Laboratories Case. It is believed that the citation may have been incorrectly listed through possible typographical error.

With reference to the two other cases cited, the Arbitrator believes that they are clearly distinguishable, either on the evidence or the contract provisions involved.

In the Duval Case (21LA 560) that Arbitrator finds that the penalty was too severe under all of the circumstances. He emphasized that there was a reasonable suspicion that the falsification of the application was not the real basis for the discharge and pointed out that the Company did not investigate the employment application until after the employee had filed a grievance for failure to promote him and that approximately seventeen (17) months had elapsed from the date of hire to the investigation.

The Arbitrator in that case stated:

> "On the other hand, as has been pointed out, there are other circumstances, including the succession of events, which raise pointed inquiry as to the innocence of the company's conduct."

It is believed that the following further statements made by the Arbitrator in the Duval Case are significant:

> "Employment statements are meant to furnish a basis for action by recruiters of personnel. They should be able to repose confidence in the good faith with which they are made, and in the substantial truth of what is said in them. Deliberate falsification is one of the most serious blows which can be struck at the relationship of employer and employee. While, obviously, it does not prevent the relationship from arising, see Merrill, Misrepresentation to Secure Employment, 14 Minn. L. Rev. 646 (1930), it should afford adequate ground for severing that relationship after it is discovered. The decisions so hold. See Consolidated Western Steel Corp., 13 LA 721; Chrysler Corp., 14 LA 381; Bauer Bros. Co., 15 LA 318." (Emphasis added)

The facts of the present case do not fit within the principles that Arbitrator Merrill set forth. He indicated that it was his belief that the general trend of arbitration decisions is to establish a one (1) year bar. He stated:

> "On the other hand, in nearly all the cases where the discharge was held not barred, the employee's falsification was discovered within not more than a year from his employment and he was discharged promptly."

It must be noted that in the case presently before this Arbitrator the period was less than one year. Arbitrator Merrill also listed those factors which he believed warranted consideration in arriving at a decision as follows:

> "As a result of this survey, I come to the conclusion that there should be no hard and fast rule as to limitation on discharge for newly discovered falsification of somewhat ancient vintage. The opinion in Bell Aircraft, 17 LA 230, enumerated several matters that should be taken into account; the length of the employee's service; the nature of his job; the substantive character of the falsification; whether he would have been hired had he told the truth; whether the employee's services have proved satisfactory or unsatisfactory. No doubt there may be others applicable in certain situations. Each case, in the end, must stand upon its own facts."

Based upon the above quoted criteria, even if Arbitrator Merrill's decision were to be regarded as persuasive, the Grievant in this case could not bring himself within the principles set forth.

The Union also cited the case of Aviation Maintenance Corporation (8 LA 261). The

Arbitrator in that case was Benjamin Aaron. The undersigned Arbitrator has served on a Fact Finding Board with Arbitrator Aaron and has a high regard for his ability. Arbitrator Aaron sets forth the criteria for evaluating the employer's charge. He summarizes the legal principles involved as follows:

> "Third, it is well established in law that whether or not the partial disclosure of facts is materially misleading depends upon whether the person making the statement knows or believes that the undisclosed facts might affect the recipient's conduct in the transaction at hand. But one may not be said wilfully to conceal everything that he fails to reveal. Hence, it is important to determine whether X misrepresented or omitted facts in order to induce the Company to hire him, or in other words, whether he deliberately falsified his employment application because he knew, or might reasonably have been expected to know, that the Company would be less likely to hire him if it were aware of all the true facts. The omission of facts which, even if fully known by the Company, would not have affected its decision to hire X, cannot be considered as "consequential omissions" as those words are used in the certification on the employment application signed by X."

He found in that case that the discharged employee did not fall within the legal rules above quoted and that he did not have an "intent to deceive." The Arbitrator analyzed the evidence as follows:

> "In summary, the Arbitrator finds that the Company has failed to adduce clear and convincing proof that X materially misrepresented or falsified, either affirmatively or negatively, his application for employment with the Company. The facts show that he made no deliberate misstatements of fact, but that he did deliberately omit certain information, although without intent to deceive. Obviously X prepared his application with the idea of presenting himself in the best possible light; but there is no proof that he deliberately suppressed facts which he knew, or should have known, were of interest to the Company and might adversely affect his chances of employment with the Company."

In the case presently before this Arbitrator, the evidence is that the Grievant has "deliberately suppressed facts which he knew, or should have known, were of interest to the Company and might adversely affect his chance of employment with the Company."

This Arbitrator must, therefore, find that the two cases cited by the Union, which are analyzed above, are not similar. Like the Arbitrator in the Duval case, this Arbitrator must also state that the overwhelming authority clearly upholds the Company's right

to discharge in the case of a deliberate falsification. The Arbitrator is fully aware of the fact that this employee does encounter difficulty in obtaining certain jobs because of his past employment record. The Arbitrator sympathizes with the effort of this employee to secure employment at adequate wages and under proper working conditions. He is personally of the opinion that an employee should not be penalized on an indefinite basis because of the past mistakes he might have made with other employers. These, however, are considerations that could be taken into account by an employer when a full disclosure is made.

Under the limited authority that this Arbitrator has in this Contract and the universal principles of contract interpretation involved, the Arbitrator has no other alternative but to uphold the Company's position.

AWARD

The Company was not in violation of Article IX, Section 1 and Article VII, Section 2 of the Collective Bargaining Agreement when it discharged the employee for falsification of his employment application.

/s/ Peter M. Kelliher
PETER M. KELLIHER

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Dated at Chicago, Illinois
this 14th day of December, 1954.