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In the Matter of the Arbitration)
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between)
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INLAND STEEL COMPANY) Grievance No. 5-E-1
and)
UNITED STEELWORKERS OF AMERICA)
LOCAL UNION 1010)

DECISION AND AWARD OF THE ARBITRATOR

Introduction

This arbitration involves the INLAND STEEL COMPANY (hereinafter referred to as the "Company"), and UNITED STEELWORKERS OF AMERICA LOCAL UNION 1010 (hereinafter referred to as the "Union").

The undersigned was appointed Arbitrator of Grievance No. 5-E-1 in accordance with Step No. 4, Section 2, Article VIII of the agreement between the parties dated July 1, 1954, of the following issue:

> Was the Company in violation of Article XIV, Section 5 of the Collective Bargaining Agreement when it disciplined the Grievant?

A hearing was held on January 12, 1955 at the offices of the Company in East Chicago. Present for the Company were: T. T. Murnane, Divisional Supervisor, Labor Relations Department; W. L. Ryan, Asst. Superintendent, Labor Relations Department; E. Weitze, General Foreman, Mechanical Division, #2 Open Hearth Department; and P. Nutting, Asst. Superintendent, #2 Open Hearth Department. Present for the Union were: Fred A. Gardner, Chairman of the Grievance Committee; Cecil Clifton, International Representative; John Sargent, Secretary of the Grievance Committee; Scott Porter, Grievance of #2 Open Hearth; and Walter Beckman, Aggrieved.

The Grievance

On June 18, 1954 the Company issued a discipline statement to the Aggrieved which reads as follows:

> "On June 10, 1954 we were notified by Plant Protection that you had admitted taking a 12" Wescott wrench from John Suda's tool locker. You stated that this wrench resembled your own wrench and for that reason you put it in your locker. Later, you realized the wrench did not belong to you and it was returned to Suda.
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> "Normally, this offense would result in suspension preliminary to discharge. However, because of your good work performance and attendance record and this being your first offense, leniency is being shown. Therefore, you are to be disciplined with five working turns off without pay - June 19, 20, 21, 24 and 25."

Thereupon, a grievance was filed on behalf of the Aggrieved, contending that the Company was unreasonable in applying its rules and regulations in discipling the Aggrieved for taking a wrench which he thought was his own and requesting pay for the time lost. This grievance was processed through the various steps of the grievance procedure and, after denial of the grievance request by the Company, was referred to the Arbitrator.

The Facts

The Aggrieved is a first-class repairman, a member of the Mechanical Department of #2 Open Hearth. The employees in the Mechanical Department each have a set of tools which are their own property. The Company provides lockers or locked drawers in a special room for such tools. Approximately 40 men share this locker room. Prior to the incident in this case, the lockers were not numbered or otherwise identified. The locks on the lockers are placed there by the employees. It is claimed by the Union, although not admitted by the Company, that in a few instances there were safety locks for which the Company had duplicate keys. Over a period of time some trouble had developed in relation to the breaking into and removal of tools from the lockers. In the fall of 1953, one employee was suspended and later discharged for breaking and entering another employee's locker.

On June 8, 1954 the locker of one John Suda, employed in the Mechanical Division of #2 Open Hearth Division, was broken into and there was removed a No. 3 Ballpeen hammer, a 10" pipe wrench, and a 12" Wescott wrench. The circumstances which led up to the opening of the locker as related by the Union and not disputed by the Company, are as follows:

On May 4, 1954 James Toth, who had worked as a second class crane repairman in the Mechanical Division of the #2 Open Hearth, was discharged by the Company. Several days prior to the opening of Suda's locker, one Frank Selegan, an employee of the Mechanical Division, met Toth and was told by him that he could have the tools in Toth's locker. On June 8, 1954, it is claimed that Selegan went to the Company offices and secured a key to open the locker, the lock being a safety lock, and the Company having duplicate keys for it. He came to a locker which he thought belonged to Mr. Toth, was unable to open the lock, and one William Noble, a fellow employee, took a wrench and broke the lock open. The aggrieved was standing by at the time. As they were looking in the locker he saw a 12" Wescott wrench that he thought was his wrench. Toth had worked as a helper to the aggrieved on the same turn and the aggrieved claims that he thought that Toth had his wrench because it was a common practice for helpers to lock tools of their fellow employees in their lockers. He claims that he recognized the wrench to be his own because a chip was broken off the adjusting screw. The locker broken into had formerly been occupied by James Toth but Suda had occupied it some time in December, 1953. The Company contends that the aggrieved's role at the time of the breaking into the locker was not a passive one; that he first attempted to open the locker without success and that Noble then used the wrench to break it open. No competent evidence was introduced to support this contention. The Company also contends that the locker that was being opened did not belong to Toth, and implies that the aggrieved knew this. This latter contention is based on the fact that Toth was the injured's helper, worked the same turn as the aggrieved, and had not occupied the locker for some six months prior to the incident. In support of this contention the Company also points out the fact that every third week the aggrieved works a turn with Suda.

The aggrieved testified that after he took the wrench from the locker he put it in his locker and then was off work for three days. When he returned to work he was interviewed by the plant police and advised them that he had the wrench taken from the locker. He then returned the wrench to the plant police. He testified further that when he emptied the contents of his locker he found his own wrench in the locker. Both the wrench taken from Suda's locker and the aggrieved's wrench were exhibited to the Arbitrator. The wrenches were both 12" Wescott wrenches; both had a chip broken off the adjusting screw in about the same place. It is admitted that the wrench which was taken from the locker could not be used with safety and that it had no value. William Noble admitted taking two of the tools from the locker and also admitted breaking into the locker. He was discharged by the Company and no grievance was filed on his behalf.

The Company, in October of 1953, had discharged an employee for entering a fellow employee's locker and taking tools. The Company claims that this action put the employees of the Mechanical Department on notice that the Company would not tolerate breaking and entering into lockers where tools were kept. The Company does not publish a list of its rules and regulations indicating the penalties for breach thereof.

Relevant Contract Provisions

The provisions of the current collective bargaining agreement between the parties which are relevent to this dispute are:

Article IV, Section 1
Article VIII, Section 5
Article XIV, Section 5

The section which the Union claims was violated is Article XIV, Section 5, which reads as follows:

> "Company Rules and Regulations: The Company shall have the right to make and enforce reasonable Company rules and regulations consistent with the terms and conditions of this Agreement and a copy of new rules and regulations, when issued, shall be furnished the Union. The Union may request a meeting between Company and Union representatives and at such meeting the parties shall meet to discuss the reasonableness of such rules and regulations. In any arbitration involving discipline of any employee for violation of a Company rule or regulation, the reasonableness of the rule or regulation involved may be an issue."

Contentions of the Parties

The Union contends that the Company violated Article XIV, Section 5. The Union contends the aggrieved made an honest mistake because he was certain the wrench he took was his own; that the Company had never set up a system of distributing lockers until after the instant in this case occurred; and that the aggrieved's record with the Company is one of the best in the mill. Accordingly, the Union contends that the Company was unreasonable in applying its rules and regulations.

The Company contends that its rule prohibiting employees from breaking into, entering, and removing material or equipment from a fellow employee's locker is a reasonable rule; that, since the Union does not contend that the rule is not a reasonable rule, the grievance should be denied, since it is predicated exclusively on Article XIV, Section 5, which gives the Company the right to make reasonable rules. In the alternative, the Company contends that the facts show that the grievant entered a fellow employee's locker and removed property from it; that the reasons assigned by the grievant for his actions are not sufficient justification that the Company has consistently applied severe discipline up to and including discharge for breaking, entering, and removing material and equipment from a fellow employee's locker and that under Article IV, Section 1, of the Collective Bargaining Agreement the Company is authorized to discipline for cause and there was just cause to discipline the grievant.

Discussion

At the outset it is necessary to consider the Company's contention that the grievance filed cannot stand under Article XIV, Section 5, the only section referred to in the

grievance. It makes this contention on the ground the Union has conceded that the rule prohibiting employees from breaking and entering into their fellow employees' lockers and removing any part of the contents is a reasonable rule. It is true that the Union has stated that it regards the rule as reasonable and desirable and that it is working with the Company toward securing compliance with it. Article XIV, Section 5 gives the Company the right to "make and enforce reasonable Company rules and regulations consistent with the terms and conditions of this agreement." It further provides "In any arbitration involving discipline of any employee in violation of a Company rule and regulation, the reasonableness of the rule and regulation involved may be an issue." Although the Union concedes that the rule is reasonable, it contends that it can, under the provision of Article XIV, Section 5, question the reasonableness of the penalty or discipline imposed. It appears from the record the Company does not publish a list of rules and regulations, nor does the Company publish a statement or list of penalties to be imposed in the event of infraction of its rules and regulations. The penalty to be imposed, whether it be a reprimand, a layoff, or discharge, is of necessity a part of any rule or regulation which may be in existence. Since Section 5 of Article XIV provides that the reasonableness of the rule or regulation may be an issue in an arbitration proceedings involving the discipline of an employee, the reasonableness of the penalty imposed in connection with the violation of the standard of conduct can be questioned since it is of necessity part of the rule or regulation involved. Accordingly, it is the opinion of the arbitrator that the Company's contention in this respect is without merit and the arbitrator must therefore determine whether, under the facts of this case, the penalty imposed was a reasonable penalty.

In reaching his decision with reference to the reasonableness of the penalty, the arbitrator is assuming that the facts are as they were related by the Union witnesses. From the evidence the arbitrator believes that the aggrieved was genuinely mistaken in believing that the locker opened was that of his fellow co-worker, James Toth, and that, likewise, mistakenly believed that the wrench which he took out of the locker was his. But the fact remains that he stood by and watched while the lock was broken open and removed a tool from the locker. The taking of the tool changed his status from a passive onlooker to an active participant in an act forbidden by the employer. These facts clearly establish the violation of the rule of the Company by the aggrieved.

Was the violation such as to warrant the discipline enforced? Here we enter an area in which reasonable men can differ. The Company, in effect, contends that it has established the rule for the protection of the employees, as well as the Company, and that if the rule means anything at all, it has to be enforced. Giving weight to the fine service record of the aggrieved, the Company imposed discipline which, in its severity, falls far short of a discharge. The arbitrator would be inclined to favor a lesser penalty but he cannot rule that the penalty imposed was so unreasonable as to require that it be set aside. A week's loss of wages is also a serious penalty, but the arbitrator is hardly in position to substitute his judgment that the penalty should be loss of one or two days pay, or simply a reprimand. Article VII, Section 1. Step 4, includes among its provisions the following: "The arbitrator shall have jurisdiction and authority only to interpret, apply or determine compliance with the provisions of this agreement. He shall have no power to add to, detract from, or alter in any way the provision of this agreement." Under the provisions of the agreement, the arbitrator's authority, by virtue of Article XIV, Section 5 is limited to a determination as to whether the Company's action was reasonable and not what penalty the arbitrator would impose if the matter were submitted to him in the first instance.

The mitigating circumstances here, so far as the arbitrator is concerned, is not the length of service of the aggrieved, as much as it is a circumstance that the rule was relatively new and the habit patterns among the men in the toolroom had, for a long time prior thereto, included the practice of men going into lockers, not their own, to borrow tools.

It should be noted in passing that the Company could secure better compliance with its rules and regulations if the practice widely used in many plants of publishing a printed set of rules and regulations with prescribed penalties, were adopted by the Company, subject to the limitations of Article XIV, Section 5.

Award

It is the award of the Arbitrator that the grievance is without merit and, accordingly, it is denied.

/s/ Alex Elsen
Arbitrator

Executed this 1st day of

March, 1955, at Chicago, Illinois