Grievance No. 20-E-29
Appeal No. 232
Arbitration No. 160

Opinion and Award

INLAND STEEL COMPANY)
)
and)
)
UNITED STEELWORKERS OF AMERICA)
Local Union 1010)

Appearances:

For the Company:

T. G. Cure, Assistant Superintendent, Labor Relations
T. R. Tikalski, Divisional Supervisor, Labor Relations
Frank Orosz, Supervisor, Apprentice Training

For the Union:

Cecil Clifton, International Representative
Fred Gardner, Chairman, Grievance Committee
Joseph Wolanin, Secretary, Grievance Committee
John Negovetich, Grievance Committeeman

The grievant, Stanley Carter, was hired by the Company as a vocational trainee on April 30, 1953. "Vocational trainee" is the occupational title assigned to pre-apprentice employees for a probationary period. On July 1, 1953, Carter officially entered the Company's apprentice training program for the Machinist craft. Acting under Article IX, Section 1 of the 1954 Agreement, the Company suspended Carter on April 5, 1956; a hearing was requested and held before the Superintendent of Labor Relations on April 12, 1956; and on April 17, 1956 Carter was notified that the suspension had concluded in discharge. A written grievance was filed by the Union on April 18, 1956 alleging that the Company was "unjust and unfair" in such action and requesting that Carter be restored to his "regular occupation" and paid for all time lost.

The apprentice training program has been in effect at the Company since 1936. Applicants must have a prescribed scholastic record and are selected after interview and investigation. They are, like all other new hires, regarded as probationary employees for the first 60 days of employment. They are expected to show aptitude in their chosen craft. The document setting forth the elements of the program provides for an apprenticeship term of 8,000 hours with specified wage levels and an increase of pay every 1,000 hours. Apprentices are required to attend classes conducted by the East Chicago Public School System and to maintain designated percentage levels of achievement in attendance and in their academic grades. Their selection, promotion, training and periodic interviews are under the supervision of designated officials. Careful records of scholastic and work progress are kept. The Company states that it "intends and expects" to give the apprentice steady employment but reserves the right to suspend him or curtail his working hours when business conditions so require. The Company

> " ... reserves the right to terminate an apprentice for unsatisfactory work in the shop or class or improper conduct in shop or class room."

It is also provided that

> "Failure at any time to indicate an aptitude or manual ability for mechanical work or to adhere to the prescribed educational program shall be considered cause for terminating his /an apprentice's/ apprenticeship."

The specific apprenticeship agreement executed by the Company and Carter on June 25, 1953 states that

> "The Employer shall have the right to terminate this agreement for inability on the part of the apprentice to do the work or acquire the knowledge necessary for graduation ...."

Among other things, it calls for four hours of classroom instruction per week, sets forth the term of apprenticeship, the processes and methods to be taught, the times to be spent on each and the compensation to be paid. The Agreement contains a provision that it does not

> " ... add to, detract from, or alter in any way the provisions of the existing collective bargaining agreements."

The collective bargaining Agreement of the parties contains no reference to the apprenticeship program, or the status or rights of apprentices.

Carter's record discloses failure to attain passing grades as required by the apprenticeship program for the following periods:

Metallurgy: September - October, 1953; Mathematics: September, 1954 - January, 1955; School Attendance: (November, 1953 - April, 1954; September, 1954 - January, 1955).

Out of a class of 34 Inland Machinist Apprentices at the East Chicago Public Schools for the apprentice school year 1954 - 1955 Carter, despite a commendable scholastic record before becoming an apprentice (he placed 16th in a High School graduating class of 226), ranked last in school marks, last in school attendance and last in shop marks. The foremen under whose supervision he worked in the shop gave him 11 grades in the period September, 1953 to March, 1956, of which three were under the passing grade of 75%, four were at that minimum passing grade, two were at 80% and two at 85%. These grades were accompanied by comments by this foreman of which the following are illustrative:

> "Employee did not apply his ability and required constant discussion concerning his attitude and workmanship;" "Spoilage of several jobs;" "Required discussions concerning poor workmanship;" "Unsatisfactory;" "Job spoilage," "Extremely uncooperative," etc.

On three occasions his promotion was withheld. On October 25, 1954, March 18, 1955 and March 3, 1956 he was formally reprimanded, in writing, for negligent work, lack of interest, failure to complete work on schedule and absenteeism. He was warned that "future instances ... will be just cause for disciplinary action, including possible suspension preliminary to discharge." Finally, he was directed to the Employees' Services Section of the Personnel Department for possible re-assignment to some other department. On April 5, 1956 the Company's interviewer reported that he "could not recommend /Carter/ for transfer on basis of performance and attitude." Carter was referred back to his department and suspended on April 5, 1956. After a hearing he was discharged on April 17, 1956. A Third Step hearing was held on May 4, 1956.

Carter testified at the arbitration hearing that, at the Third Step, he had asked for transfer to another job but was refused on the ground that "we feel that with your education you wouldn't be happy in a job, like sweeper or janitor." The Company denied that any such request was made, and asserted that when questioned at the Third Step Carter stated that a laboring job "would be unsatisfactory." Carter and the Union deny this.

The Company's Third Step answer states that the Union alleged a breach of Article IV, Section 1 (Management Rights Clause) and Article IX, Section 1 (Discharge Clause) and claimed that the Company should have transferred or demoted Carter but should not have suspended him. The Company denied the grievance, relying on Carter's record and the facts outlined above. The Company maintained, further, that Carter's poor record and his attitude prevented re-assignment to another department.

The argument of the Union is in the alternative: the Company did not have "cause" to discharge Carter; and even if the Company had cause to terminate the apprenticeship arrangement, as a permanent employee he should at most have been downgraded and not discharged.

Carter and the Union questioned whether his workmanship was of the unsatisfactory character represented by the Company. They contended that he was the subject of "ill feeling" in the shop insofar as some of his foremen were concerned; that he could obtain no satisfactory interview with them or their superiors to discuss his work and progress; and that his attitude was not poor, as claimed, but that he was emotionally upset because of his inability to get help in remedying his unsatisfactory record. The Union claims that he should have been offered the job of Machinist's Helper, Janitor, Painting Laborer or have been permitted to work in the Labor Pool.

The Company places great importance on the success of its apprenticeship program and observes that it has only terminated seven apprentices out of the 55 to 75 who enter the program each year. Apprentices are carefully selected, instructed and counseled and, in the event of poor attendance or workmanship, personal interviews and verbal warnings always precede disciplinary action and termination. From August, 1954 to February, 1956 Carter failed to appear for work on 27 occasions and on six of these no explanation whatsoever was offered. His grades, the Company maintains, were reviewed with him. He attained a passing mark in all phases of his training in only one period.

All of these circumstances together with his attitude toward his work, according to the Company, persuaded it to exercise its rights to terminate the grievant.

As to the Union's claim that Carter should have been transferred or demoted, the Company points out that of the seven apprentices dropped from the program over a period of five years, only four left the plant. The Company attempts, after interview, to transfer and reassign unsatisfactory apprentices to other jobs. Carter, in the opinion of the Company, could not be successfully transferred or reassigned.

The Company argued that in the machine shop there is no labor pool as such; Painting Laborer is not a full time occupation and no employees are assigned to it on a full time basis; the job of Janitor is considered a "pension job" for older men and only pays $1.82 per hour.

It is evident from the practices followed and the arguments advanced by the parties that, for many purposes, the employment rights and duties of apprentices are governed by the general collective bargaining Agreement. The status and rights of apprentices, however, are derived from both this and the apprenticeship agreement. For example, for the purpose of the exercise of seniority, demotion and "stepback" rights, apprentices are within the protections of the collective Agreement; but the wage rates of apprentices, however, are covered not by the wage scales in the collective Agreement, but rather by those set forth in the statement of the apprenticeship program and in the apprentice agreement. The Company, which seems to rely upon the provisions in the apprenticeship program and the apprenticeship agreement in terminating the apprenticeship status, has demonstrated, nevertheless, by scrupulously following the procedure of Article VIII and IX of the collective bargaining Agreement, that it regards the grievance and discharge provisions of the main Agreement to be applicable also to apprentices. As an apprentice Carter, who is entitled to the benefits of the grievance and discharge procedures of the Agreement, is equally entitled to the benefits of the seniority, transfer and demotion provisions of that Agreement. In the absence of explicit direction by the collective Agreement, I must be guided by the practices of the parties and the assumptions which appear to underlie their behavior. Accordingly, I am led to the initial conclusion that in regard to discipline and to seniority rights, Carter has the same recourse to the collective Agreement as any other employee.

The next consideration relates to the nature and severity of the disciplinary penalty imposed.

First, the facts set forth above show that the Company had justification for terminating the apprenticeship. Clearly, Carter did not fulfill the promise he exhibited when selected as an apprentice. The record of his performance speaks for itself. There is, moreover, no persuasive evidence of improper discriminatory treatment.

As to the severity of the penalty, we should note that the last sentence of Article IX, (Marginal paragraph No. 170) dealing with discharges, says that:

> "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."

The Company, in the exercise of its judgment will, of course, determine when it believes discharge is the appropriate penalty; but the Agreement clearly confers upon the Arbitrator the burden of determining whether the circumstances call for a modification of that penalty.

Carter was not shown to have been guilty of anything calling, imperatively, for his discharge. The worst that can be said of him is that he did not live up to the prescribed standards of apprenticeship and that he exhibited an unsatisfactory attitude for continuing in that program. The record in this proceeding does not present facts which would justify the discharge of a regular employee. The failure to measure up to his full capacity or promise, however relevant in determining whether an employee should be promoted, or whether he should be continued in the apprentice program, would not ordinarily be considered, by itself, as a cause for discharge.

Carter was interviewed for assignment elsewhere. The interviewer "could not recommend /him/ for transfer on basis of performance or attitude." But this misses the point of the matter. Carter was not a new hire, but an employee with almost three years' seniority. The problem was not properly understood if it was conceived that the only alternatives open to the Company were a) discharge or, b) transfer to a job to which the interviewer thought he could be "recommended." Properly regarded, the problem was, and is, what lesser penalty than discharge is appropriate, under the circumstances, and what rights does Carter have by reason of Article VII of the Agreement (Seniority)?

Article IV (Plant Management) grants Management the right to

> "hire, recall, transfer, promote, demote, suspend for cause, discipline and discharge for cause ... "

Thus, in addition to discharging for cause, the Company may "demote, suspend for cause." The circumstances of this case call for neither discharge nor suspension. But a <u>demotion for cause</u>, on the other hand, is a form of discipline which appears to be suitable, considering Carter's shortcomings as an apprentice and the Company's legitimate interest in maintaining an efficient working force. The availability of demotions for cause, is also recognized by explicit reference in Article VII, Section 8.

It does not seem necessary, having determined that the proper step in this case was to demote Carter for cause, to spell out the details of the procedure to be followed. There were lower-rated positions filled by

employees with less seniority than he had, and the parties are entirely familiar with the provisions of Article VII which indicate the seniority rights of employees under various circumstances. On the evidence presented at the hearing, the finding is that Carter did not rule out the suggestion that he accept assignment to some lesser position but that he was not so assigned because Management thought he could not be recommended for another position.

AWARD

1). The Company had cause for terminating Carter as an Apprentice Machinist and for removing him from this category;

2) The Company did not have cause for discharging him;

3) The Company shall demote him for cause in accordance with the provisions of Article VII of the collective bargaining Agreement, and give him as back pay the amount he would have earned in such inferior position if he had been demoted rather than discharged, less all amounts he has earned in other employment in the interim.

David L. Cole
Permanent Arbitrator

Dated: March 6, 1957