

INLAND STEEL COMPANY)	Grievance Nos. 19-E-52
Indiana Harbor Works)	19-E-53
)	19-E-54
and)	19-E-55
UNITED STEELWORKERS OF AMERICA)	Docket Nos. IH 14-14-5/3/56
Local Union 1010)	IH 15-15-5/3/56
)	IH 16-16-5/3/56
)	IH 17-17-5/3/56
		Arbitration No. 176

Opinion and Award

Appearances:

For the Company:

T. G. Cure, Assistant Superintendent, Labor Relations Department
 George Melvick, Assistant Superintendent, Field Forces Department
 L. R. Mitchell, Division Supervisor, Labor Relations Department

For the Union:

Cecil Clifton, International Staff Representative
 Fred Gardner, Chairman, Grievance Committee
 Joseph Wolanin, Secretary, Grievance Committee

These four grievances were heard as one case. Inasmuch as they involve common facts, they will be similarly grouped for the purposes of this opinion and award.

The grievants are four employees on a Boiler Shop crew. They complain of a disciplinary suspension; in the case of two of them for four days, in the case of one of them for two days and in the case of the fourth, for one day. One other employee was a member of the crew involved in the events that led to the disciplinary action, but no grievance was presented on his behalf. The Union disputes the action taken by the Company in all four cases, stating that the Company did not have just cause for suspending the men and requesting compensation to them for the time lost.

The grievance filed, in each case, sets forth as the "Statement of Grievance" the following:

"On March 9, 1956 aggrieved was issued the following Discipline Statement: 'On March 8, 1956, you were one of five employees assigned to work on transmission tower #50 at the south end of Plant #42 Coke Plant. At approximately 8:15 a.m. and prior to removing your tools from the tool box, you refused to work on the assigned job. After your refusal, the foreman informed you that the assignment for the day was just and proper and that if you refused to work the assigned job, there was no other

work available for you that day.

"Your General Foreman went to the Job site immediately to look over the job assignment. Upon his return to the locker room, he told you that there was no other work available for you for the particular day and that you should go home.

"This action on your part constitutes a violation of Article III, Section 5 of the Collective Bargaining Agreement. Inasmuch as your record reveals that you have two (2) reprimands for violations of Company Rules and Regulations as well as your violation of today, you are being disciplined for a period of three (3) days, March 8, 9, 12, 1956, 7:30 a.m. to 4 p.m. turn. You will return to work on Tuesday, March 13, 1956, at 7:30 a.m.

"Further infraction of any Company Rules and Regulations or the Collective Bargaining Agreement may result in more severe disciplinary action."

The "Relief Sought" is expressed in each grievance notice as follows:

"Aggrieved contends he did not violate Article III, Section 5 as is stated above by the Company.

"Aggrieved alleges the Company violated Article XI, Section 1 and Article VIII, Section 1 and 2, Article III, Section 1 and Article IV, Section 1.

"Aggrieved requests the Inland Steel Company pay him for time lost for this unjust discipline and remove this Discipline Statement from his record."

The facts and events, to the extent that they can be ascertained from the contradictory versions of the witnesses are as follows:

The five employees in a Boiler Shop crew went to the job site shortly after 8 a.m. on March 8, 1956. Their assignment was to work on the repair of transmission tower No. 50. They opened their tool box and, according to the Union version, proceeded to remove and lay out some of their tools. Their foreman, standing ten or eleven feet away from the tool box denied that any of the tools were removed therefrom or laid out. The day was cold but the parties were unable to agree even on so objective a fact as the temperature. The Union claimed that it was 19 degrees above zero at 8 a.m., relying on the weather report in the Hammond Times which, I was informed, uses reports from the Midway Airport Station 25 miles away. The Company presented records of its Occupational Hygiene Department which recorded 26 degrees above zero at Indiana Harbor at the same hour. Because the Company's data was made in the area of the plant and was recorded in the regular course of business I shall accept the 26 degree figure as correct. There were flurries of snow during the day and some snow on the ground.

One of the five employees went to get a salamander (a 50 gallon drum without a lid) which this crew customarily used to keep warm on cold days. When he returned with the salamander, according to the Union witness, the foreman refused permission to build a fire in it. The foreman denied that he refused such permission, stated that he said nothing in answer to the request to use the salamander, that the men had never before asked his permission to fire a salamander, and testified that he was "waiting to see what they would do." This testimony apparently had reference to a request of the men to do inside work rather than outside work. The testimony is confusing as to whether discussion about the possibility of inside work took place before or after the question of the use of the salamander arose. The foreman also remarked that he withheld a reply to the request to use a salamander because he had orders not to permit the use of salamanders, but the Assistant Superintendent of the Field Forces testified that there was no such order issued and the use of salamanders depends on the nature of the job. Further testimony on salamanders revealed that they are commonly permitted by the Company to be used on outside jobs in inclement weather. Indeed, on a previous occasion this foreman built a fire for the comfort of the crew. The grievants, apparently, felt that it was needed for the drying of gloves as well as for general protection against the weather inasmuch as at this job site no other shelter or heated apparatus was available to them.

The Union witness testified that from what he knew of the job, the crew would be obliged to ascend the ladder; that this was dangerous, in view of the weather; and accordingly the men asked for an assignment to alternative inside work. The Foreman testified that there was enough work available on ground level and that it was not necessary for them to ascend the tower and, in fact, he instructed them not to. He testified that the work might have been done in the shop but that it would require obtaining a truck to haul the material inside and half an hour's work-time would have been lost. He told them that he had no inside work and that "This is it; you do it or go home; it is the only job I have for the day." He also testified that after using some profanity one of the members of the crew slammed the door of the tool-box; one of them said, "To hell with this; we are not going to do this"; and they left the work site in the direction of the shop, some eight or nine blocks away. The Union witness testified that when they were refused the right to use the salamander and an inside assignment, they asked to see their Grievanceman but the Foreman did not reply. The Foreman denied that they asked to see their Grievanceman.

The Foreman called his General Foreman to report the events. The crew found their grievanceman, discussed the matter with him and then encountered the General Foreman in the locker room. He asked them why they were not on the job. They explained their position to him and asked for an inside assignment. He told them, according to the Union witness, "This is the job. If you don't want to work, no other work is available." Then he went to the job site by car. Two of the grievants walked to the job site leaving the others in the locker room. After their return to the locker room the General Foreman again told them that "That was the job. If you don't want to do it, go home." They changed clothes and went home at about 9:15 a.m.

Before leaving the facts it should be remarked that the Union had previously complained of the cluttered condition at the base of the tower constituting a safety hazard and that the Foreman had reported this condition, but that nothing had been done about it up to the time the events re-

counted took place. There was a light fall of snow on the material.

The provisions of the Agreement cited as bearing on the disposition of this case are:

Article III, Section 1: (Responsibilities of the Parties) "Each employee * * * shall observe and abide by the terms and conditions of this agreement."

Article IV, Section 1: (Plant Management) Includes the right to "direct, plan and control plant operations". Also "to suspend for cause."

Article VIII, Section 1 and Section 2: (Adjustment of Grievances)

Article XI, Section 1: "The Company shall continue to make all reasonable provisions for the safety and health of its employees at its plants."

The Company, unquestionably, has the right to suspend employees for cause. Such cause would certainly be presented where it is shown that without reasonable justification therefor a proper job assignment is refused by an employee. Accordingly, it becomes necessary to inquire whether such a showing of cause was made by the Company in this case.

The facts are far from certain. If the Company witness is to be believed, there was a clear case of insubordination and refusal to accept a proper assignment; that the employees never showed any disposition to work; that they never even removed their tools from the toolbox; and that they deliberately set about to have their assignment changed. Finally, when they were unsuccessful in this endeavor, they illegally left the work-site and the plant.

If the Union witnesses are to be believed the usual custom of permitting a salamander on an inclement day was arbitrarily denied to them; they believed that the work assigned for the day entailed ascending the tower which, under the circumstances of the weather was admittedly dangerous; the day was raw, cold and unpleasant; they had no place of shelter; the tower base was littered with materials partially snow-covered, constituting a hazard; they believed that work was available indoors and felt that their requests therefore were given short shrift by their Foreman; they felt that they were being treated without consideration; they searched out their Grievanceman; they lingered around the plant in the hope that the situation would take a new turn and inasmuch as it did not, they went home as directed.

It is difficult to ascertain the true facts when the testimony is so contradictory. However, there were some aspects of the foreman's story which seem questionable. One is the fact that he stated that he had not denied the crew the use of the salamander when they requested it; that they had never requested permission for its use in the past; and that instead of replying to the request he kept quiet "waiting to see what they would do." This was a curious thing for the Foreman to have done, in view of the fact that one of the crew had brought the salamander to the work site from another location and, presumably, was ready to start a fire. The purpose could only have been to keep the men warm while they were working at the site. How,

then, could it be said that they showed no disposition whatsoever to work, as the Foreman claimed, and that they started the day by flatly rejecting the assignment? The Union witness stated that he heard the Foreman testify that he had not denied permission to have a salamander. With reference to that testimony he said:

"I heard that and that is not true. He definitely said 'No salamander on this job.' Why would we bring a salamander to the job and go in the shop? That doesn't make sense. We brought the salamander there for a purpose. We wanted a fire. We was going to stay there and work." (Transcript p. 117).

These circumstances suggest that if the Foreman had not withheld response (as he testified) when permission to use the salamander was requested, which silence, apparently was interpreted as refusal, the crew might have proceeded with the assignment.

An additional clue to what probably transpired was disclosed when the Foreman testified that there had been a Company order to prohibit the use of salamanders--but the Assistant Superintendent of the Field Forces stated that no such order had been issued applicable to the situation here involved. Further, the Foreman testified that he affirmatively had instructed the men not to ascend the tower; but he also stated that they did not object to the work on the specific ground that it entailed ascending the tower. My impression is that the Foreman's recollection of the events of the day is not entirely reliable. The conduct of the Foreman, at the least, was sufficiently curious to raise a question in my mind whether his own conduct did not contribute to the confusion of the day.

The credibility of the Union witness was in no way impeached excepting to the extent that the version of the events related by the Foreman was inconsistent with such testimony. The account of the Union witness was circumstantial and factual, so far as I could see, and had internal logical consistency. I failed to find similar consistency in the Foreman's story. Under all of the circumstances presented and the whole record I find that the Company has not demonstrated, at the hearing, that the disciplinary action taken was based on just cause.

I do not perceive in the record any evidence that would justify a finding that any of the numerous provisions relied on by the Union or the Company have been violated.

This award turns on a question of fact. It would be a serious mistake for anyone to read it as a precedent which would deny to the Company the right to take disciplinary action, under the provisions of the Agreement, when employees refuse reasonable work assignments.

AWARD

The grievance is sustained. The grievants shall be reimbursed for the periods of their suspension and their records shall be cleared of the charges in question.

Dated: July 19, 1957

Peter Seitz
Assistant Permanent Arbitrator