INLAND STEEL COMPANY
Indiana Harbor Works

and

UNITED STEELWORKERS OF AMERICA
Local Union 1010

Grievance No. 20-E-31
Docket No. IH-37-37-6/30/56
Arbitration No. 185

Opinion and Award

Appearances:

For the Company:

Thomas G. Cure, Assistant Superintendent, Labor Relations
Joseph Matusek, General Foreman, Weld Shop

For the Union:

Cecil Clifton, International Staff Representative
Fred Gardner, Chairman, Grievance Committee
Joseph Wolanin, Secretary, Grievance Committee
S. Logan, Vice-Chairman, Grievance Committee

The aggrieved employee, M. Noch, a Welder-Standard in the Weld Shop of the Mechanical Department was disciplined with the loss of three days of work (May 10, 11 and 12, 1956) purusant to a Discipline Statement dated May 10, 1956. He claims that the discipline imposed was improper and unjust in the light of all the circumstances surrounding his case and asks that the discipline be removed from his record and that he be paid for the three days of work he lost.

The Discipline Statement of May 10, 1956 recites that on May 10, 1956, at 7:30 a.m. Noch was assigned to the Bar Mill; that at approximately 8:30 a.m. he was observed in the area of the Weld Shop; that he had left his assignment without permission in violation of departmental rules and regulations; that two days before, on May 8, 1956, he had also been observed at the Weld Shop at about 9 a.m. after having been assigned to the Bar Mill; that a review of his record reveals a series of reprimands, warnings and disciplines which in March, 1955 culminated in a demotion; and that there had been no improvement since that time in his workmanship or attitude. The Statement proceeds to list eight infractions starting with April 2,1955 and ending with May, 1956. Seven of these dealt with complaints of bad workmanship; one dated Febrary 15, 1956 stated that in violation of departmental rules and regulations he left his assignment at the Weld Shop and was observed in the Continuous Galvanizing Department. The Statement concludes by observing that in each of the instances cited he had been warned that the Company "would not tolerate this type of conduct or work performance and that severe disciplinary action would be taken"; that he was being disciplined with the loss of three days of work and that future infractions "will result in more serious discipline, up to and including suspension preliminary to discharge". The Company presented 16 additional documents constituting discipline statements, letters of reprimand and warnings, bearing dates ranging from June 15, 1944 to March 25, 1955.

Noch's foreman testified that on May 10, 1956 at 7:30 a.m. Noch had been assigned to go to the Bar Mill and to perform welding tasks there under Bar Mill supervision. At about 8:15 a.m. the Bar mill telephoned "wanting to know why we hadn't sent the welder over." One of the Weld Shop supervisors, at about 8:30 a.m., found Noch in the vicinity of the Weld Shop, at a greater distance from the Bar Mill than he had been when he departed for the Bar Mill at 7:30 a.m. Noch, when questioned, stated that he had returned for his helmet which he had forgotten in the Weld Shop. He admitted not having informed the Bar Mill supervisor of his departure but claimed to have told a grinder in the department, whom he could not identify, of his need to return to the Weld Shop. The foreman also testified that on May 8, 1956 when Noch left the Bar Mill without permission and

> "* * * he was asked about that by the shop foreman, he wouldn't even answer him. He didn't give the shop foreman any satisfaction to a question asked him why he had left, or if he had notified anyone at the Bar Mill regarding his absence."

The record contains no explanation by Noch of the events of May 8. With respect to the May 10 events he testified that he forgot his helmet (an essential item of equipment for a welder) for the first time in twenty-three years; that he did not realize that fact until he was in the Bar Mill and that he was found at a greater distance from the Bar Mill than the Weld Shop is distant from that Mill because he sought to avoid his supervisors in the Weld Shop where his helmet was located. He stated that "I was ashamed to tell you the truth that that incident happened." He also conceded that he was under a duty to inform Bar Mill supervision when he went off the job, but claimed that his "immediate foreman" was not present when he left the Bar Mill for the Weld Shop.

The Union relies heavily on Article VII (Seniority) Section 2 (Personnel Records) of the 1956 Agreement which reads, in full, as follows:

> "Sec. 2 Personnel Records
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> " Records and ratings as to each employee's service with the Company shall be maintained in the department in which he is employed, and such records and ratings shall include matter relative to an employee's work performance and length of service in such department and in the sequencestherein. Each employee shall at all times have access to his personal record and in case of those employees whose record indicates unsatisfactory workmanship, the superintendent of the department or his assistant will call the employee in and acquaint him with the reasons for unsatisfactory rating.
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> " The superintendents of departments will, when necessary, continue the program of acquainting the employee with written notice of discipline or warning to stop practices infringing on regulations or improper workmanship. These letters are recorded on the personnel cards. In all cases

where one (1) year elapses after a violation requiring written notice, such violation will not influence the employee's record.

" These records of the employee's individual performances have much influence on the "Ability to perform the work" clause in Section 1 of this Article, but in no case will the Company contend inability to perform the work when the procedure as outlined in this Section has not been strictly complied with. Should any dispute arise over the accuracy of the personnel record, it shall be disposed of through the normal grievance procedure."

Based on this Section, the Union claims that when, at the third step meeting, Noch's personnel record was produced for its inspection, that record did not contain the letters, warnings, reprimands and discipline statements referred to above. The Union argued that such reprimands. etc., given more than one year before the offense may not, under Marginal Paragraph 93, be considered as influencing Noch's record and that they may not be considered in the arbitration hearing as bearing on the question whether the Company had just cause for the discipline imposed.

The Company argued that the one year clause in Marginal Paragraph 93 has to do with promotion only; further that personnel files are kept in two separate locations: in the department in which an employee works and in the Personnel Department of the Industrial Relations Division.

The Union also argued that there had been a failure of the superintendent of the department to acquaint Noch with record notations of unsatisfactory workmanship and with disciplinary or warning notices as required by Marginal Paragraphs 92 and 93.

Because the issues raised at the hearing are important in discipline cases generally, and have not been previously considered in arbitration awards, and because the parties had not addressed themselves to these considerations in their briefs, I requested that the parties discuss three questions in post-hearing statements. These statements have been received and have been helpful in clarifying to some extent, the positions of the parties.

First, the Union contends that in all cases (discipline as well as poor workmanship reprimands) written notices cannot be used after a year has elapsed. I find it unnecessary to address myself to the interpretation of the one year clause in this case on the facts presented.

It does seem pertinent to observe, however, that I am not convinced that because Section 2 is in an Article dealing, generally, with Seniority, that that Section has significance only in regard to promotions. In the same paragraph as that containing the one year clause (Marginal Paragraph 93) we find the provision that superintendents of departments will, when necessary, continue the program of acquainting the employee with written notices of discipline or warning to stop practices infringing on regulations or improper workmanship.

Second, the post-hearing statements of the parties have served to eliminate what appears on the record of the hearing as a serious issue. It now seems clear that there is no dispute that oral or verbal reprimands given within one year in advance of an event for which discipline is imposed may properly be considered in determining just cause for discipline.

The Union, however, contends that oral or verbal reprimands later incorporated into a personnel record on a VODG (Verbal Orders Don't Go) form may not be so used in determining whether just cause existed for discipline, "unless the employee was acquainted with the written notice which is placed in his personnel record as the Company is required to do" under the provisions of Marginal Paragraph 93. Certainly that paragraph clearly states the policy that "when necessary", superintendents will continue to acquaint employees with written notices of discipline or warning in their files; but one reads it in vain to find a prohibition against resorting to VODG's as a justification of discipline if the superintendent should fail to carry out the program of keeping employees informed of derogatory material in their personnel records. A VODG is no more than a written memorandum or record of an event kept by one party thereto. It is, of course, always open to the attack that its substance was not, in fact, communicated to the employee. It serves as an aid to the memory of the foreman and being unilateral in character may not have the status and weight as evidence, as other more persuasive modes of proof would have. The facts that an oral reprimand was reduced to a VODG and the Superintendent failed to discuss the VODG with the employee do not, by themselves eliminate them wholly from consideration with regard to the employee's record of performance and conduct.

Third, the Union is justified in objecting when the personnel file it has examined does not contain material subsequently presented to the Arbitrator. It is not a sufficient answer to state that the material was in another file at another location. An arbitration proceeding that does not strengthen and make more effective the grievance procedure fails to achieve its purpose. Part of that purpose is to promote and enhance every opportunity, in a discipline case, for the Union to be informed of the basis of the cause upon which the discipline rests. If this is not done, the Union is in no position properly to screen cases before appeal to arbitration and is obliged to proceed entirely on the version of the aggrieved employees.

It is now appropriate to apply these principles and propositions to the instant case. Because the Union was not shown the discipline statements, reprimands, etc. in Company's Exhibit No. 2 dating from June 15, 1944 to March 25, 1955 when it requested to inspect the personnel file at the Third Step, I do not consider it desirable or proper that I should give weight to them here.

The Union, however, did have in its possession (or should have had in its possession) the May 10, 1956 Discipline Statement which enumerated eight infractions from April 2, 1955 to May 7, 1956 and described the derelictions on May 8 and 10, 1956 which led to the disciplinary action. Even if the April 2, 1955 item should be ignored on the theory that the one year rule applies and the May 26, 1955 item be regarded as of doubtful importance, there is still sufficient evidence here of a background of unsatisfactory work and conduct. There is testimony in the record that on each occasion Noch was actually reprimanded, orally, by his supervisors with regard to these items. Noch himself conceded the verbal reprimands with regard to

most of them. His explanations and justifications of his shortcomings and failures were not convincing.

It is immaterial for the purposes of this case that the VOGD's were not in the file handed to the Union to inspect at the Third Step. The substance of such documents was set forth at length in the May 10 Discipline Statement. The Union has no basis upon which to claim surprise or prejudice with respect to any material set forth in the May 10 Statement.

Viewed against this background, I find that Noch's absence from his assigned posts on May 8 and 10 afford cause for the three day suspension. The act of forgetting his helmet for the first time in twenty-three years is entitled to consideration in mitigation of the offense of failing to report to his assignment. However, this was the third time in four months that he had left his post without permission. He had done so twice before; indeed, as recently as only two days before the events of May 10.

Under all of the circumstances, there was just cause for the discipline.

AWARD

The grievance is denied.

Peter Seitz,
Assistant Permanent Arbitrator

Dated: July 19, 1957