INLAND STEEL COMPANY)
) Grievance No. 5-E-35
- and -) Docket No. IH 36-36-6/30/56
) Arbitration No. 215
UNITED STEELWORKERS OF AMERICA)
Local Union No. 1010) Opinion and Award

Appearances:

For the Union:

Cecil Clifton, International Staff Representative
Fred Gardner, Chairman, Wage Rate & Incentive Review
J. Wolanin, Acting Chairman, Grievance Committee

For the Company:

L. E. Davidson, Assistant Superintendent, Labor Relations
Dr. H. G. Gardner, Medical Director, Harbor Works
R. H. Werntz, Divisional Supervisor, Labor Relations
R. Ayres, Divisional Supervisor, Labor Relations

The issue for decision in this case is whether the Company is obligated to compensate the grievant in an amount equal to the difference between his earnings as a stripper craneman and as a thermocouple maker, and if so obligated, for what period of time.

The grievant, Elmer Ross is a stripper Craneman. He was absent from work because of illness from January 24, 1956 until March 29, 1956 on which date he reported to the Company's clinic for permission to return to his job. In response to an inquiry as to the nature of his illness, Dr. Siekerski, the grievant's personal physician, informed the clinic that he had had a myocardial infarction and that the prognosis was very good. Acting on this information, on April 2, 1956, the Company's Medical Department restricted him to "work at floor level with no great speed or energy demands." He was given work as a thermocouple maker at a wage level below that of stripper craneman.

The record contains copies of two insurance claims filed by the grievant for health and accident benefits for the period of his illness and absence from work. The forms in each case indicate that the physicians who signed them stated that the grievant had a myocardial infarction. These claims were paid.

On May 21, 1956 the grievance notice was filed requesting that Ross be restored to his stripper craneman job and that he be paid all monies lost due to "unjust demotion".

At the first arbitration hearing in this case, held on June 24, 1957, more than one year later, the Union claimed that "during the processing of the grievance" the grievant presented to Dr. Vore of the Company's medical department a note from Dr. Siekerski as to his condition, reporting a normal electrocardiogram test. There is no record in the clinic of the receipt of the note. If it was delivered, as testified to by the grievant, it has been lost. At the hearing the Union presented as Union Exhibit No. 2 what purported to be a copy of that note bearing the date May 7, 1957, signed by Dr. Siekerski. It states

> "On 4-13-56 his EKG /electrocardiogram/ was normal. Sed. Rate was 13
> B.P. 120/80"

Manifestly this cannot be an actual or exact copy of the note allegedly written and delivered to the Company in 1956, of which the Company denies knowledge. It is a statement made on May 7, 1957 of what Dr. Siekerski's records concerning the grievant disclosed as of April 13, 1956. Further, if, in fact, it was delivered to Dr. Vore, as claimed by the Union, it must have been delivered a considerable period of time after the electrocardiogram was taken (on April 13, 1956) because to have been delivered during the grievance procedures it would have had to be presented between May 21, 1956 (the date of filing of the grievance notice) and June 13, 1956 (when the third step meeting was held). It is a significant circumstance that under date of April 17, 1956 Dr. Siekerski, on a prescription form, wrote in longhand

> "Mr. Ross was ill and under my care and may resume his regular work April 18, 1956".

Thus a note, which made no reference to normal electrocardiogram readings was written by the grievant's physician only three days after the electrocardiogram reading was taken. The April 17,1956 note was presented in arbitration as a Company exhibit and was not in the possession of the Union. These considerations, together with the fact that the testimony concerning the contents and the circumstances of the delivery of the note is vague, imprecise and unsatisfactory, do not permit me to conclude that the note quoted above was delivered, as claimed. I find that it was this April 17, 1956 note that was presented to Dr. Vore rather than the note which the Union claims was delivered to Dr. Vore.

Because of the character of the job duties of a stripper craneman and the absence of any medical evidence of recovery from his heart condition, the Company refused to restore the grievant to his job. The third step answer dated June 29, 1957

states that the demotion "was necessary not only for the safety and welfare of the employee but also for that of his fellow workers." At the third step hearing the Union "contended t hat Ross had completely recovered" but no satisfactory professional medical statement was presented to the Company to support the contention. The International Staff Representative stated at the arbitration hearing that at the third step meeting he offered to have Dr. Siekerski "testify" to the Company as to the grievant's recovery. That this offer was made was not denied by the Company; but the Company did not accept the offer and the Union did not, until May, 1957 present any other professional proof to the Company of the grievant's recovery.

Prehearing statements in this case were exchanged by the parties during the week of May 12, 1957. When the Company read Union's Exhibit No. 2 (Dr. Siekerski's note dated May 7, 1957 recording the grievant's normal EKG reading as of April 13, 1956) for the first time it was presented with factual material of a medical character indicating that the grievant may have recovered. Dr. Gardnor, the Medical Director of the Company, requested the grievant to come to his office, which he did on June 4, 1957. Dr. Gardnor requested him to have Dr. Siekerski send in a complete medical report together with verification of recovery.

On June 11, 1957 the grievant returned with a statement signed by Dr. Siekerski reading as follows:

> "Mr. Elmer Ross has been seen by me.
> His blood pressure is 120/80
> Electrocardiogram on
>
> | | |
> |---|---|
> | 4/13/56 | normal |
> | 6/8/57 | normal |
>
> Sed. Rate 14 mm
>
> As far as his condition he may return to his old job."

Dr. Gardner did not regard this note as responsive to his request. He personally examined the grievant but was not content with his own examination. He then requested the grievant to submit to an examination by Dr. Ferry, a well-known cardiologist, at Company expense. The grievant consented and an appointment was made for that day, June 11, 1957.

Dr. Ferry, in the course of his examination of the grievant, subjected him to a Masters Test which required him to ascend and descend stairs. Grievant left Dr. Ferry's office before the completion of the test believing that the testing procedure constituted a danger to him. This belief is difficult to reconcile with his concurrent claim that his heart condition was normal and that he was physically fit to return to his job. The grievant failed to appear at Dr. Ferry's office at two subsequent appointments made for him.

The character of the Masters Test having been described at the first arbitration hearing on June 24, 1957 as being a well accepted method for determining the abnormality of a heart condition, and the Union having been assured that it subjected the grievant to no risks, the tests were resumed. Dr. Ferry reported to the Company on July 1, 1957 that the grievant's heart condition was normal and the Company forthwith offered to restore him to his job. The grievant resumed as stripper craneman on July 6, 1957.

The only remaining issue in the case, accordingly, is retroactive pay. The parties met and discussed this issue, at the request of the Arbitrator, but were unsuccessful in resolving it. The second arbitration hearing, on that issue alone, was held on November 21, 1957.

I find, first, that the Company was privileged to rest upon the statement of the grievant's physician that he had suffered a myocardial infarction and that this medical history justified the placing of a restriction upon his work and demoting him to thermocouple maker.

Second, it is not enough,for removal of the restriction and restoration to his former job, that the grievant and the Union on his behalf contend, allege, or urge that his heart condition was normal. The original personnel action of placing a restriction on the grievant's work and demoting him was grounded on a professional medical diagnosis; and it is not unreasonable for the Company to demand a professional statement of equal dignity and authority to restore the grievant to his old job. Nor is this requirement satisfied by a physician's note that "he may resume his regular work." There is no showing here that Dr. Siekerski was familiar with the physical and other demands of the job of stripper craneman in the sense and to the degree that such knowledge was possessed by the head of the Company's medical department.

A statment by a physician that his patient's electrocardiogram reading is normal would be sufficient to put the Company on notice that the abnormality that justified the work restriction may no longer exist. Here, the record discloses no satisfactory proof of the communication to the Company of a medical statement that a normal electrocardiogram reading was had before the week of May 12, 1957 when prehearing statements were exchanged. Upon being apprised of the fact that a physician had reported a normal electrocardiogram reading for the grievant, Dr. Gardner, without delay, took all steps reasonably calculated to determine whether the work restrictions should be removed. He invited the grievant to his office; requested that Dr. Siekerski address to him a full report on the grievant's condition; seven days later he personally examined the grievant and when left unsatisfied by his own examination and the report from Dr. Siekerski, arranged for an immediate examination by a cardiologist at Company expense. I find that the Company amply satisfied the burdens and responsibilities placed upon it by the

late notice of the results of the April 13, 1956 electrocardiogram. The additional delay in verifying the normal condition of the grievant's heart is not, of course, to be attributed to the Company.

In view of all of the circumstances recounted, I find that the Company had cause for demoting the grievant in view of his physical condition as it then appeared to be; that it was justified in placing the work restriction referred to upon his employment; and that it acted with all reasonable dispatch and good faith to ascertain the facts that would justify a removal of the restriction as soon as the existence of the normal EKG was brought to its attention. Accordingly, I find no basis for retroactive pay in this case.

AWARD

The grievance is denied.

Peter Seitz,
Assistant Permanent Arbitrator

Approved:

David L. Cole,
Permanent Arbitrator

Dated: December 20, 1957