INLAND STEEL COMPANY )
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- and - )
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UNITED STEELWORKERS OF AMERICA )
Local Union No. 1010 )

Grievance No. 14-F-16
Docket No. IH-177-172-5/15/57
Arbitration No. 226

Opinion and Award

Appearances:

For the Company:

W. A. Dillon, Assistant Superintendent,
Labor Relations Department
J. Borbely, Divisional Supervisor,
Labor Relations Department
E. McGaughey, Superintendent, No. 3 Blooming Mill
G. Lundie, Assistant Superintendent, Safety Department
J. Wrbanski, Turn Foreman, No. 3 Blooming Mill

For the Union:

Cecil Clifton, International Representative
J. Wolanin, Acting Chairman, Grievance Committee
F. Patlyek, Grievance Committeeman

In March, 1957 Juan Juarez, the grievant, was a Hooker in the No. 3 Blooming Mill and worked in the 14" Merchant Mill, Yard Department and New Construction. He was suspended on March 30, 1957 and was discharged on April 3, 1957. His grievance notice, under "Relief Sought," states

> "Aggrieved requests he be put back to work in light of his service with the Company - 24 years. In a plant the size of Inland there must be a place for this employee."

No retroactive pay is requested.

The occasion which led to the suspension and discharge was an event occurring on March 29, 1957 in the course of which the grievant suffered a near-fatal accident. The Company's position at a hearing held on April 10, 1957 pursuant to the provisions of Article IX, Section 1, of the Agreement and at the arbitration step was that the incident of March 29, 1957 was the straw that "broke the camel's back" and was not the sole basis for the discharge as claimed by the Union. In its third step answer dated April 16, 1957 the Company stated that

> "A review of subject employee's personnel record disclosed that he had received numerous letters of reprimands and disciplines citing him for absenteeism, poor work performance, reporting to work in a questionable physical condition, refusing to take a drunkometer test, and unsafe acts."

At the arbitration hearing the Company emphasized that the discharge was based upon the totality of the grievant's record and his demonstrated lack of qualification to be continued in employment.

The Union, focussing its argument on the March 29, 1957 incident, claimed that the record discloses an improvement in the grievant's performance as an employee and, in any case, that the Company shares fault for the events of March 29, 1957.

1. The Accident on March 29, 1957.

The facts found with respect to the accident are as follows:

The grievant, at 5:50 A.M. was sitting on a bench, in the company of a fellow-worker, at the side of the building in which he worked. The photographs of the area submitted by the Company show that railroad tracks ran approximately two to three yards from the bench. A train of cars bearing billets normally passed the bench four times in every turn. While a 13 car train was approaching the area of the bench, the grievant suddenly left the bench and stepped between the tracks directly in the path of the lead car. He was struck in the back by a coupler and fell to the ground, his body parallel to the rails. Prompt action by his co-worker and the train crew was successful in stopping the train after three cars had passed over his body. The fourth car was such that it would have dragged the grievant to his death if it had reached him. The grievant's co-worker and others found it necessary to expose themselves to considerable hazard in their efforts to save him and stop the cars. The grievant, fortunately, suffered only superficial injuries as a result of the accident.

Normal safety precautions relating to the movement of the train in and out of the building included sirens at the south door, the north door and in the center of the building, the sounding of which is a regularly assigned task, and a flasher light in the center of the building about 50 feet off the ground. The Company investigation conducted immediately after the accident disclosed that the sirens were sounded in accordance with regular procedure before the grievant was struck by the train, but that the siren in the center of the building, closest to the scene of the accident was not operat-

ing due to mechanical defect. The grievant testified at the hearing that he did not hear the siren, but so far as the record reveals this is the first time he voiced this claim. The flasher light might not have been within the range of his vision when he was sitting on the bench at the extreme side of the building, but would have been visible as he approached the tracks.

Since the accident the siren near the bench has been repaired, new flasher lights installed, more easily visible to employees, and a warning notice has been posted.

The grievant admitted having seen the train at some time "but thought they were through loading the billets."

In its pre-hearing brief the Union refers to the safeguards installed after the accident and states

> "For this reason, we feel that Mr. Juarez was not wholly responsible for the accident in which he was involved, although he may be guilty of some carelessness."

The record does not support this view. As I read it, the Company had taken reasonable precautions to protect its employees from being struck by the train, and the accident resulted from the clear negligence of the grievant in failing to observe normal care before proceeding on the tracks. The Union has not, by proof, established fault on the part of the Company with respect to any of the safeguards in force at the time of the accident. The fact that the Company later improved those safeguards does not demonstrate that the Company was negligent in the first instance.

2. The Personnel Record.

In support of its position the Company presented at the hearing in the form of exhibits a record of written reprimands or discipline statements which goes back almost 12 years prior to March 29, 1957. Many of these are referred to in the discipline statement of March 30, 1957. They include 34 reprimand letters and nine discipline statements for failing to report off; six reprimand letters and three discipline statements for bad work performance; four reprimand letters and one discipline statement for safety violations; four discipline letters for reporting for work or working in an inebriated condition; and one discipline statement for having left the job without permission. One of the safety infractions (May 31, 1955), for which the grievant was laid off for three days, was crawling under railroad cars on the track in the 76" mill. Analysis of the exhibits reveals that although a large number of these reprimands and disciplinary actions took place in the

early years of the 12 year period selected by the Company, a considerable number occurred within the two or three years preceding the discharge. In sum there were 62 discipline statements and reprimands prior to the discharge.

On the basis of this formidable list of infractions and failures the Company says that the grievant is not fit to continue in its employ. It regards him as a poor worker, undependable in attendance, lacking in sobriety and responsibility and as having evidenced such lack of care as to constitute a danger to himself and to his fellow-workers in the normally hazardous area of a steel mill. It states that in the hope that the grievant would improve his performance every possible consideration had been extended to him over a period of many years. On several occasions he was demoted and again promoted in the belief that his efforts to better his ability to understand, write and read English would enable him to improve his performance and his qualifications. The Company feels that patience and forbearance had not enabled it to achieve its objectives and when the accident occurred on March 29, 1957 and occasion arose for a review of the personnel record, it took the step that it believed itself to have been amply privileged to take on numerous dates in the past, namely, discharge.

The Union does not deny that the Company in the past might have had cause to take much more severe disciplinary action than it did; but it does deny that it has cause to take it now. It observes that from October 4, 1953 until the date of his discharge, the grievant had received only "nine (9) disciplinary letters in the four years." It reads the personnel record as demonstrating that the grievant was improving in his qualities and performance as an employee and that there existed no cause for discharge.

A more thorough canvas of the material produced than was possible by the Union at the hearing reveals that since March, 1953 (the four year period referred to by the Union) there were, in fact, not nine but 10 discipline statements and a number of reprimand letters.

The observations made by the Union with respect to the materiality of the considerable amount of data culled from the grievant's personnel record makes necessary some general comments on the problem of the use of the personnel record in discipline cases. Violations of company rules, warranting reprimand or disciplinary action, which occurred within a reasonably recent period of time are of greater relevance than

those years removed and more remote. This general rule is subject to the qualification, of course, that even a recent infraction may be shown to have no reasonable relationship or bearing on the question whether cause exists for the disciplinary action complained of by the Union. Violations of Company rules which are remote, in point of time, are generally of less relevance than recent occurrences except to the extent that they indicate an attitude, a course of conduct, or a pattern of behavior which bears a relationship to the incident involved in the dispute.

A study of the whole personnel record shows that this grievant, over the years, by his conduct evidenced an indifference to his own welfare and safety and that of his fellow-workers, as well as the interest of the Company. In the face of repeated reprimands and disciplinary actions, he failed to report his absences from work and he came to work under the influence of liquor. His safety record is not one to give confidence that he is capable in the future of exercising that caution, care and prudence which must be used in a steel mill. At least four times he has been reprimanded for violation of safety rules. Moreover, it was not the act of a reasonably prudent steel worker when in May, 1955 he crawled under cars on a railroad track. After having been disciplined for that offense he recklessly stepped into the path of a moving train of cars without making routine observations up the track. The extent of his carelessness is indicated by the fact that he was struck in his back by the first car while he was either standing or walking on the tracks.

These events disclose an irresponsible frame of mind or an innate inability to adjust to the requirements of work in a steel mill, which gives substance to the Company's conclusion that its efforts further to improve and preserve the grievant as an employee are likely to be unavailing, and perhaps, hazardous not only to himself but to his fellow-workers as well.

Under all of the circumstances presented, the Company had cause to discharge this grievant.

A W A R D

The grievance is denied.

Peter Seitz,
Assistant Permanent Arbitrator

Approved:

David L. Cole
Permanent Arbitrator

Dated: December 27, 1957