

*Iron ore
Inland Mines*

INLAND STEEL COMPANY

- and -

UNITED STEELWORKERS OF AMERICA
Local Union No. 2099

} Grievance No. 137
} Docket No. 228-IOMM2
} Arbitration No. 252
} Opinion and Award

Appearances:

For the Union:

Jack Powell, International Staff Representative
Harold Matthews, President, Local Union
Ronald Perala, Chairman, Grievance Committee, Morris Mine
Frank Harris, Member, Grievance Committee, Morris Mine
Robert Truckey, Member, Grievance Committee, Morris Mine

For the Company:

Henry J. Thullen, Attorney
Robert W. Edwards, Mine Superintendent
John W. Hendricks, Supervisor, Industrial Relations

The grievant, Joseph L. Delongchamp was suspended for five days, effective September 14, 1957 for excessive absenteeism and failing properly to report prior to the starting of work, " * * * with the understanding that you will be subject to discharge at the end of this suspension." Pursuant to the procedure provided in Article V, Section 5 a hearing was requested and held on September 17, 1957. On September 18, 1957 the suspension was converted into a discharge. The grievance was filed on September 20, 1957 claiming unjust suspension and discharge and requesting reinstatement without loss of seniority and pay for all time lost. Second and third step answers on September 26, 1957 and October 11, 1957, respectively, confirmed the discharge and the Union appealed to the arbitration step.

The question is whether the Company had "proper cause" for the discharge. (Article VI, Section 1, Article V, Section 5).

The grievant is an underground Contract Iron Ore Miner assigned, with a fellow-employee to the development and exploitation of a "contract" area in the mine. He had been in the employ of the Company since April, 1952, or a period of about five and one-half years. He was compensated by payment of a standard hourly wage rate plus a bonus for production.

My analysis of the grievant's record of absences and the reasons therefor, as noted on the records of the Company, either as a result of telephone calls by the grievant or his wife or others reporting for him, for the period January 1, 1956 to September 12, 1957, the day before his suspension, is as follows:

<u>Circumstances of Absence</u>	<u>Number of Occasions</u>
a) Reported off and no reason given	7
b) Absent, and did not report off	3
c) "Sick"; "operation scare"; "sore side", etc.	19
d) "Family sick"; "taking child to hospital"; "called during day, getting wife from hos- pital"; "child sick"	5
e) Overslept	10
f) Various kinds of car trouble	12
	<u>56</u>

In the 12 month period prior to suspension, the grievant was absent from scheduled work on 38 days. In the 21 month period prior to that event he was absent on 56 days.

The grievant has no means of checking or verifying the accuracy of the Company's records with respect to the reasons recorded for all of his absences. At the hearing he presented bills showing that he incurred considerable hospital and medical expense for himself and members of his family and for repairs to his car. Many of these items coincide with the dates of absence; some do not. A satisfactory showing was made however by exhibits and oral testimony to warrant the following findings of fact:

1. The grievant suffered recurrent attacks of sickness, at one time diagnosed as gallstones, but he refused to have an operation performed.

2. His wife and seven children have not been in good health and have required medical and hospital care.

3. In 1956 he purchased a 1950 Buick second-hand automobile for transportation to work. The car was not guaranteed to give good performance. It broke down on numerous occasions and required extensive repairs, some of which the grievant tried to perform himself, others of which were performed by others at his expense.

4. He made no efforts to persuade others to take him to work when his car broke down because he believed they would be reluctant to do so, his residence not being in the direct line of their travel to the plant.

5. Attendance at the bedside of sick members of his family frequently deprived him of sufficient rest at night and resulted in his oversleeping. He purchased three alarm clocks in the two year period but they were either defective or were rendered defective and unreliable by his children who tinkered with them.

The Company's personnel file with regards to the grievant's absenteeism shows the following:

a) On August 6, 1954, slightly less than three years before his suspension he was given a written notice of a two-day layoff for being absent from work for the two previous days without reporting off. The notice stated that he had been warned concerning this matter "several times".

b) On June 28, 1955, after having failed to report off for two previous shifts he was given a three day layoff effective the following day. This discipline was made known to him when he reported fifteen minutes late on June 28, 1955. According to the contemporaneous memorandum of the event made by the Mine Superintendent, he left work immediately, without finishing his shift with the remark that this would give him the time he needed to finish some work on his house.

c) On March 18, 1957 he was given a written notice stating that he had been absent on March 13, 1957 without reporting; that more than a year and a half had passed since his last offense and he was therefor not being disciplined; and that on the next absence from work without reporting properly he would be given a five day layoff. In fact, according to Company records and contrary to the statement in the notice, he had committed this offense (absence without reporting) on December 12, 1956, October 5, 1956, September 10, 1956, August 15, 1956, June 26 and 29, 1956, May 18, 1956 and April 20, 1956. Moreover, on March 18, 1957 the Company records did not show the grievant absent without reporting off but because of sickness.

d) On March 21, 1957 he was handed a letter signed by the Mine Superintendent reading as follows:

"Our records indicate that last year you missed a total of 27 days of work. I realize that some of this time lost was because of sickness, either yours or someone in your family, but I feel you have not made an honest effort to correct your time missing habits.

"This time loss has cost you about \$560.00 in wages, and has hampered our operations at the mine. In order to fill in for your absence, we must stop needed work elsewhere.

"So far this year you have missed 11 shifts. We cannot permit your poor attendance record

to continue. For the good of both the Company and yourself you must show an improvement in attendance."

e) The suspension letter of September 13, 1957 referred to the March 21, 1957 warning letter and recited that the grievant's 1957 record showed 29 absences, seven being for oversleeping. (The grievant had stated that his September 12, 1957 absence was due to oversleeping.)

According to the uncontradicted testimony offered, the grievant had also been warned with respect to his absenteeism on a number of other occasions in 1957 and in previous years by the Mine Captain and the Mine Superintendent.

His record also shows a) an oral warning on February 14, 1954 for insufficient work and stretching a half hour lunch period into an hour and five minutes; b) a warning that further garnishment notices would subject him to discharge (19 had been filed against his wages); c) a written notice of two days of layoff, dated January 25, 1955 for violating the no smoking underground rule; and d) another written notice for violating that rule, dated August 28, 1956 imposing a three day layoff.

None of these warnings or disciplinary penalties were the subject of protest or grievance.

The grievant testified that the conversations he had with mine supervision concerning his absences were not characterized by offensive or unsympathetic behavior on their part and that he was made fully aware that the Company might seek to discharge him if his absences continued. Under examination by the Arbitrator, he stated that although he had acquainted Company representatives with the fact that he had had health and car difficulties he did not seek to convey to them the scope and extent of his personal difficulties. He was unable to explain why the severity of his personal misfortunes was not communicated to his supervisors. The Company, apparently, had had some knowledge of his family health and car difficulties and was prepared to credit some amount of it, but also doubted the legitimacy of some of the excuses for absence. The bills for doctor and hospital expenses were not exhibited to the Company at any time prior to the arbitration hearings, neither before suspension nor at the hearing thereon.

The Company observes that for the period starting January 1, 1956, the grievant's absenteeism was one day in every seven working days or about 14 per cent of all working days. The average of absenteeism for the mine is three or four per cent of working days.

The Company urges that the circumstances furnish ample support for its position that just and proper cause for discharge exist. It cites arbitration precedents holding that excessive absences are just cause for discharge even though some or many of the absences are for reasons which might be excusable. It regards the grievant, on his whole record, as an undesirable employee, who after repeated warnings "has clearly demonstrated his refusal to accept his responsibilities to the Company and to his fellow employees." It asserts that his reinstatement "would accomplish nothing".

The conduct of the grievant on the stand and his failure to communicate the character and extent of his misadventures and misfortunes to a not unsympathetic management are difficult to understand. He did not demonstrate belligerency nor did he indicate a conviction that he had been chosen as the object of unfair discrimination or persecution. His demeanor can only be described by the writer as apathetic, listless and unconcerned. One who observes him briefly and who lacks professional competence in psychological disciplines and techniques is led to wonder whether this was due to an innate incapacity to comprehend his economic situation, an emotional inability, for whatever the reason, to communicate with others, or perhaps a feeling of being so crushed by misfortune that efforts to extricate himself are likely to be fruitless. Reference is made to his conduct and appearance because the consequences of discharge here are indeed dire, when one considers the number of persons immediately affected and the grievant's future economic prospects. His bearing and demeanor are important for whatever light they may shed on the Company's view that this is not a case in which rehabilitation is feasible.

Correlative to the responsibilities of Management are its right to be assured a responsible work force. The regular and responsible attendance of employees is essential to the fulfillment of the managerial functions. The duty of the Company to furnish work when employees are scheduled therefor is paralleled by the employee's attendance in accordance with such schedule. Non-attendance may be explained on grounds that furnish reasonable excuse for absence; but such non-attendance when it occurs with excessive frequency is also a hindrance to the fulfillment of the managerial duties. "Excessive frequency", of course, is a question to be determined by the facts presented in each case; but the inquiry does not end there. After "excessive frequency" of absenteeism is found it is still required to determine whether "proper cause", the standard for disciplinary action placed in the Agreement by the parties has been met. This standard makes it appropriate to inquire into the circumstances that occasioned the absences, the mental attitude of the grievant, and the possibilities for rehabilitation.

In this case I find the absenteeism of the grievant excessive to a point where it is a burden on the Company and his fellow-employees. Further, I find that there has been demonstrated by the grievant neither contriteness nor regret for his past record nor the least evidence of hope, desire or determination to better it. His attitude, in effect, expresses the position "This is what I am; these are the circumstances that resulted in my absences; I have no hope, conviction or anticipation that they will change."

This attitude of apparent submission to events as predetermined or beyond control is distressing and underlines the need of the grievant for competent guidance and help. I am reluctantly forced to conclude, however, that his utter inability to cope with his personal affairs has resulted in non-fulfillment of the duty of an employee regularly and responsibly to attend, when scheduled; and further, there is no basis for a reasonable belief that, if given further opportunity, his attendance would improve. This conclusion compels the finding that the Company had proper cause to sever the employment relation.

The Union claims that the action of the Company was arbitrary and capricious and that the decision to discharge was too severe. I do not find it to be so. It is not for the Arbitrator to express views as to the obligations of the Company with respect to the guidance and assistance of its employees in the management of their personal affairs, and he does not do so. For the purposes of this case it is sufficient to observe that the Company exercised considerable forbearance with respect to the inconstant and irregular attendance of the grievant and was not unreasonable when it decided not to continue such forbearance.

The Union observes that previous disciplinary measures related only to the grievant's absence without reporting off. This is countered by the written warning of March 21, 1957 which referred to sickness and other absences of a character prima facie excusable and subsequent discussions with the Mine Captain which gave him to understand that his absenteeism record, whether or not individual acts of absence were justifiable, were jeopardizing his job tenure.

The Union invokes Article IV, Section 2 and argues that there was a past practice of suspending employees with intention of discharge and then returning them to employment; a practice not honored here. The evidence does not support this contention.

Finally the Union refers to Article X, Section 9 which provides in part

"The Company shall have the right to make and enforce reasonable Company rules and regulations consistent with the terms and conditions of this Agreement and a copy of new rules and regulations, when issued, shall be furnished the Union. The Union may request a meeting

between Company and Union representatives and at such meeting the parties shall meet to discuss the reasonableness of such rules and regulations. In any arbitration involving discipline of an employee for violation of a Company rule or regulation, the reasonableness of the rule or regulation involved may be an issue."

Concededly, the Company did not issue a rule or regulation bearing on absences without reporting off, absences for which reasonable excuses are offered, or for excessive absences of whatever kind. But a careful reading of this section discloses that although the Agreement imposes a standard of reasonableness to test the validity and enforceability of Company-issued rules or regulations, it does not require their issuance, or publication. The first sentence of the quoted provision gives the Company the "right" to make rules and regulations and gives the Union certain rights of discussion with respect to their reasonableness. The decision in this case, however, is not based upon any rule or regulation, but rather, upon the failure of the grievant to meet minimal and reasonable requirements of a responsible employee with respect to attendance, the absence of any prospect that he might do so in the future, and the existence, therefore, of proper cause for the Company to discharge him.

AWARD

This grievance is denied.

Y

Peter Seitz,
Assistant Permanent Arbitrator

Approved:

David L. Cole,
Permanent Arbitrator

Dated: March 25, 1958