

INLAND STEEL COMPANY	)	
- and -	)	Grievance No. 138
	)	Docket No. 236-IOMM3
UNITED STEELWORKERS OF AMERICA	)	Arbitration No. 253
Local Union No. 2099	)	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, Ray Kulju was suspended for five days, on September 17, 1957, with notice that he was subject to discharge; a hearing was requested and held pursuant to the provisions of Article V, Section 5 of the Agreement; and on September 20 he was notified that the suspension had been converted into discharge. A grievance claiming that he had been unjustly suspended and discharged was filed by Kulju on September 23, 1957 in which he requested reinstatement without loss of seniority and pay for all time lost. A grievance meeting was held on October 9, 1957 and a third step answer to the grievance was given on October 21, 1957.

Kulju started his employment with the Company on April 1, 1952 and was assigned as a Timberman and Stem Miner. Two weeks later, on April 15, 1952, on the basis of the representation in his employment application that he had had two years of experience as a Miner, he was promoted to Contract Miner. He worked as a Contract Miner for one year and a half until October 1, 1953, when, because of inadequate performance, in the judgment of the Company, he was demoted to Stem Mining and Timbering. He continued to work in this status until May 1, 1957 when he was once more assigned to Contract Mining at which he continued until his discharge.

The basis for discharge was set forth in the letter of the Mine Superintendent to the grievant dated September 17, 1957. That letter read as follows:

"On June 11, 1957 you were given a letter advising you that your work was not up to our standards and that unless you changed your attitude toward your work, I would be forced to resort to either demotion or discharge. On July 24, 1957 you were advised by Captain Tippettt that again your work was not up to standards and that the matter would be referred to me when I returned from my vacation. On September 16, you again failed to produce a normal day's output and on September 17 as I approached your working place at 10:05 A.M., you were lying down apparently asleep on a bench by your working area.

"In view of the repeated warnings which apparently had gone unheeded, you are hereby given a five calendar day layoff effective September 18 with the understanding you will be subject to discharge at the end of the five day layoff."

The history of dissatisfaction by the Company with the grievant's performance was set forth in considerable detail at the hearing. On several occasions while he was Stem Mining his supervisors had cause to speak to him about the quality of his performance. The shift boss testified that other Miners had complained to him that the grievant did not do his share of work as a fill-in for absent Contract Miners, their partners, and that his attitude was wrong. This criticism was communicated to the grievant. During this period of Stem Mining, on March 28, 1956 he had been disciplined by a one day layoff for having taken one hour and twenty minutes for lunch instead of a twenty minute paid lunch period. On May 1, 1957 he was again orally told that his work performance was unsatisfactory.

On May 1, 1957, (shortly after the last mentioned warning), when he was again promoted to Contract Miner (on the basis of his seniority and experience) he was told that he now had a chance to prove himself. On June 11, 1957, however, the Mine Superintendent addressed the following letter to the grievant:

"For some time now the supervisors have been watching the amount of work you produce in a day and we feel, not only is your attitude toward your work poor, but the amount and quality of your work is not up to what we expect.

"This letter will serve as your warning to change your attitude towards your work and raise your work standard or I will be forced to resort to either demotion or discharge."

On July 30, 1957 he was given a disciplinary layoff of one day for being absent from work without reporting.

In the absence of the Mine Inspector in July, the Mine Engineer had occasion to discuss his poor performance with the grievant. His memorandum of the circumstances, dated July 24, 1957 was highly critical. It referred to the grievant's failure to show improvement in his below-average production despite warning and that C. Lautanen, his partner was "continually griping" that grievant was not holding up his part of the work. Reference was made to the fact that it took the grievant two shifts to put in six rounds of cribbing on July 15 and July 16 that should have taken one shift; and that when asked why he didn't put a short prop in the corner he replied he didn't know and that he was doing his best. According to the memorandum the Mine Inspector told him if this was his best, it was not good enough.

The suspension and discharge resulted from the events of September 16 and 17. In the previous week the grievant was absent from work, on his honeymoon. His partner had also been absent on the last shift preceding September 16. According to the report made by those who worked Contract No. 11 where grievant was regularly assigned, it had been made ready for charging and blasting at the beginning of the September 16 shift. In fact it was not blasted until the end of the September 16 shift, which he worked with a Stem Miner who he regarded as inexperienced. The Management witnesses testified that the work he performed that day, even including some Timbering which the grievant stated was necessary, should not have taken over two and one half hours of the entire shift. The rock and dirt, they say, could have been removed during the remainder of the shift. The Company Supervisors did not testify, however, that they had actually observed the condition of the raise in which the work was being done and their judgment seems to have been based upon the circumstances as reported by the last Miners to work the raise.

The grievant testified that he experienced difficulties with the performance of his job on September 16, not understood or appreciated by the Company. He stated that his inexperienced partner did not cooperate with him and lend him the assistance he required when he needed it; that he had trouble with the skip; that he couldn't find the motor for about an hour and then had to take out a full load of dirt; that after he was all charged out he had to wait for the motor again; that another nearby contract had to be notified of the blast; that he had to make a considerable number of trips up and down the raise to get the dirt out; that he had to do a great deal of cribbing and timbering including cover timbering; that, in fact, the place was not ready to blast as represented.

On September 17, the next day, the Mine Superintendent testified that, being underground, he decided to ascertain why the grievant had not blasted before the end of the shift. He found grievant's regular partner standing or walking around, but not working. The partner's answer to the Superintendent's question as to what was going on was to refer him to grievant. The grievant was found lying upon or getting up from a reclining position on a bench. This was about two hours after the start of his shift. The grievant admitted to having done no work since his starting time and explained that he was waiting for the motor (the train) which, apparently, was being utilized in another part of the mine to transport ore in preference to dirt and rock. At the hearing he stated that he had walked down to the switch on one occasion to look for the motor. He gave no explanation of a failure to make greater progress than he had on September 16 other than to say he did his best.

The Company regarded the grievant's conduct and performance on September 16 and 17 as additional evidence of the deficiencies concerning which they had given him prior notice, and he was suspended. The Mine Superintendent emphasized that even if the motor had been delayed there is always clean-up and other work available to be performed by a Contract Miner. He did not indicate specifically what other work might have been performed, but on the other hand, the grievant did not deny that he could have done some work rather than merely await the arrival of the motor to load and tram away the blasted material.

The question for decision is whether the disciplinary action taken was "for proper cause" (Article VI, Section 1).

A finding of proper cause to discipline is amply warranted by the evidence. In his performance as a Contract Miner grievant left much to be desired. He did not demonstrate that initiative and responsibility which the Company has a right to expect of Miners who, in the nature of the operation, cannot be subject to close surveillance and supervision. The two Supervisors in the underground workings, on the average, do not spend more than five or ten minutes with a Contract Miner, and may not see him at all on some days. Thus, the quality of dependability and responsibility are important in a Contract Miner. The Company asserts unequivocally that the grievant has the requisite experience to handle all phases of contract mining including work on the raises as to which the grievant states he may not be as experienced and as proficient as he should be. The Company's appraisal of the grievant's knowledge of and ability to do the job is supported by the testimony of the Chairman of the Grievance Committee, with whom he worked as a Stem Miner, and who stated that if he did not already have a partner he would welcome the opportunity to work with the grievant.

The Company's position is that the grievant is unwilling to work and accept his responsibilities as a Contract Miner, had no pride in his work and exercises no initiative therein as required of Contract Miners, and that he tries to get away with as little as possible. Weight is added to the Company's judgment by a comparison of production figures for the period July 1, 1957 (shortly after the grievant was promoted back to contract mining) to the end of the last half of September and the first half of October through the first half of December (during which another Miner worked with the grievant's regular partner in the contract). In the period in which grievant worked there was an average advance in the raise (for the first 70 feet) of .5 feet per man-shift; in the subsequent period the advance was .73 feet per man shift. The fact that the higher one goes in the raise the slower and more difficult is the work makes this comparison significant.

On all of the evidence, there can be no doubt that disciplinary action was justified.

The justification for discharge, however, on the evidence presented at the arbitration hearing (as distinguished from the strongly held subjective convictions of the Company's responsible representatives) is not as clear. There are several aspects of the case which engender doubts. It is noted that he was promoted to Contract Miner only a month after he had been warned of inadequate performance as a Stem Miner. As a Stem Miner he had received several reprimands but, apparently, did not run the risk of discharge, although he had been working in that job for some time. Second, the testimony showed that the grievant's partner had privately "griped" about working with him to Company officials on several occasions. His complaints may or may not have been justified; but at any rate they may well have had the effect of coloring Management's appraisal of the grievant. So far as the record goes, the inference is rather strong that the partner also did no work on September 17 for two hours after starting time and, like the grievant, was content to await the delayed arrival of the motor. A lack of initiative and the wrong "attitude" toward work responsibilities can be demonstrated in a vertical as well as in a horizontal position. The failure of the grievant to be doing clean-up or other work on September 17 was an important (but not, of course, exclusive) factor in the decision to discharge him; the like failure of his partner resulted in no warning or discipline so far as the record shows. The facts, as they developed, compelled speculation whether the lack of work progress, generally, on the contract may not have been due to incompatibility of the two employees and their lack of cooperation. Third, the judgment of the Superintendent that, on September 16, the work done could have been accomplished in two and one half hours rests on the report of the crew that had worked on the contract in the previous shift. The grievant disputes that the raise was ready for charging and blasting. The record contains no evidence that

management representatives actually inspected the raise and the conditions with which grievant says he had to contend on September 16. Thus, the Arbitrator has to choose between the testimony given by the Superintendent and the Mine Captain on the one hand, based on reports of others and general practice in the mine, and that of the grievant, on the other hand, based on his actual observation and experience. Although there is no reason whatsoever to doubt the credibility of the Company representatives, there is likewise no reason to doubt the credibility of the grievant. He was a frank witness, admitting his deficiencies and shortcomings.

These circumstances, not singly, but taken as a whole, compel substantial doubts as to whether the events of September 16 and September 17 furnish proper cause and justification for the discharge action. Poor workmanship and a failure to discharge the duties and responsibilities of a Contract Miner, are, indeed, proper causes for discharge of a Contract Miner. It has not been shown to my satisfaction in this case, however, that the grievant has been guilty of such non-feasance or misfeasance as to justify the extreme penalty of dismissal.

The argument of the Union based upon local conditions and practices (Article VI, Section 2) is regarded as lacking in factual proof and in substance.

#### AWARD

1. The Company had proper cause to discipline the grievant.
2. The discharge is modified to disciplinary layoff. The grievant shall be reinstated as soon as possible and not later than the work-week following the date of this award, without loss of seniority but without back pay.
3. The action taken herein shall be a part of the personnel record of the grievant.

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Peter Seitz,  
Assistant Permanent Arbitrator

Approved:

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David L. Cole,  
Permanent Arbitrator

Dated: March 25, 1958