INLAND STEEL COMPANY)
)
and)
)
UNITED STEELWORKERS OF AMERICA)
Local Union 1010)

Grievance No. 16-F-309
Docket No. IH-366-357-8/11/58
Arbitration No. 280

Opinion and Award

Appearances:

For the Company:

J. Borbely, Divisional Supervisor, Labor Relations
W. A. Dillon, Assistant Superintendent, Labor Relations
R. L. Williams, General Foreman, Mechanical Section
J. Knapik, Foreman, Mechanical Section, Cold Strip
G. Zelanik, Foreman, Mechanical Section, Cold Strip
H. S. Onoda, Divisional Supervisor, Labor Relations

For the Union:

Cecil Clifton, International Staff Representative
F. Gardner, Chairman, Grievance Committee
J. Wolanin, Secretary, Grievance Committee
J. Stone, Grievance Committee
K. Carpenter, Aggrieved

The grievant, Kenneth Carpenter, was suspended on July 7, 1958 and at the end of his suspension was discharged. The grievance, filed July 23, 1958 alleges violations of Article IV, Section 1, Article VII, Section 2 and Article IX, Section 1, and requests that Carpenter be reinstated.

Grievant is a Welder. On the 3:30 - 11:30 turn on July 6, 1958 he was assigned to the #1 Cold Strip. He was doing a welding job on a Looper Pit Wing Plate job on the #2 Pickle Line. At 7:15 p.m. he left his work and went home, although he knew that it was necessary that he complete his assigned task so that the Mill could start up at 11 p.m. as scheduled. The only reason Management knew for this unusual behavior was that his foreman had been checking his work that day too closely.

The Union charges violations of Article IV, Section 1, the Plant Management provision of the Agreement, and Article VII, Section 2, the Personnel Records provision, as well as of Article IX, Section 1, the Discharge provision. Article IX outlines the procedure to be followed in testing Management's decision to discharge an employee for cause. A number of expressions are used with regard to the basis of such action: "right to discharge employees for cause;" "discharge is warranted;" "if the employee believes he has been unjustly dealt with;" and "that the action taken was unwarranted in light of all the circumstances." In Article IV Management's general right to discipline and discharge employees for cause is reserved. Article VII, Section 2, pertains to the keeping and use to be

made of records and ratings as to the employee's service. It is cited by the Union ostensibly because of this paragraph:

> "The 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. 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."

Essentially, the test to be applied to grievances of this kind is whether the discharge was for cause warranting this extreme form of discipline in light of all the circumstances. The Arbitrator is specifically authorized to modify, revoke or affirm the action taken, and to dispose of the grievance "upon such terms and conditions as may be deemed proper under the circumstances."

In the notice of suspension mailed to grievant the Company explained its action as follows:

> "This action is taken on the basis of your repeated refusal to work, leaving your job and threatening a foreman. You have been warned both verbally and in writing that any continued refusal to work, leaving your job, or threatening a foreman would be cause for suspension subject to discharge."

The Company was referring to the July 6 incident only to the extent that grievant left his job and thereby can be said to have refused to work. In fact, there was no direct refusal that day, nor was there any semblance of threats made to a foreman. These references were to other incidents in grievant's record which had occurred much more than a year before.

Stripped of technicalities and argumentation, what happened on July 6 appears substantially to be this. At the beginning of his turn the foreman told Carpenter that he was to do the Looper Pit Wing Plate job and that he would have to "hump"; that the job had to be completed before the 11 p.m. turn when the mill was scheduled to start. Grievant took some offense at this, replying that he would do his work but that he would not "hump" for anybody. The Millwright in charge was also informed of the urgency of the job and asked to keep things moving. Thereafter the foreman did not speak to Carpenter again while he was on the job, but a number of times he stopped at the pit, some 15 feet above the welding job and observed grievant at work. The work apparently was progressing at a satisfactory pace, but the foreman was anxious to see that it continued. At the end of the lunch break the foreman asked the Millwright where Carpenter was, and was told he was in the canteen. The foreman commented: "What, again?" It happened that Carpenter was getting a drink at the fountain and that he had not that turn left his work to go to the canteen at all. On resumption of work in the pit the Millwright told grievant about the Foreman's inquiry and comment. This aroused Carpenter, and led him to leave the pit,

approach the foreman, and say, in effect: "If my work can't satisfy you, I'd better go home." The foreman said little or nothing other than to ask him whether he really intended to leave his job at that time. He did, and the disciplinary action resulted.

Carpenter was resentful at the foreman for seeming to "breath down his neck," as he put it. In truth, the foreman did not speak to him except at the beginning of the turn, although he looked in on the job from time to time, but he did speak to the Millwright about grievant and his work progress. Grievant had had trouble with supervisors in former years and asserts that he was anxious for general reasons, as well as for special personal reasons, not to get involved again in such difficulties, and that this was why he preferred to go home at 7:15 that evening. Grievant also argued at the meeting in the Industrial Relations Department and to a minor extent at the arbitration hearing that the welding job that evening had an inadequate complement of workers, but the facts do not support him. Despite the time lost when he walked off the job, the Welders' assignments were completed before 11 p.m., and no man-hours beyond those available to grievant were used.

But for grievant's record of prior transgressions it is doubtful whether his disciplining would have gone to the extent of discharge. There is no desire in this opinion to embarrass anyone or to bore into personal beliefs, but it must be mentioned that since grievant's last infringement of rules resulting in a five-day suspension in October, 1956, he has undergone a transformation in personal attitude and philosophy which strongly militates against conflict, and certainly abusiveness, in dealing with his superiors at the plant.

This introduces an additional element into the case. Article VII, Section 2, as indicated above, includes a form of contractual statute of limitations on the influence of violations calling for written recording in an employee's personnel record. The period of limitation is one year. At most, after a year expires with no repetition of similar or related violations, the early violation may serve only as a backdrop against which the current violation may be judged. The old violation may not in itself serve as a basis for disciplinary action at the present time.

We observe that in November, 1953 grievant was suspended for four days for refusing to perform his job, and on October 23, 1956 for five days for threatening a foreman with physical violence. But it must be noted that, aside from the one year limitation provided by the Agreement, for almost three years after the 1953 incident his record was clear of any written caution, and from October 1956 to July 6, 1958 it was again devoid of any written mention of any infraction.

The observations made above should not confuse the situation, however. It is not remotely suggested that grievant was justified in doing what he did on July 6, 1958, or that the foreman did anything improper. At the hearing, Union witnesses agreed with the Arbitrator that it was perfectly normal for a supervisor to advise employees of the urgency of an assigned job on a given day and from time to time to check on the progress. Nor can any employee assume with impunity the right to walk off the job and go home whenever the spirit moves him. It would be impossible as a practical matter to operate a steel mill under such conditions.

What grievant did calls for strong disciplinary action. His desire to avoid an argument with his foreman is commendable, but this could more effectively have been accomplished by remaining at his post and doing his job. Grievant's feeling that he was being discriminated against seems to have been purely subjective and with little or no foundation in fact. He had successfully prosecuted one or more grievances some time before. While he should not therefore have been subjected to any form of retribution, at the same time he had no basis for expecting to be immune from normal rules and supervisory direction thereafter. Moreover, if he was convinced that his foreman was unduly "breathing down his neck," the proper recourse was through the grievance machinery and not through self-help.

The only question is whether discharge was warranted under the circumstances described. Factors to be weighed in determining this question are the considerable period of time during which grievant conducted himself in a manner not calling for written reprimand, despite his particularly poor record in the years 1950 - 1951, and the personal transformation which contributed to his action on July 6, 1958 in the sense that it reflected his desire to avoid rather than to seek controversy with his foreman.

In arriving at its decision to discharge grievant Management frankly relied heavily on his past record. It is dubious in view of the one-year limitation stipulated in Article VII, and of the time gaps between recorded offenses since 1953, whether Management had the right to accord such weight to this record.

It seems to the Arbitrator, however, that under the circumstances a severe penalty short of discharge was warranted. Carpenter has now been away from his job for more than four months. If he is reinstated without back pay this period will be converted into a long suspension, which his conduct on July 6 would warrant, and it would serve as a strong warning to him and to any other employees who may be inclined to follow a similar course. They would be on notice that they could expect severe discipline, not ruling out the possibility of discharge, depending on all the circumstances in each case.

AWARD

The Company was warranted in disciplining grievant, but the circumstances in this instance do not justify discharge. He shall be reinstated, but without back pay, at the beginning of the pay period following receipt of this award.

Dated: October 29, 1958

/s/ David L. Cole

David L. Cole
Permanent Arbitrator