

INLAND STEEL COMPANY

and

UNITED STEELWORKERS OF AMERICA
Local Union No. 1010

) Grievance No. 21-F-32
) Docket No. IH 433-420-1/19/59
) Arbitration No. 313
)
) Opinion and Award
)

Appearances:

For the Union:

Cecil Clifton, International Representative
Fred Gardner, Chairman, Grievance Committee
Joseph Wolanin, Secretary, Grievance Committee
G. Gernick, Grievance Committeeman
J. Wiseman, Assistant Grievance Committeeman

For the Company:

R. J. Stanton, Assistant Superintendent, Labor Relations
L. R. Mitchell, Divisional Supervisor, Labor Relations
R. W. Bley, Assistant Superintendent, Chemical Department

The grievant, Duane Hayes, was discharged from employment on November 21, 1958, following a suspension notice dated November 15, 1958, which charged him with "chronic absenteeism and failure to report off".

The immediate occasion for the action by the Company was the failure of the grievant to report for work on the 4-12 ¹/₂ turn on November 14, 1958, according to his schedule and his failure to report his absence until 6:00 P.M. or two hours after the start of his shift. This, in the light of previous reprimands and disciplinary action by the Company, was regarded by it as cause for discharge (Article IV).

The grievant worked the 4-12 turn on November 13, 1958. Then, because four employees were absent from the 12-8 turn on November 14, the grievant and several other employees were held over for that turn. At its termination, according to the grievant, it took him about an hour to return to his home in Gary,

1/ There is an indication in the record that, in fact, grievant's turn started at 3:30 P.M. However, since both the Company's and the Union's statements refer to his turn as 4-12, it will be assumed, for the purposes of this decision, that this is correct.

Indians, and he was then obliged to drive his wife to her job. He claims to have gone to sleep after a 16 hour stint at about 10 A.M. He also testified that he required about two hours before the start of his 4 P.M. turn to awaken, dress, eat, transport himself to the plant, park his car and walk to his job. Roughly estimated, on November 14, then, he would not have had more than five hours of sleep and rest. He claims to have set his alarm clock and to have placed it in a bowl to maximize the sound of the alarm - but did not awaken until 6 P.M. when his wife returned. He then dressed and immediately called the plant. So far as the record reveals there was nobody else at home to awaken him at the hour he had planned to arise.

The Company's showing of cause leans heavily on an unfavorable personnel record with respect to absences. Less than a month previously, on October 24, 1958, the grievant was given a discipline statement noting that he had failed to report off in advance or to work his regularly scheduled turn on October 21, 1958. The statement went on to say:

"Your absentee and failure to report off record has been deplorable. Because of your past record and this present infraction, you are scheduled off for three (3) days, November 5, 6 and 7, 1958.

"This is your last chance. Any further violation of Company rules or poor attendance will result in suspension preliminary to discharge."

The Company presented, as an exhibit, the personnel record card of the grievant which records the following:

Three Reprimands for poor attendance (absenteeism)
3/25/57; 7/23/58; 8/12/58

= Four Reprimands for failure to report off in advance: 10/21/54; 9/23/55; 8/19/56; 10/10/57

One Discipline for poor attendance: 10/17/57
(two days)

Two Disciplines for failure to report off in advance: 7/25/58 (one day); 10/24/58 (three days)

The Company statement sets forth the following (p. 3):^{2/}

"Records reveal that, during the four-month period of his employment in 1952, he was

^{2/} The Company statement (p. 3) presents these reprimands and disciplines in chronological order. It includes, also, two reprimands for poor workmanship in 1956 and 1957 the relevancy and materiality of which were not discussed in the statement or at the hearing.

absent one scheduled turn. For the 4 1/2 months of 1954 after his return from the service, he was absent two scheduled turns. During the year of 1955, * * * he was absent 14 scheduled turns. In 1956 he was absent 21 scheduled turns. In 1957, he was absent 31 scheduled turns. From January, 1958 to the date of his suspension (November 15, 1958) he was absent 21 scheduled turns."

This raw enumeration of absence statistics without reference to the reasons for absence and the circumstances surrounding the absence forms an insufficient basis to relate what occurred on November 14, 1958 to the employee's absentee record. Accordingly, the Arbitrator consulted the photostatic copy of the grievant's personnel card placed, in evidence by the Company, and developed the following data.^{3/}

Absences Reported (1952-1958)

a)	Sickness	69 days		
b)	Sickness (Family)	1 day		
c)	Sickness (Wife)	3 days		
d)	Sickness (Child)	<u>3</u> days	76 days	
e)	Unknown	4 days		
f)	Out of Town	1 day		
g)	Undecipherable	3 days		
h)	Car Trouble	1 day		
i)	Personal	1 day		
j)	Overslept	<u>1</u> day	<u>11</u> days	87 days

Absences Not Reported (1952-1958)

a)	"Sleep in"	1 day		
b)	Unknown	3 days		
c)	House Fire	1 day		
d)	Personal	<u>1</u> day		<u>6</u> days
				93 days

^{3/} Several of the entries are difficult to decipher. Accordingly, there is a small margin of error in this compilation. In the main, however, it is believed to give a reasonably accurate picture of grievant's record.

The Personnel Card from which this data was taken records Absences Reported as "DR" (did report) and absences not reported as "DNR" (did not report). In some instances ditto marks are used; in other instances this is recorded by a check mark and in still other instances by "x".

It might also be remarked that the exhibit shows three separate entries for absences on October 28, one for sleeping

Qualitatively, this presents an entirely different picture from the undifferentiated data on page 3 of the Company's statement.

The grievant did not file any grievances with respect to the disciplinary actions taken or the reprimands issued.

The analysis set forth above indicates that the grievant's absentee record is very unfavorable, although, by far the greatest number of absences are alleged to be due to sickness. The Company did not dispute in the record of this case that the reasons reported for the absences were truthful. To be sure, grossly excessive absences could be the basis for discharge. The Permanent Arbitrator has so held in Arbitration No. 252 in which it was made to appear that there was no reasonable expectation that the grievant would be able to correct his behavior, and improve his attendance. In this case no such showing (beyond the statistical data referred to) was made. On the question of failing to report in, as specifically required by Article VI, Section 4 (Paragraph 119) the grievant's record is not good, but there is doubt that it is so bad as to justify discharge, particularly if the offense which was the immediate cause of the discharge action had elements or aspects which, even if they did not excuse the absence, tended to explain or justify it. The worst aspect of the grievant's record is that after having been disciplined with three days off on October 24, 1958 he was absent because he overslept on October 28, 1958 (although the accuracy of this entry is questioned in footnote "3") and then was absent because of oversleeping on November 14. The October 28 absence is recorded as having been reported by the grievant; the November 14 absence was reported, as stated above, some two hours after the start of his shift.

The question must be asked here what occurred on November 14 that persuaded the Company, which was content to continue him as an employee on October 24 (under the shadow of serious warning) despite the previous record of absences, to dispense with his services on November 19?

3/ (continued)

and two for sickness. It is difficult to reconcile these entries even on the theory advanced at the hearing that there was an inexperienced clerk in the office on this day. These anomalies, however, give weight to the Union's argument that it is hazardous to depend too heavily on the absence statistics and that there may be errors contained therein of which the grievant may have no knowledge or notice.

The factual circumstances relied upon by the Union (double shift worked, transportation time, driving wife to work, insufficient rest, et cetera) do not make the absence an excusable one in the sense that physical inability, for example, would be. In such a case, surely, the Company would have no basis for discharge however bad the grievant's former attendance record might be. It cannot be said that he was without fault, as the Union would have it. It was his duty to appear for work at the start of the turn and it was his responsibility to take such means and measures as might be necessary to assure his attendance, whatever they might be.

On the other hand, the Company, although it does not dispute the facts, seems not to give any weight whatsoever to the circumstances relied on by the Union. It says merely that the grievant was warned that "any further violation of Company rules or poor attendance" would result in discharge, and in light of his record, the absence and late reporting on November 14 furnish it with "cause" for discharge.

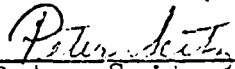
Without condoning the dereliction of November 14, one is compelled to disagree with the Company's decision. Although the absence is not excusable, it is not of such a character as to be entirely and utterly inexcusable. The grievant, here, did not deliberately absent himself from work for personal or other unacceptable reasons. There is no indication that the absence was due to personal self-indulgence or wanton disregard of the duty to report at the starting hour of the turn. The grievant on this record must be assumed to have overslept because of long hours of work and inadequate rest, due in part to the Company's needs. If his account is to be accepted (and we have no alternative on this record but to do so) he was not conscious at the time he should have arisen to prepare to go to work. True, he might and should have taken more effective means to be awakened in a timely manner, and for this he is at fault; but it cannot be held that the means he did take were plainly inadequate. If grievant was guilty of not exercising the highest degree of care on November 14, to assure his attendance, it cannot be said that he exercised that unconcern or disregard for his obligation that would furnish cause for discharge.

The straw that breaks the camel's back (to use the expression commonly employed in this type of case) must itself be related to the kind of straw which already overburdens the camel. The event which furnishes cause for discharge must be capable of standing on its own bottom; that is to say it must be of such a character, itself, which, when considered with the personnel record, justifies discharge. The grievant overslept, but for the reasons and under the circumstances indicated.

In view of the foregoing, the penalty of discharge is commuted to disciplinary suspension for a period expiring five days after the date of this award. It is found that grievant's non-attendance on November 14, in the light of the personnel record, although it does not justify discharge, amply supports such discipline. u/

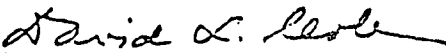
AWARD

The grievance is granted in part and denied in part. The grievant shall be reinstated in employment five days after the date hereof but without back pay or other benefits of employment that may have accrued since November 19, 1958.



Peter Seitz,
Assistant Permanent Arbitrator

Approved:



David L. Cole,
Permanent Arbitrator

Dated: March 31, 1959

u/ "If the arbitrator determines that the action taken should be modified rather than revoked or affirmed, such grievance shall be disposed of upon such terms and conditions as may be deemed proper under the circumstances."
(Article IX - Discharge, Section 1, Paragraph 215)