INLAND STEEL COMPANY	)	Grievance No. 22-F-51
	)	Docket No. IH 381-370-11/3/58
and	)	Arbitration No. 327
	)	
UNITED STEELWORKERS OF AMERICA Local Union No. 1010	)	Opinion and Award

Appearances:

For the Union:

Cecil Clifton, International Representative
Joseph Wolanin, Secretary, Grievance Committee
J. Gyurko, Grievance Committeeman

For the Company:

Henry Thullen, Esq., Attorney
Glenn Gardiner, M. D., Indiana Harbor Works Medical Director
L. E. Davidson, Assistant Superintendent, Labor Relations
R. H. Werntz, Divisional Supervisor, Labor Relations
R. M. Walsh, Assistant Director of Safety and Plant Protection
B. E. Burke, General Mechanical Foreman, No. 3 Open Hearth Dept.

The grievant, C. Robison was injured while working as a First Class Crane Repairman on October 9, 1956. He fell approximately 25 feet from a scaffold and suffered fractures of the pelvis and the left wrist. Following hospitalization and recuperation he returned to the plant on January 21, 1957 and performed "modified work" until September 19, 1957 when he resumed his regular job of First Class Crane Repairman until August 10, 1958. Then, as a result of a medical restriction, issued by the Medical Department of the Company, he was demoted to the occupation of Pump Tender.

The issue, as declared by the Union and accepted by the Company is "whether the Company had just cause under Article IV, Section 1, in demoting Clarence Robison?"

The events relevant to a determination of the case and their sequence are found to be as follows: After his return to work and in connection with treatments given to him in the Company's Medical Clinic and a workmens' compensation claim pending, Robison was examined on a number of occasions in the Clinic and had discussions with the Company's Medical Director and his associates. It is evident from the fact that no medical restriction had been issued

when he was permitted to return to his occupation that the Company, through its responsible medical officers, regarded him, at that time, as being physically fit to perform the duties of First Class Crane Repairman. The Medical Director's evaluation of the permanent total disability suffered by the grievant was ultimately stated by him to be 7%. The grievant disputed this, claiming that there was a 30% loss of the use of the left wrist below the elbow and, including the pelvic fracture he suffered approximately a 25% impairment in toto. This claim was supported by a medical report "To Whom It May Concern" of J. C. Donchess, M.D., written on March 12, 1958, but not seen, allegedly, by the Company's Medical Director until a later date. The Medical Director at that time stood by his 7% evaluation, and the matter was referred to the Safety and Plant Protection Department of the Company for handling of the workmens' compensation claim.

Robison was sent by the Safety and Plant Protection Department to the Jones Clinic of Hammond, Indiana for medical examination. The report of E.S. Jones, M. D. to R. M. Walsh of the Company department referred to above, dated June 10, 1958 raised some question as to whether the wrist injury was due to an antecedent accident or the one he suffered in 1956. It concluded by stating

> "There is no impairment from the fractured pelvis. I should estimate the permanent impairment of the left wrist due to the navicular fracture to be from 20-25 percent of the wrist, but as stated when this occurred I am unable to determine."

The Medical Director testified that he regards the two physicians who had reported on the grievant's condition to be "in the highest repute". When confronted with these two reports and having read them in the light of the Clinic's examination of the grievant he stated that he was inclined to take a different view both of the grievant's physical condition and his fitness to perform the duties of the job. The workmens' compensation claim, following receipt and consideration of these reports, was settled by the Company and C. Robsion at the figure of 14% of total permanent disability of the whole man. In the light of all of these circumstances Robison was called into the Clinic for another examination, following which, on July 28, 1958 the Medical Director recommended that the grievant be restricted to work not requiring heavy lifting (over 50 pounds) or climbing (except stairs).

The Medical Director testified that he regarded the medical restrictions to be sound in view of the requirements of the job. Those requirements, as evidenced by the job description and classification, include the handling, lifting and carrying of heavy materials and tools and climbing agility. It is said that he is obliged to work on cranes from 20 to over 70 feet above ground level with heavy objects and must climb vertical ladders.

The Union argues, first, that the fact that the grievant worked in his job for some eleven months (after recuperation) without adverse criticism of his physical fitness or performance thereon proves that he was physically fit to perform at the time of the demotion. While this is worthy of consideration and weight in the determination of the ultimate fact of physical fitness to perform the job, the Union's claim for this circumstance cannot be accepted as made. Physical unfitness to perform a job could manifest itself in two ways: either the employee is clearly incapable of performing under normal standards; or, alternatively, that he has the capacity to perform, but when he does so it is with undue risk of further physical damage. Probably the clearest illustration of the alternative situation would be an employee who suffers occasional epileptic attacks doing crane repair work at considerable heights above floor level. His physical fitness to perform the work might be claimed, based upon actual performance thereof for 11 months; but this would not take into consideration and account the hazards inherent in his condition which may not have been experienced during the period he actually worked.

Second, the Union regards the demotion as being in the nature of a disciplinary action taken against C. Robison because of his success in obtaining a settlement of his workmens' compensation case in an amount higher than that deemed proper by the Company. In this connection it points to the fact that the Company's responsible medical officers originally were of the opinion that C. Robison was physically fit to perform as First Class Crane Repairman and it was only subsequent to the settlement of the workmens' compensation claim that their evaluation of his fitness was reversed and the medical restriction issued.

This aspect of the case presents many difficulties. The considerations which follow, however, require a decision for the Company.

There is no doubt that the Medical Director completely reversed his judgment both as to the extent of the injuries suffered and as to whether the grievant was physically fit to perform the job duties. This reversal, he explains, was prompted by the medical evaluations of Dr. Donchess and Dr. Jones. It is curious that the Medical Director, in this case should modify his own medical evaluation because of the opinions of other physicians. It is not entirely consistent with the position taken in at least one prior case. What was there, one is prompted to ask, in the reports of Dr. Donchess and Dr. Jones that carried so much weight? Dr. Donchess was the grievant's personal physician. His "To Whom It May Concern" report was a document prepared to support the grievant's workmens' compensation claim. He refers to "x-ray examination of x-rays brought by the patient". He expresses no opinion whatsoever as to the relationship between the grievant's physical condition and the requirements of the grievant's job.

Dr. Jones' evaluation specifically rules out any question of "impairment from the fractured pelvis" - a condition which the Company in its statement filed at the hearing asserts has occurred and relies upon as supporting its conclusions as to the grievant's fitness to climb and lift without undue hazard. Although Dr. Jones estimates a 20-25 percent permanent impairment of the left wrist, strangely, he also remarks: "he has a fairly good grip in both hands". This suggests some area of contradiction to a layman; although the possibility that the statements are reconcilable to a physician must be recognized.

It was on the basis of these items of evidence (plus his own observations and conclusions which were not set forth with any detail at the hearings) that the Medical Director determined to revise his previous medical evaluation of the case. The Union vigorously argues that the motivation to revision stemmed not from the reports of the other doctors but a design to force the grievant to accept and live by the facts which he advanced in securing his 14% workmens' compensation settlement. To use a figure of speech, the Union believes that the Company felt that the grievant should be hoist by his own petard.

The Arbitrator finds difficulty with the explanation of the Medical Director as to how he came to reverse his carefully considered previous judgment. The circumstances recited here, indeed, seem unusual. The opinions expressed by the Company's Medical Department in previous arbitration cases have been confident, strongly held and expressed without qualification. One who has been exposed to those evaluations in the past would not expect them to be revised radically by reports of other doctors, of the kind described above.

Acceptance of the Union's thesis, however, must rest upon grounds even more difficult to accept. If the Union is correct, then the professional testimony given by the Medical Director respecting the reasons for the revision of his opinion was false, and the Medical Department must have been prompted by a malevolent and unprofessional motive and design. In other words, the Union is declaring, in effect, that the Medical Director never really changed his initial opinion that the grievant could work at his job. On the other hand, Dr. Gardiner testified that he did exactly that!

There is one other consideration to mention before summing up preparatory to stating a conclusion. It should be noted that there is no medical testimony in the record of this case (other than Dr. Gardiner's opinion, made before he revised it, and since withdrawn) that the grievant is physically fit to perform the duties of the job.

The testimony, then, comes to this: Supporting the Union's position is a) the fact that the grievant worked on the job some 11 months after the accident without incident or criticism; b)the fact that Dr. Gardiner's evaluation originally favored the grievant's position that he was physically fit to work; and c) the fact that it is difficult to understand why or how Dr. Gardiner revised his opinion unless the hypothesis of punishing the grievant for his workmens' compensation claim position is accepted.

Supporting the Company's view are the considerations a) that Dr. Gardiner frankly and candidly concedes a change in evaluation and insists that he had reasonable grounds to be persuaded that the other physicians were correct; and b) that whereas there is no medical testimony presented that the grievant is physically fit to perform the job, the record contains the testimony of Dr.Gardiner that it is his current view that he is not so physically fit. This view is buttressed by the two medical reports, with the limitations attached to them, mentioned above.

The decision in this case, so viewed, must be for the Company on the ground that the weight of the evidence is in its favor. The Union position would have the Arbitrator disregard completely,not only the findings of the two doctors, but the testimony of the only physician who testified at the hearing, on the ground that that testimony is unworthy of credence. On all the evidence I do not feel justified in doing so. Much stronger and weightier evidence than has been presented here would be needed to support a finding that the decision which resulted in the medical restriction being issued was motivated by base motives and was without weight as credible evidence.

On the basis of all the evidence I find and hold that the Company had just cause to demote the grievant when it did, and that the Company did not violate Article IV of the Agreement. Under the circumstances the grievant will not be ordered to be reinstated in his job. This disposes of the specific issue in arbitration.

The decision does not purport to determine whether the grievant in the future will be entitled to such reinstatement after satisfying the Company that he is physically fit to perform the job duties or after demonstrating in the grievance procedure that the Company is acting unreasonably or wrongfully in failing to be persuaded by such additional evidence.

AWARD

The grievance is denied.

Approved:

Peter Seitz,
Assistant Permanent Arbitrator

David L. Cole,
Permanent Arbitrator

Dated: May 16, 1959