In the Matter of Arbitration Between:

ARBITRATION AWARD NO. 416

INLAND STEEL COMPANY
- and -
UNITED STEELWORKERS OF AMERICA,
Local Union No. 1010

Grievance No. 19-F-95

Appeal No. 223

PETER M. KELLIHER
Impartial Arbitrator

APPEARANCES:

For the Company:

W. A. Dillon, Asst. Superintendent, Labor Relations Dept.
R. J. Stanton, Asst. Superintendent, Labor Relations Dept.
G. Melvick, Asst. Superintendent, Field Forces
L. R. Mitchell, Divisional Supervisor, Labor Relations Dept.
S. A. Garraffa, Administrative Supervisor, Medical Dept.
H. S. Onoda, Labor Relations Representative, Labor Relations Dept.

For the Union:

Cecil Clifton, International Representative
Joe Molson, Aggrieved
James O'Connor, Grievance Committeeman
Jack DeGraff, GrievanceCommitteeman
Al Garza, Secretary, Grievance Committee
Peter Calacci, International Representative
Myer Stumer, M. D., Witness

STATEMENT

Pursuant to notice, a hearing was held in Gary, Indiana, on April 13, 1961.

THE ISSUE

The grievance reads:

"The aggrieved reported for work on April 6, and was assigned to light work. He was sent to the clinic for re-examination and although specialists consulted by him asserted in writing to the Company that he was able to resume normal work he was restricted by the clinic to light work. You refused to assign him light

work on the basis that there was none available (contestable).

The Union contends that the aggrieved is capable of performing his regular work and should be so assigned.

The aggrieved be assigned his Wireman "A" occupation and be paid all moneys lost due to your discriminatory action."

DISCUSSION AND DECISION

The Grievant was injured in an automobile accident outside the plant on January 5, 1958. He suffered a fracture of the radius and ulna bones of his right forearm. He returned to work on March 31, 1958, and was assigned to light work in his Wireman--"A" occupation and continued to receive that rate while on a light duty status. The Company asserts and the Grievant denies that on May 2, 1958, that he complained of a swollen right wrist while performing Craneman Inspector duties. The Grievant states that at that time he simply attempted to verify his light duty status. The Company took an X-ray of his forearm on May 2, 1958, and the Company doctor indicated that because he had been required to crawl on several cranes, his right wrist was swollen. The Company doctor continued him in the light work status. On May 8, 1958, the Grievant's doctor made a statement that he should be on light duty for another six months. When the Grievant sought to return to the full duties of his job, the Company had his forearm X-rayed on November 5, 1958. This X-ray report indicated that the two views of his right forearm showed healing fractures of the radius and the ulna. The Company at that time determined he was not ready to return to his regular job.

The Grievant suffered a gall bladder attack on February 18, 1959. When he returned to work on April 6, he was again examined at the Company clinic. On April 7, 1959, the Grievant's doctor issued a statement saying that he "may do his regular and complete work even though there is a fracture of his I. M. Nail". "His function and strength is excellent." (Co. X B) On April 15, the Company issued a formal medical restriction recommending that the Grievant "be restricted to work not necessitating climbing (except stairs) or heavy use of right arm". Upon receiving this restriction the Field Forces Department concluded he could not perform his regular Wireman--"A" job and since he could not perform any other occupation in this department to which his seniority entitled him, he was placed on a lay-off status on April 17, 1959. The present grievance was then

filed on May 4, 1959. Because the Grievant was in a labor reserve status, he was assigned to the 76" Hot Strip Mill on February 3, 1960. During that period he performed labor work. He was layed off from that job on August 12, 1960, because of a lack of business. He was recalled to the 76" Mill on February 24, 1961, but indicated that he would waive that job and desired to be returned to work only in the Field Forces Department.

The Company does contend in this case as it has in prior cases that it is the sole judge of the Grievant's physical fitness, and that where there is a conflict, the medical opinion of the Company doctor must be sustained. In Arbitration Award No. 145, Arbitrator Updegraff stated:

> "The undersigned cannot agree with management's contention that the contract by the text of Article VII, Section 1, makes it the sole judge of an employee's 'physical fitness'.
>
> In conclusion, it is the opinion of the undersigned that the contract (Article VII, Section 1) does not provide that management shall be the sole and final judge of 'physical fitness'. The Company is entitled to make the initial decision subject to the balance of that article and the grievance procedure. In pursuance of the final step of that procedure the undersigned finds that in the present instance the evidence relied on by management sustains its decision that Willie Betts is not physically fit for the work of his former job as janitor in the Quality Control Department."

In Arbitration Award No. 300 the following quotations are deemed significant:

> "The Company rests its case, in part, on Marginal Paragraph 133 which provides that 'Management shall be the judge' as to physical fitness. When read together with Paragraph 129 to which it relates, it becomes clear that Management is the judge of 'physical fitness', under Paragraph 133 as one of the ingredients of 'Seniority', as defined, which governs 'promotional opportunity', 'job security upon a decrease of forces' and 'preference upon reinstatement after layoff'.
>
> Dr. Armalavage, the Union's principal witness at the hearing, is conceded by the Company to be a highly qualified specialist in bone and orthopedic surgery. The Grievant is his patient; he performed the operation and

has been in charge throughout. His testimony strongly disputed that presented by Dr. Gardiner, the Company's Medical Director. Dr. Armalavage testified that the operation was completely successful; that the grievant is in better condition now than she was for about a year before surgery; that it would not be harmful for her to bend; and that it would not be injurious to her future health to lift weights up to fifty pounds. He conceded, on cross-examination, that her condition might not be as good as it was prior to the injury to the disk, but, he said, 'the amount of the difference is in my opinion, very slight, probably.' When more completely informed of the nature of the Tool Keeper's duties and after having examined photographs of representative portions of the job and area Dr. Armalavage testified that he saw no reason why the grievant should not be able to perform her activities safely and efficiently."

Thus, Dr. Armalavage, a specialist whose decision is entitled to considerable weight, attacks both the medical restriction itself and the decision that if Mrs. York were permitted to work at her job she would be injuring herself.

Dr. Gardiner, however, pointed out that while he deferred to Dr. Armalavage, as the grievant's physican, in his superior information as the the state of the grievant's spine and disks and while he respected his standing as a surgeon, he, Dr. Gardiner, presented his judgment as an industrial medicine and health expert. He observed that it is his special duty to be informed of the medical and health consequences of individuals with particular ailments or post-operative conditions working in the industrial milieu of a steel mill. His reading and his extensive experience at Inland, he felt, invested him with qualifications superior to those possessed by an orthopedic surgeon to determine the degree of risk of injury assumed by one who returns to work after a laminectomy.

Here a respected professional specialist who performed the surgery and is best acquainted with Mrs. York's condition, after being fully informed of the demands of the job, expressed his considered opinion that there is no reason why she should not be permitted to perform her work. Testimony of this kind is certainly entitled

to weight. To the Arbitrator it does not mean that the medical restrictions, themselves, are improper, unreasonable, and lacking in merit. What is suggested is that with respect specifically to Mrs. York's case, they must give way to the details and special facts pertaining to her and that the general rule should not be permitted to override this strong special testimony. In other words, the general rule may not, regardless of particular facts, always preclude the restoration of an employee to his job.

In any event, in this case the credible evidence offered by the Union has successfully overcome the presumption implicit in the general medical rule of the Company pertaining to disk cases which have been treated by surgery. On the evidence the Arbitrator must find that Mrs. York is physically qualified to resume her work. In the absence of the strong professional testimony of her attending surgeon, the general rule stated by the Company's Medical Director would have prevailed."

At this point the Arbitrator must observe a striking parallel exists in the Juanita York Arbitration Award No. 300 and in the present case between the testimony of the Company's doctor (his affadavit is accepted as having the same value as testimony) and the testimony of the orthopedic specialist. There can be no question that Dr. Gardiner, the Company doctor, has an outstanding reputation in the field of industrial medicine. He, however, is not a specialist in bone and orthopedic surgery. The Permanent Arbitrator in Award No. 300 appeared also to stress the difference. Doctor Stumer, who performed the operation on the Grievant's right forearm, is a bone and orthopedic specialist. He indicated that he performed physical manipulation tests on the Grievant's right forearm to determine skeletal stability. He did read the job description of Wireman--"A" (Un. X 1) and indicated that none of the job duties therein described would be injurious to the Grievant's right forearm. He testified that the X-ray taken on July 20, 1960, clearly shows despite the different angle that there is evidence of healing. He testified that even if the ulna bone were not healed, the Grievant's arm would still be strong. He tested the Grievant's arm and it is strong. It was his medical opinion that the Grievant was physically able to climb and use his arms in overhead grasping movements in connection with climbing. The ulna has strong support. During his physical examination of the Grievant's forearm, he could find no obvious motion on the fracture side. It was his opinion that the Grievant was capable of performing his full job function at the time he was layed off. Dr. Stumer, the Grievant's doctor, did concede that experts might have different opinions.

The Arbitrator in this case must note, however, that the Company made no showing that it ever availed itself of the opinion of an orthopedic expert. The Company doctor's judgment as far as this record indicates, was based entirely upon an examination of the X-rays. There is no showing of any physical manipulation or test of the Grievant's right forearm. The Company did not request the Grievant's doctor nor did it attempt on its own to give the Grievant a test with reference to his climbing a ladder or using unusual stress on the right forearm. The Grievant's testimony is uncontroverted that after the automobile accident he did go out in the field and climb ladders.

This Arbitrator does believe that the medical opinion of a Company doctor should prevail in matters of this type in the absence of a showing by the Union by a clear preponderence of the evidence. In this particular case, the evidence reveals that while the Grievant was working in the shop from March 31, 1958, to April 17, 1959, he performed fairly heavy work. He was required to thread 6" pipe that weighed about eighty pounds. His testimony is that he did do some climbing of ladders. When he worked in the 76" Hot Strip Mill for a period of approximately six months in 1960, he performed heavy physical work. The matter of climbing ladders which is stressed by the Company does not require as great a degree of muscular co-ordination as it does require strength of the arms. While it may be conceded that the Grievant does not have a completely normal right forearm, the evidence clearly shows that there is no skeletal instability that would affect his job performance.

AWARD

The grievance is sustained. The employee shall be made whole for loss of earnings. Inasmuch, however, as the Grievant failed to mitigate damages by accepting the position in the 76" Hot Strip Mill offered to him on February 24, 1961, the earnings that he might have received if he had accepted said job shall be taken into account.

Peter M. Kelliher

Dated at Chicago, Illinois

this 18 day of July, 1961.