

In the Matter of Arbitration Between:

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

ARBITRATION AWARD NO. 476

Grievance No. 16-G-234
Appeal No. 836

PETER M. KELLIHER
Impartial Arbitrator

APPEARANCES:

For the Company:

W. A. Dillon, Assistant Superintendent, Labor Relations
R. J. Stanton, Assistant Superintendent, Labor Relations
J. Borbely, Divisional Supervisor, Labor Relations
H. S. Onoda, Labor Relations Representative, Labor Relations
H. E. Muller, Superintendent, Roll Shops
N. Powell, Assistant Superintendent, Roll Shops
A. Kapshull, General Foreman, Strip Mill Roll Shop
A. Kozlowski, Foreman, Strip Mill Roll Shop
A. Hodge, Turn Foreman, Strip Mill Roll Shop

For the Union:

Cecil Clifton, International Representative
Peter Calacci, President, Local Union 1010
Al Garza, Secretary of Grievance Committee
Buster Logan, Vice Chairman of Grievance Committee
Ted Rogus, Grievance Committeeman
John Falcone, Aggrieved
Mike Falcone, Witness
Milton Huttle, Witness
Harold King, Witness

STATEMENT

Pursuant to notice, a hearing was held in Gary, Indiana, on Friday, January 12, 1962.

THE ISSUE

The grievance reads:

"The Aggrieved, John Falcone, #13153, suspension which culminated in discharge is unwarranted and unjust in light of all the circumstances.

The aggrieved requests that he be placed back on his occupation with all seniority rights."

DISCUSSION AND DECISION

The Grievant, John Falcone, was discharged because of his words and conduct on September 12, 1961. The statement of violation reads in part as follows:

"On the above date and turn the General Foreman and Turn Foreman entered the #3 Shop (work area to which you were assigned) to hand you a Discipline Statement pertinent to your having been sent home (after 2.2 hours had elapsed) on the 7-3 Turn, 9/8/61, because of your stalling and loafing during work hours, not performing work as directed, and leaving your assigned work area without permission. The supervisors could not find you in the #3 Shop at this time; the General Foreman proceeded to #2 Shop and the Turn Foreman went to #1 Shop to locate you. The General Foreman found you in #2 Shop where you were sitting behind the roll rack. He handed you the envelope containing the Discipline Statement and told you that you had no business in #2 Shop, then ordered you to get to your assigned duties in the #3 Shop. You directed an abusive remark toward the two supervisors as you left for #3 Shop.

Shortly thereafter the General Foreman and the Turn Foreman returned to #3 Shop to check on your work completion in assigned area. Here they found you sitting down near the water fountain while reading the Discipline Statement. The Turn Foreman told you that you had been assigned to perform specific duties in #3 Shop, and directed you to begin performing work. You did not respond to the Turn Foreman's Order, but rather uttered another indecent remark; whereupon the Turn Foreman told you to go home and he reported this fact at once to the General Foreman."

(Co. X A-2)

One of the defenses raised by the Grievant is that he actually was reading the disciplinary letter of September 8, 1961, and that the Foreman told him that he must read this letter on his own time. Both the Foreman, Mr. A. Kozlowski, and the General Foreman, Mr. Art Kapshull, deny that any such statement was made to the Grievant. In a letter addressed to the International Representative on October 24, 1961, it is noted that the Grievant is recorded as

having stated in the Third Step Hearing that at the time he was "sitting on a bench making notes to help the Union process his pending arbitration case" when the General Foreman gave him the discipline statement dated September 8, 1961. It is also noted that in this letter the Aggrieved is quoted as stating "that although he used vile and obscene language at this time, he had not directed it towards either the General Foreman or the Turn Foreman".

In its brief the Union states:

"The letter which was issued to Mr. Falcone on September 12, 1961 also alleged that he had used abusive language towards the turn foreman and general foreman. Mr. Falcone alleges that the foreman used vile language toward him." (Un. Br. p. 5)

At the hearing Mr. Huddle, a Union witness, testified that while he was pleading with the General Foreman to give Mr. Falcone another chance, that the General Foreman referred to the Grievant as an "s.o.b." and at that time Mr. Falcone was looking in the doorway and could have heard this statement. Mr. Al Hodge, a Company Witness, testified that he was in the room during the conversation between Mr. Huddle and Mr. Kapshull and that no such statement was made by Mr. Kapshull. Mr. Falcone was not present in the room at that time and Mr. Hodge was the last person to enter the room and he closed the door. The General Foreman emphatically denies that he at any time referred to the Grievant as an "s.o.b.". It is noted that Mr. Huddle does not claim that Mr. Kapshull was actually aware that the Grievant was in the room at the time of this alleged utterance. It is significant that in any event there is no claim that any alleged "cussing" by the General Foreman was what originally caused the Grievant to utter the obscene language he used. At the hearing the Parties evidenced a complete understanding that it is not so much the words themselves that constitute the gravamen of the offense, but the tone of the voice and whether the words are directly addressed to someone in a manner intended to humiliate and insult the person. There can be no question that the language alleged to have been used by the Grievant was directed to the Foreman.

The basic consideration here relates to the question as to the relative credibility of the Foreman and the General Foreman as compared to that of the Grievant. The General Foreman, Mr. Kapshull, has been employed in this plant for approximately thirty-three years. He has served in the capacity of General Foreman for about thirteen years. Both Supervisors appear to be seasoned and no evidence was presented that would in any way effect their credibility. The Grievant on the other hand, considering his past record as a "back drop" in judging the current violation has a record of five previous incidents that indicate a tendency and a pattern of falsehood. (See Company Exhibit C, Items 1, 2, 4, 15 and 16.).

Giving greater weight to the more recent events, it must be noted that a "Discipline Statement" was issued to the Grievant on May 23, 1961, for giving a false reason as to his absence. In analyzing the evidence relating to this incident, it must also be noted that the Company did not question the fact that the Grievant may well have driven his son to the airport. He, however, was seen at the gas station alleged to be owned by his sons on May 18 and he was performing some work at the gasoline station on that date. It is noted that the grievance that was filed against this "Discipline Statement" was dropped. The grievance that was filed against the three-day disciplinary lay-off then imposed was dropped.

On June 7, 1961, the Grievant was given a five-day suspension subject to discharge based upon the allegation that he reported off sick on June 5 for a scheduled turn on the following day indicating that he had to keep a doctor's appointment. On that day, June 6, he was seen working at the filling station. The discharge action was modified to a thirty-day suspension and no grievance was filed against this thirty-day suspension. The Arbitrator does note here that the Grievant himself did not file a grievance even though this meant a loss of thirty days. This is not a question of processing reprimands or minor discipline to arbitration. The failure to file a grievance with reference to this severe discipline certainly must give rise to an implication that the violation as charged was committed and the falsity of the Grievant's excuses is established. The record not only reveals that the Grievant is "not worthy of belief", but the very offenses that constituted the immediate cause of his discharge judged against his past record shows that he has a pattern of behavior relative to these offenses. Considering the most recent period subsequent to his demotion on May 9, 1960 as a Roll Shop Laborer, he failed to work as directed on two prior occasions, i.e., discipline of January 26, 1961, and September 8, 1961. While the matter of "leaving assigned work area" is in a sense part of the failure to work as directed, it must be noted that here the weight of the evidence is that he was assigned to perform particular work and that he was not called upon to travel throughout the general area. The obscene remarks to the Foreman are also part of a pattern of insubordination on his part. On July 14, 1960, he was issued a discipline statement for insubordination wherein he was alleged to have uttered a verbal threat against the Foreman. Giving greater weight as the Union suggests in its Brief (Page 7) to the Grievant's conduct since his demotion on May 9, 1960, it must be found that during this period prior to the incident that gave rise to his discharge he received five disciplinary lay-offs.

Some indication of the Grievant's attitude and conduct is shown by the discipline statements issued in the period after the demotion. On July 14, 1960, the discipline statement reads in part as follows:

"At this time you were again told by the General Foreman to start performing labor duties assigned for the turn, in response to which you remarked that the General Foreman should not worry as you had 8 hours in which to perform the assigned work.

At this point you followed the General Foreman into the #3 shop office where you verbally threatened him as you felt he was not justified in taking the course of action which he followed." (Co. X D-13).

The discipline statement issued on January 26, 1961, again shows that the Grievant was not trying to do a "fair day's work". It reads in part as follows:

"At about 10:00 a.m. the General Foreman and Turn Foreman noticed that you were standing between #7 and #9 grinding machines; they approached you and found that you were working a crossword puzzle. The General Foreman asked you what you had done all morning. You replied with the statement that you had not done a heck of a lot considering the wages you are paid." (Co. X D-14).

This tendency of the Grievant to attempt to avoid work is further illustrated by the discipline statement issued on September 8, 1961. It reads in part as follows:

"At 7:20 a.m. on the above date and turn you were directed by the Turn Foreman (A. Kozlowski) to clean up #3 shop area. At 7:55 a.m. you left for the #2 shop area. After an hour and ten minutes had elapsed the Turn Foreman checked #3 shop area and observed that you had not accomplished any work in that area. At 9:10 a.m. the General Foreman and Turn Foreman noticed that you were still loafing and stalling in the #2 shop area. At this point you were told to go home for failure to perform the assigned work as directed and leaving your assigned work area without the permission of the Turn Foreman. Prior to being sent home you were observed by the General Foreman to be loafing in the #2 shop area at 8:10 a.m. and again at 8:40 a.m." (Co. X D-17).

That the Company has made a serious attempt to correct the conduct of the Grievant short of discharge is evidenced by the Superintendent's letter of May 29, 1961:

"In your more than twenty-five years of employment in the Roll Shop, you must have experienced or observed the necessity of maintaining uniform standards of

conduct and workmanship that can be administered alike to all employees. It must also be obvious to you that if one employee is privileged to repeatedly violate these standards without censure, it has a demoralizing effect on the other employees. Therefore, unpleasant as it may be, those who are charged with the responsibility of maintaining these standards of conduct and workmanship must bring repeated irregularities to the attention of the offender. Letters of reprimand and discipline are used to accomplish this. It is the belief and hope that these letters will serve to correct the employee's conduct or workmanship to a point where it is in conformance with the standards that others accept. Experience has indicated that most employees receiving such letters do make a sincere effort to conform and no further action is necessary. Of course, in the exceptional case where the employee persists in non-conformance, the Company is compelled to suspend him preliminary to discharge. In such cases the discharge usually is final. This is seldom necessary in cases of long service employees such as yourself and is resorted to only after all other attempts to reach the employee's understanding have failed.

This letter is intended as an appeal to your understanding. This Company nor no one in its employ wants to suspend you preliminary to discharge. Everyone recognizes the losses such as pension, insurance, vacation, seniority and security of employment that will result with your dismissal. Please do not force it to this end.

Although a review of the letters of reprimand and discipline sent you in the past would serve no added purpose at this time, a recent incident involving a statement you made to the Assistant Superintendent on May 3, 1961 is further an example of an attitude, on your part, which is not good nor is it improving. The statement made by you, "Stay close to the boss and keep him out of dark alleys," reflects a wholly unacceptable relationship. You are also aware of the three-day discipline imposed as a result of the circumstances set forth in the recent discipline notice dated May 23, 1961.

It is indeed unfortunate that your allergy has made it necessary for your own well being to remove you from the job of grinding rolls. However, this in itself is not

the end. You can remain on the lower rated job where you may protect your well being as well as your interests until other opportunities avail themselves. All that is required of you is that you conform with the standards that other employees accept. That is, do your work in a workmanlike manner in an acceptable amount of time, be regular in hour attendance, and elevate your attitude to that displayed by other employees.

It is hoped that you will get the message intended by this letter. It is an appeal for your cooperation so that the best interest of all concerned with results."

(Co. X F).

Mr. Falcone stated that he was "elated" when he received this letter from the Superintendent. The record, however, does not show that he actually got the "message" intended by this letter as evidenced by his conduct subsequent to the receipt of the letter. In modifying the discharge penalty, the Superintendent of Labor Relations in his letter of July 5, 1961, stated:

"A review of your personnel service record represents standards of conduct and attitude which are unacceptable. The trend of this record has been a deep concern of the Company for many months and was the motivating factor which prompted the letter dated May 29, 1961, from the Department Superintendent. The letter set forth the seriousness with which the Company considered this matter. Apparently, you have not been impressed with the Company's concern about the fact that lacking improvement such conduct would inevitably result in discharge and loss of valuable seniority rights to you. Once again the Company is expressing to you the seriousness with which the situation before us commands. Within a very short period from the issuance of the aforementioned letter, a repeated violation occurred and perhaps the full impact of the objective of the letter had not been completely realized by you before the latest incident occurred. It is for this reason only that it has been decided to give you one more chance. The discharge action has been modified to a thirty (30) working days suspension as a disciplinary measure. The suspension period will serve two purposes (1) you may give complete attention to your skin disorder, and (2) the time can be used by you to fully comprehend the seriousness of your record and the objective of the May 29, 1961 letter.

This decision is made with the understanding, of course, that any further violation of Company rules and regulations such as those that led to this suspension will cause you to be separated from the payroll of this Company." (Co. X G).

It is apparent that despite the discipline and the pleas for co-operation and a change of attitude that the Grievant in this case did not undergo any "personal transformation". The Arbitrator in this case is fully mindful of the Grievant's long seniority. This factor has been taken into full consideration by the Company in prior incidents. The possession of long seniority, however, does not constitute complete immunity to discharge action. The Arbitrator is also cognizant of the fact that the Grievant was evidently unhappy in his work as a Laborer. The fact that he was assigned to Laborer work of a restricted nature shows that the Company was attempting to keep the Grievant employed despite the condition of his hands. The Grievant had filed a claim for reinstatement to his job as a Roll Grinder and if he had been successful in this claim he would have been compensated for earnings lost for a wrongful demotion. This situation was difficult for both the employee and the Company in that the Company was then not able to fully utilize his services on a variety of Labor jobs. Assignment to this Laborer work did not constitute a "license to loaf" or immunity to discipline for insubordination and abusive language to Supervision.

The Grievant himself in his testimony indicated that he would be resentful if anyone referred to him as an "s.o.b.". The Union stated that it would not tolerate use of abusive language by a Foreman directed to an employee where it had concrete proof of this.

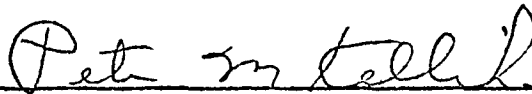
Where abusive remarks are directed to a Supervisor, severe discipline must be imposed in order to permit Supervision to carry out its functions without intimidation. Unlike the "Wedding Case", Arbitration Award No. 377, and the "Levy Case", Arbitration Award No. 393, which were heard by this Arbitration, Mr. Falcone had received forty-eight full days of disciplinary lay-off, plus seventeen hours of partial days lay-off. These disciplinary lay-offs did not serve to correct the Grievant's attitude and behavior. These nine instances of disciplinary time off must be contrasted with the one day off in the Wedding case. The pattern of his conduct shows that unlike the situation in the "Carpenter Case", Award No. 280, he did not undergo any transformation in his personal attitude and philosophy.

As shown by the published decisions of this Arbitrator, the discharge of long service employees is not sustained in the absence of a showing of a flagrant violation or a long history of repeated violations and discipline which show that the probability does not exist that the employee's conduct can be corrected by any form of

discipline short of discharge. There must be a terminal point. It is noted that Assistant Superintendent Powell testified that when he read Superintendent Muller's letter of May 29, 1961, the Grievant replied that he "could repudiate everything in the file". The clear weight of the evidence is, however, that the seventeen prior incidents where some form of discipline was imposed were not "repudiated" by valid evidence. An examination of the full record of the Grievant, giving greater weight to the more recent events, shows that the discharge penalty is here warranted.

AWARD

The grievance is denied.

A handwritten signature in cursive script, appearing to read "Peter M. Kelliher", is written over a horizontal line.

Peter M. Kelliher

Dated at Chicago, Illinois
this 28th day of February 1962.