In the Matter of Arbitration Between:

ARBITRATION AWARD NO. 486

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

Grievance No. 7-G-85
Appeal No. 947

PETER M. KELLIHER
Impartial Arbitrator

APPEARANCES:

For the Company:

Mr. W. A. Dillon, Assistant Superintendent, Labor Relations
Mr. R. H. Ayres, Assistant Superintendent, Labor Relations
Mr. R. A. Senour, Assistant Superintendent, Plant No. 2 Mills
Mr. J. Vana, General Foreman, Plant No. 2 Mills
Mr. C. Harris, Plant Protection
Mr. T. Granack, Division Supervisor, Labor Relations
Mr. S. Riffle, Divisional Supervisor, Labor Relations

For the Union:

Mr. Cecil Clifton, International Representative
Mr. Ronald Kroslack, Grievant
Mr. Chester Szymanski, Grievance Committeeman
Mr. Al Garza, Secretary of Grievance Committee
Mr. Urban Loesch, Witness

STATEMENT

Pursuant to proper notice, a hearing was held in Miller, Indiana, on Wednesday, May 16, 1962.

THE ISSUE

The grievance reads:

> "The suspension hearing which culminated in discharge for Ronald Kroslack, Check No. 11587, was unjust and unwarranted in light of all circumstances.
>
> The aggrieved requests that he be reinstated with all seniority rights and paid all moneys lost."

DISCUSSION AND DECISION

The evidence in this case shows that when the Grievant was hired on August 20, 1956, he filled out an employment application which contained the following question and statement:

> "Have you ever been arrested? List all offenses charged: disposition of each case: and place where each offense occurred." (Co. X C).

At the time of his interrogation by the Plant Protection Sergeant on November 15, 1961, the Grievant was asked the following questions and made the following answers:

> "Q. Have you ever been arrested by the police?
>
> A. Yes.
>
> Q. Were you ever arrested and convicted by the police prior to your hiring date here, August 21, 1956?
>
> A. Yes." (Co. X D).

It is entirely clear that at the time of the interrogation in 1961 that the Grievant fully knew the meaning of the term "arrested by the police". Mr. Kroslack had approximately one and one-half years of high school education in the Hammond area at the time he filled out his employment application. At the hearing the Grievant claimed that he thought the above-quoted question and statement in the application referred to the question as to whether he had ever "served a jail sentence". It is very difficult for this Arbitrator to accept the proposition that a prospective employee has the right to choose the "no" answer to the question as to whether he had ever been arrested when, in fact, he had been arrested for "public intoxication and disorderly conduct" on August 17 just three days prior to his filling out his application. If he had any doubt as to the meaning of the term "arrested" this doubt was dispelled by the request that he list "all offenses charged." He was definitely charged with two offenses on August 17. The term "charged" should have indicated to a person with the Grievant's educational background that this did not mean "the serving of a jail sentence". He was further informed as to the necessity for listing all offenses charged by the request that he give the "disposition of each case". If he had been arrested and had not been convicted, this was clearly an indication that he should give the "disposition" regardless of how the matter had turned out. The Grievant did not have any possible basis for answering "no" in this situation. It is noted, however, that he was interviewed, according to his own testimony, by Foreman Terry and another Foreman in the

Mechanical Department. He had some brief conversations with Mr. K. E. Gant, who is recorded as being the interviewer on his application. He did not make any claim that he attempted to clarify this question which at the very least under the circumstances of his arrest three days prior should have been very much on his mind. The Company should not be required to conduct an "F.B.I." type search to determine if the prospective employee has falsified his application. This knowledge rests with the employee. He had the burden of making a full disclosure. The Company should be able to rely on the understanding that an employee will tell the truth in his statements. The Grievant was fully cautioned by the bold type headline "READ CAREFULLY" and the following statements:

> "1. All the statements and information on my application are true and correct and no attempt has been made to conceal or withhold pertinent information.
>
> 2. I hereby authorize investigation of all statements at any time with no liability arising therefrom.
>
> 3. Any falsification or misrepresentation is cause for termination of my employment.
>
> 4. I agree to abide by all rules, regulations and policies of the Inland Steel Company."
>
> (Co. X C).

The Company has the unilateral right to choose the employees that it will hire in the absence of certain contractually defined restrictions which are not pertinent in this case. What the Union and the Arbitrator might not consider an important consideration conceivably could be critical in the Company's decision as to whether to hire or not to hire an applicant. It would appear that any Company would want to know more facts where an employee was arrested for "public intoxication and disorderly conduct". Any employer would be interested in knowing a Grievant's background as to sobriety and reasonable good conduct in his future relationship to other employees. The offenses here were not simply traffic violations. It cannot be compared to a situation where an employee might have been uncertain or forgetful and made an error in listing dates. Certainly the Grievant could have remembered his arrest three days earlier. This Arbitrator and numerous other Arbitrators have rejected the notion that the Company must discover all falsifications and misrepresentations during the probationary period. The past practice of this Company is to impose a discharge penalty for falsification of employment records. Sixteen employees were discharged during the period of 1959 to 1962 for this offense and this particular matter is the only case that has been brought to arbitration. Arbitration decisions involving these Parties, as well as the general weight

of arbitration decisions, upholds the Company's right to discharge an employee for falsification of an employment application. These decisions rest generally on the grounds that because there was a fraud from the very beginning, actually no binding contractual relationship existed with the particular employee. It is fundamental in any type of contractual relationship that an agreement can be set aside where it is based upon fraud. This applies to all types of employment contracts as well as to any type of commercial contract.

The Arbitrator here cannot find that the alleged hostile attitude of a Supervisor could have any possible bearing in this case where the Grievant clearly committed the offense.

This Arbitrator has carefully reviewed the entire record and finds that the offense of falsification of the employment application standing alone constitutes sufficient grounds for the Grievant's discharge. The Arbitrator does not believe it would be to the long-range, best interests of this employee or to be necessary under the circumstances to make a finding as to the charge of "theft of Company property". Where any possible aternative exists to making such a finding, this Arbitrator believes that it is preferable to the possible branding of any employee as a "thief".

The only finding that is made in this record is that the Grievant did falsify his employment application. This, therefore, can be the only notation listed as the reason for his discharge.

AWARD

The grievance is denied.

Peter M. Kelliher

Dated at Chicago, Illinois

this 27 day of June 1962.