In the Matter of Arbitration Between:

INLAND STEEL COMPANY
- and the -
UNITED STEELWORKERS OF AMERICA,
AFL-CIO, LocalUnion No. 1010

ARBITRATION AWARD NO. 498

Grievance Nos. 20-G-192, 193, 194, 195, and 196

Appeal Nos. 1060, 1066, 1067, 1068, and 1069.

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. T. R. Tikalsky, Supervisor, Labor Relations
Mr. C. Harris, Sergeant, Plant Protection
Mr. M. V. Schillo, Assistant Superintendent, Stores and Garage Department
Mr. Jack Decker, General Foreman, (Garage)
Mr. James Decker, Foreman (Garage)

For the Union:

Mr. Cecil Clifton, International Representative
Mr. W. Bennett, Secretary of the Grievance Committee
Mr. J. Balanoff, Grievance Committeeman
Mr. J. Baker, Assistant International Representative
Mr. M. M. Cawvey, Aggrieved
Mr. F. W. Deyarmin, Aggrieved
Mr. T. Potosky, Aggrieved
Mr. G. Stout, Aggrieved
Mr. S. Lovatt, Aggrieved

STATEMENT

Pursuant to proper notice a hearing was held in Gary, Indiana, on August 6, 1962.

THE ISSUE

The issue is the disposition of Grievance Nos. 20-G-192; 193, 194, 195, and 196. Grievance No. 20-G-192 reads:

"The aggrieved, Tony A. Potosky, #562, contends that the circumstances that lead to his discharge, do not

justify the severity of this action. The Union agreed that a discipline was justifiable, but that discharge was not warranted."

The relief sought reads as follows:

"The aggrieved requests that he be re-instated with full seniority rights and be paid all moneys lost from March 23, 1962."

All of the grievances read the same except for the names of the aggrieved.

DISCUSSION AND DECISION

On March 5, 1962, at about 6:45 p.m., Mr. Stout, one of the Grievants, lured Mr. Barker into an area where he was physically held by Grievants Deyarmin, Cawvey, and Potosky. Mr. Lovatt then did a "paint job" on him. Mr. Barker reported this incident to Supervision.

The Grievants claim that Mr. Barker had been "agitating" them and they believed that he needed a "lesson". The Arbitrator must observe that although some of the Grievants made this allegation during the investigation by Plant Protection, they did not then specify the nature of the alleged "agitating". This claim was not made in terms of specific details until the suspension hearings. Mr. Barker did not regularly work with any of the Grievants and must be considered as being a regular member of another crew. During the 146 turns that he worked since the date of his hire, he worked 29 turns with Mr. Stout, 25 turns each with Mr. Potosky and Mr. Cawvey, and only 3 turns with Mr. Lovatt. The Union testimony as to his alleged misbehavior and horseplay did relate to incidents on the Shop Floor and not in the locker room. None of the employees who were part of his regular crew made any complaint with reference to his alleged aberrant behavior. The Turn Foreman, who works one out of three turns with Mr. Barker as compared to the one out of six or seven turns of the Grievants other than Mr. Lovatt, testified that he did not observe any of the alleged horseplay by Mr. Barker. The General Foreman testified that employees have reported the same type of alleged horseplay and that employees would not hesitate to report such conduct where it might result in physical injury to them through bumping their heads, etc.

It must be noted that the Grievant was recommended for employment by some of his fellow-garage employees. He had served as the manager of the baseball and basketball teams in high school.

While the Grievants claim that Mr. Barker did not resist to any degree, in view of the circumstances that he was being held by three

men much physically larger, this resistence would have been futile. No claim was made that Mr. Barker took it as a "joke" and that he considered that he was simply being "initiated". The Grievants by their own testimony indicated that they were entirely serious and intended to inflict a proper penalty for what they believed to be "agitation".

The Grievants were guilty of serious "horseplay", to put the incident in its least extreme light. They did commit an assault and battery upon the Grievant in physically placing green paint on his body. This was the action of "bullies". The same type of mob psychology prevailed as would in a "lynching". They "took the law into their pwn hands" and meted out their own punishment. While Mr. Barker could have had a warrant sworn out for their arrest or have instituted civil proceedings to collect damages for the assault and battery and for slander, employees generally look to the Company to maintain proper discipline in the plant.

Although in this case the Grievants admit that they engaged in this action of "horseplay" they do claim that Mr. Barker engaged in certain conduct that they termed "agitation", and that he repeatedly asked them on prior occasions when he was going to get a "paint job". Although it is somewhat understandable that Mr. Barker was not present at the hearing, it is regreted that his absence prevented cross-examination relative to some of the alleged statements of the Grievants. No signed, written statement of Mr. Barker was presented in evidence. The Grievants were not confronted by their accuser.

All of the Grievants with the exception of Mr. Lovatt have what must be termed "good records". Mr. Lovatt has an exceedingly poor record. He worked only three turns with Mr. Barker and must be considered almost totally unacquainted with him. He had engaged in prior horseplay and had been reinstated after a prior suspension. He must be found to be the prime mover in this incident because he "applied the paint". While admittedly most of the incidents of his misconduct occurred prior to 1956, considering his exceptionally poor record and the leading role that he assumed in this incident, there is no possible basis for not upholding his discharge. All of the other Grievants have good records and it must be noted that the incident cannot be considered as "premeditated". Mr. Barker had worked on the 8 to 4 shift and he then doubled over on the 4 to 12 shift. This group of employees had no way of knowing that he was going to double over on their shift. While Mr. Barker suffered a great indignity by the degrading action of these Grievants, he was not physically injured. This case is, therefore, not comparable to the Kark Discharge in Arbitration Award No. 162 where two employees were seriously injured with one employee suffering amputation of his arm.

This Arbitrator has no positive way of knowing whether the action of the Grievants constituted a temporary "foolishness" as one of them claimed at the hearing, or whether they suffer from basic emotional and sexual drives, particularly of a sadistic nature, that would not permit them to live up to rules of decent conduct in this plant. It is the Arbitrator's finding that employees Deyarmin, Cawvey, Potosky and Stout present a letter from their Doctors and if their physicians are not qualified to determine their emotional stability, then they should be referred to a Psychiatrist. Considering the record of Mr. Lovatt and the fact that he was almost totally unacquainted with Mr. Barker, plus the leading role that he played in this incident, his discharge is sustained.

AWARD

Within thirty (30) days after the receipt of the above-referred to letter from a Doctor, employees Deyarmin, Cawvey, Potosky and Stout shall be reinstated, but without compensation for earnings lost. The discharge of employee Lovatt is sustained.

Peter M. Kelliher

Dated at Chicago, Illinois

this 21 day of August 1962.