INLAND STEEL COMPANY)
)
and)
)
UNITED STEELWORKERS OF AMERICA)
Local Union 1010)

Grievance No. 20-G-87
Appeal No. 675
Arbitration No. 531

Opinion and Award

Appearances:

For the Company:

H. G. Gardiner, M. D., Medical Director
W. A. Dillon, Assistant Superintendent, Labor Relations
R. H. Ayres, Assistant Superintendent, Labor Relations
A. T. Anderson, Divisional Supervisor, Labor Relations
M. Schillo, Assistant Superintendent, Stores and Refractories
J. Decker, General Foreman, Garage Mechanical Division
A. W. Grundstrom, Supervisor, Wage and Salary Administration

For the Union:

Albin A. Jahns, M. D., Witness
Cecil Clifton, International Representative
William E. Bennett, Secretary, Grievance Committee
James Balanoff, Grievance Committeeman

This grievance challenges the medical restriction imposed on grievant as the result of which he was demoted from Truck Driver to the garage labor pool, with a consequent loss of earnings. Article IV, Section 1 of the Agreement is cited, the reference being to Management's right to demote employees for cause.

Grievant had been a Truck Driver since January 30, 1951. On July 21, 1955 a laminectomy was performed on him because of a herniated disc. When he reported for work some three months later he was examined at the Company's Medical Clinic and returned to his job as Truck Driver. No restriction was placed on him in a formal manner, although it was testified that a verbal suggestion was made that he should not be required to do bending or lifting of consequence, which was explained to mean not over 25 pounds. He testified that in fact he performed the normal duties of his job for more than five years. [illegible] and some unrelated illness and was given a routine physical [illegible] February 22, 1961 the Company's Medical Director stated that [illegible] restricted to work not requiring bending or lifting of conse[illegible] pounds). He was thereupon assigned as General [illegible] Mechanical Division on March 1, 1961, with instructions that he be confined to work within the Medical Department's restrictions. In fact, he testified that he lifts weights (tools, parts, buckets of water) weighing considerably more than 25 pounds, does shoveling, and handles loaded wheelbarrows, and that although he has done such work for almost two years since his demotion he has had no ill effects.

The orthopedic surgeon, Dr. A. A. Jahns, who performed the laminectomy in 1955 was visited by grievant on April 27, 1961. Dr. Jahns wrote as follows:

"Examination, today, was non-revealing. The patient had full range of motion in the lumbar spine with no tenderness on pressure or percussion. All recumbent leg signs were negative. Reflexes, sensation and motor power in both lower extremities were preserved. There was no measurable atrophy of either thigh or calf. The rectal examination was negative.

"*X-rays of the lumbar spine failed to reveal any abnormality.* There was no evidence of any arthritic changes. There was no evidence of injury either recent or old.

"This patient has withstood the test of time from a laminectomy and is able to pursue relatively unrestricted work. I can not understand why after six years of active employment in a moderately strenuous capacity, this patient suddenly finds himself disqualified for this type of work. It is my opinion that this patient is capable of performing relatively unrestricted active except for lifting that would exceed 150 to 200 pounds."

Dr. Jahns testified at the hearing, and reiterated this opinion as to grievant's physical condition. He added that his personal experience with some 600 patients who have undergone this or more radical surgery for herniated discs has shown that there have been recurrences in only one percent of the cases. He also testified that at the United States Steel Corporation plant the medical department does not automatically restrict such employees in the manner in which this grievant has been restricted.

The position of the Company is that in following the recommendation of its Medical Director, Dr. H. G. Gardiner, it should be sustained as having good cause for this demotion. Dr. Gardiner's view, as developed at the hearing, *is that herniated discs are the result of a degenerative condition justifying* a flat rule that the employee should not be on a job requiring much bending or any lifting of weights of consequence, and that this is so whether he has submitted to surgery or not. A letter from a member of the faculty of the Rochester Medical School was submitted which generally supported this view.

It has been ruled in several cases that the Company's judgment in medical restriction cases is subject to challenge, and that each case must be judged on its own merits. See Arbitration Numbers 145, 166, 300 and 304. While a considerable delay before imposing a justified restrictions was held in Arbitration [redacted] not to deprive the Company of the right or duty to do so, that [redacted] stated that the delay "Lends color and [redacted] weight to the Union's position" on the merits. It also referred to another situation, resulting in [redacted] 300, in which it was held that after a laminectomy, relying upon the testimony of a highly competent orthopedic surgeon who had treated the employee, the employee should have been returned to her original occupation as Toolkeeper, despite the general rule laid down by the Company's Medical Director as to all herniated disc cases.

In the instant case we have the benefit of some seven years of work experience of the grievant since his operation, and the detailed views of the medical expert most intimately acquainted with grievant's back condition. Over this entire period he has worked without regard to the automatic *restrictions favored by the Company's Medical Department and there has been* no recurrence of his condition. It may well be that the likelihood of the

occurrence of back trouble is somewhat greater in the case of an employee who has once had such a condition, but the expert, specific testimony is that this grievant is physically qualified to perform even heavier work than that called for by the job description of the Truck Driver.

The most conservative and cautious approach is that of the Company's Medical Department, which is simply to keep such employee away from work involving bending or lifting more than 25 pounds. But other highly qualified and experienced authorities favor the view that each case should be handled on its own merits, referring to the orthopedic surgeon who testified in such cases, and to the practice at the Gary Works of United States Steel Corporation.

The cited cases have established the rule that Management may make the initial judgment in such cases, but subject to challenge on the specific facts and conditions. A judgment requires the exercise of reasonable discretion rather than an automatic and rigid rule which disregards the facts and conditions of the particular case. In this case, the evidence supports the position of the grievant.

AWARDS

This grievance is granted.

Dated: February 6, 1963

/s/
David L. Cole
Permanent Arbitrator