

In the Matter of Arbitration Between:

INLAND STEEL COMPANY  
and  
UNITED STEELWORKERS OF AMERICA,  
Local Union No. 64

ARBITRATION AWARD NO. 570

Grievance No. 272  
Appeal No. 1158

PETER M. KELLIHER  
Impartial Arbitrator

APPEARANCES:

For the Company:

Mr. Robert H. Ayres, Assistant Superintendent, Labor Relations  
Mr. Thomas C. Granack, Labor Relations Representative  
Mr. Lester R. Barkley, Administrative Supervisor, Labor  
Relations  
Mr. Joseph Balogh, Superintendent  
Mr. Leon Weisenberger  
Mr. George Bittner, Occupational Hygiene Technician

For the Union:

Mr. Fred A. Gardner, International Representative  
Mr. Nick Biel, Chairman of Grievance Committee  
Mr. R. Phipps, Grievance Committeeman  
Mr. Chester Trzupek, Aggrieved  
Mr. Samuel E. Perish, Sub-District Director  
Mr. Jesse Yates, Grievance Committeeman

STATEMENT

A hearing was held in East Hazelcrest, Illinois on May 19, 1964.

THE ISSUE

The issue is the disposition of the following grievance:

"The aggrieved employee, on returning to work August 26, 1963, after being released by his family Doctor to return to work, was denied his right to return to his occupation, that of Roll Turner (Standard). He was directed by the Company to work in the Warehouse Department as a Laborer.

As long as the aggrieved employee's family Doctor's release to return to work was not questioned, this

demotion is without basis. The aggrieved has repeatedly requested to return to his occupation and has been denied."

The relief sought reads:

"That the aggrieved employee be returned to his occupation of Roll Turner and be paid all moneys lost from August 26, 1963, due to this demotion."

#### DISCUSSION AND DECISION

The medical history of the Grievant is set forth in Dr. Buchholz' letter of July 25, 1963, reading in part as follows:

"Mr. Chester Trzupek of 145 West 29th Place, Chicago Heights, Illinois, who is employed by Inland Steel Company, was in on June 14, 1963. He states that he has been employed by this company for the past eight and one-half years and denies ever having had a skin eruption prior to March 1961. At that time he noted some 'chapping' of his hands. He applied various home remedies and in April 1961 he was seen by the company physician once 'but the medication did not seem to help'. In January 1962 he saw a dermatologist four or five times and experienced some relief. Late in 1962 he saw his family physician who sent him to another dermatologist in April of 1963 and after six visits he apparently got worse. He was hospitalized by the family physician on May 28th at St. James Hospital at Chicago Heights, Illinois, for ten days. At the present he has been away from work for the past three weeks. He states that over week-ends the condition improves but does not go away completely nor does it disappear when on vacation for two week periods.

At present he presents a generalized eruption involving the face, scalp, neck, hands, forearms, and upper half of the trunk. This is composed of erythematous, one to four millimeters, oval to round, papulovesicles, excoriations, with most of the involvement of the hands. There are some fissures of the fingers. There is a diffuse scale which is greasy in character involving the scalp.

Since the eruption was quite extensive it was suggested the patient continue his treatments with his private physician until patch tests could be done with safety.

Patient is a roll turner and is exposed to lubricant for turning roll, the metal rolls, and soap.

On July 16 gross patch testing revealed him to react positively to the lubricating grease and to normal type of cuttings from the rolls.

Further testing with the ingredients shows a markedly positive reaction to nickel.

This is a case of contact dermatitis and may be caused by nickel and lubricating grease.

I would recommend his immediate removal from contact with these suspect substances and if he then clears, we would have to accept this as the cause."

(Co. Ex. E)

There can be no question that Dr. Buchholz is a specialist in the field of dermatology. He was originally selected by the Company Attorney and the Employee's Attorney because of his recognized status in this field. Dr. Buchholz appeared and testified that when the Grievant first came to him he was uncomfortable and the condition interfered with his sleep. He described him as being ill. The Doctor concluded from the evidence that his condition was caused by his coming in contact with nickel and lubricating grease. He is allergic to nickel which is found in the cuttings of the roll and this condition can come on over a period of years. The Doctor's conclusion was based upon two (2) patch tests. While the first patch test alone may not be completely conclusive, a second patch test is given and then when the reading is done by an expert who is aware of "false reactions" there then cannot be much question of the accuracy of the two patch tests. Dr. Buchholz' conclusion also was further corroborated by the fact that when there was a withdrawal from the suspect substances his condition cleared up. That nickel was responsible for this condition is further substantiated by the fact that upon a re-exposure to nickel on a spray gun the Grievant developed dermatitis on his right hand on the fingers that would be used on the nickel trigger of the gun. The Arbitrator must note that the Union at one point in the Grievance Procedure suggested that the Grievant be put back to work on the Roll Turner job to determine if a re-exposure would again cause eruptions. The Union had offered to drop the grievance if eruptions again came on after further exposure. This re-exposure actually did occur four or five weeks prior to the hearing by the inadvertant use of the nickel trigger on a spray gun and did cause eruptions on his middle fingers.

The only medical testimony presented by the Union was the statement by Dr. Fox reading:

"Has been under my care and is o.k. for work  
Wednesday, August 26, 1963." (Co. Ex. D)

Dr. Fox, however, did not conduct patch tests. There is no showing that Dr. Fox is fully acquainted with the work of a Roll Turner and the further specific fact that this employee would come in intimate contact with nickel and lubricating grease. Dr. Fox was not presented as a witness so that he could be cross-examined as to the basis of his conclusions, assuming that he meant the Grievant could go back to the Roll Turner job.

This Arbitrator in a prior medical case has accepted the testimony of a specialist in preference to the testimony of the Company's general doctor and sustained the grievance there on the basis that the Union had met the required burden of proof. In this case, however, the Union has not presented adequate medical evidence to support its position. The record does show that the Grievant's condition was somewhat alleviated in the past even over week-ends. When the Grievant was not exposed to intimate contact with nickel and was away from this job for considerable periods of time both before and after his demotion, his skin cleared. Dr. Buchholz testified that brief contacts with nickel that the Grievant might have at home while his hands were dry, would not ordinarily be sufficient to cause an eruption. This has certainly proved to be true inasmuch as the Grievant's condition has cleared. The evidence is that the Grievant was still sensitive to nickel as recently as four or five weeks prior to the hearing. Dr. Buchholz testified that he did not know of a single instance where a patient has lost his sensitivity, although there are some writings to this effect in medical journals.

Prior Arbitration Awards 145 and 327 clearly enunciate the principle that an employee is physically unfit to perform a particular job if such performance would result in "undue risk of further physical damage". The medical evidence and the on-the-job history of the Grievant shows that he does run an undue risk of further eruptions if he is exposed to nickel and lubricating grease. The Grievant concedes that he was extremely uncomfortable when he was suffering from this condition.

Based upon the clear principles that have been set forth in prior awards of other Arbitrators and this Arbitrator, a finding cannot be made that the Grievant should be returned to his job of Roll Turner when the evidence is overwhelming that to do so would result in extreme discomfort to the Grievant and could result in further financial cost to both the Grievant and the Company.

The Arbitrator fully appreciates the Grievant's disappointment as a result of his demotion to a lower rated job. If the Grievant at some future time were able to sustain the burden of medical proof to show that he no longer was sensitive to dermatitis caused by nickel or lubricating grease, then he would have a right to return to his job of Roll Turner with his seniority intact.

AWARD

The grievance is denied.

  
Peter M. Kelliher

Dated at Chicago, Illinois

this 11<sup>th</sup> day of June 1964.