In the Matter of Arbitration

Between

Inland Steel Company

and

United Steelworkers of America
Local 1010

Grievance No. 20-L-36
Appeal No. 1202
Award No. 608

Appearances:

For the Company

T. J. Peters, Arbitration Coordinator, Labor Relations
R. J. Stanton, Assistant Superintendent, Labor Relations
G. J. Melvick, Superintendent, Mechanical
R. J. Wilson, Supervisor, Insurance and Benefits, Personnel
M. R. Zarowny, Senior Claims Adjuster, Personnel
W. P. Boehler, Labor Relations Representative
D. L. Duvall, Labor Relations Representative

For the Union

Theodore J. Rogus, Staff Representative
Eugene Foster
Joseph C. Payne, Local Union Committee

In this grievance filed March 30, 1973 the Company's action in discharging grievant on March 26, 1973, after having suspended him on March 12 preliminary to discharge, was challenged as unjust and unwarranted under Article 3, Section 1 and Article 8, Section 1 of the 1971 Agreement. The ground given by the Company was "fraudulent insurance claim." Grievant's position is reflected in a denial that he intentionally submitted any fraudulent insurance claim and in his insistence that he applied for benefits to which he believed he was entitled.

The situation is unusual in that grievant has for almost 21 years been working for the Company while simultaneously holding a full-time job at another basic steel plant in the area. He has worked for the other company since 1946 and for Inland since 1952. Except for the insurance difficulties giving rise to this grievance his job performance at Inland has been impeccable. It has apparently never been

necessary to reprimand or discipline him.

At Inland grievant is a Hooker in Plant No. 1 Machine Shop; at the other company he is a Millwright in the Coke Department.

On November 16, 1972 he was involved in an automobile accident which incapacitated him. He filed a claim for Sickness and Accident Benefits ("S & A") under the Program of Insurance Benefits ("PIB") established pursuant to the parties' Insurance Agreement of August 1, 1971. In the course of the investigation of this claim the Company learned of his employment at the other steel company. An examination of grievant's November, 1972 claim for benefits indicated that he had represented that he was not covered by any other insurance providing benefits or services for hospital, surgical, or medical treatment. Further examination disclosed that on five previous occasions between October, 1970 and February, 1972 he had applied for and had hospital and physician's services paid under the Company's PIB, in the total amount of $181. Hospital benefits and physicians' fees are paid directly to the hospital and the physician, and not to the employee.

S & A benefits on the other hand are paid to the employee, under Section 2 of PIB, in accordance with this stipulation:

> "If you become totally disabled as a result of sickness or accident so as to be prevented from performing the duties of your employment and a licensed physician certifies thereto, you will be eligible to receive weekly sickness and accident benefits. Benefits will not be payable for any period during which you are not under the care of a licensed physician."

The Company in its 1973 investigation learned that grievant had several times received S & A benefits from both this Company and the other steel company. While the Company does not question grievant's right to receive S & A benefits from both of his employers, under the unusual circumstance of dual employment, it does take serious exception to his right to claim S & A benefits from Inland on the basis that he was totally disabled from performing his duties as Hooker while working at the other company in his regular job of Millwright Maintenance. This the Company found to have been so in the periods October 10 through December 19, 1970 and January 6 through January 16, 1972. For these periods of time grievant received $857.72 in S & A benefits from the Company.

This led to the discharge which is the subject of this grievance. The Company based its action on the ground that grievant willingly and knowingly attempted to defraud the Company by twice claiming to be totally disabled at Inland (in October - December, 1970 and in January, 1972) while working at the other steel company, and five times representing in hospital and physician's service claims that he had no other

insurance coverage.

In brief, the contentions on behalf of grievant are, first, that he was entitled to S & A benefits from Inland, in accordance with his claims, because he was disabled from performing his work as Hooker, as his physician certified. His work as Millwright for the other employer, he maintained, did not require the same amount of physical effort or exertion, particularly since he had a helper and a trainee working with him who could relieve him of the heavy work. His second argument is that it was a matter of indifference to him which employer had its insurance carrier pay the hospital and physician's fees, that he did not receive this money and no duplicate or overpayment was involved. Moreover, he denied that he had falsely stated that he had no other coverage, insisting that the Company's clerks in the Insurance Office who handled his claims had him sign the forms and then filled in the answers to the routine questions without asking him anything about them.

While grievant defended his right to follow the course described above, he has offered to repay any amounts found not due him in light of the circumstances. In doing so, however, he emphasized that he still believes he has acted properly and in good faith.

It is interesting to observe again that the Company acknowledges grievant's right to receive Sickness and Accident benefits from both employers, provided he was totally disabled from performing his duties on both jobs. The possibility of dual employment is recognized in Paragraph 2.5 of PIB in which reference is made to the exclusion of total disability claims for injury or sickness arising out of employment by some other employer.

The nub of the problem is whether he was actually totally disabled from performing his duties at Inland. If his job at the other company were of a substantially different character with respect to physical effort or exertion, one might accept his explanation. For example, if his position at the other company were that of a non-working supervisor or perhaps of a clerical kind, it would be conceivable that he could be totally disabled from working as a Hooker and yet able to perform these other duties.

But the fact is that a Maintenance Millwright in the Coke Plant has duties not materially less arduous physically than those of a Hooker in the Company's No. 1 Machine Shop. The Millwright does repair work, handles tools, must do climbing, and he even does some hooking.

Moreover, when grievant's physician certified to his disability as Hooker, so far as our evidence reveals, we do not know whether he was made aware of the fact that grievant was working or plan-

ning at the same time to work as Millwright elsewhere.

A physician's finding of incapacitation is not always a matter of scientific precision. He must rely to some degree on subjective symptoms of the patient. This explains why we so often have differences of opinion between employers' and employees' doctors. This is true not only when the employee's physician thinks that employee is disabled. Sometimes he certifies the employee as ready to return to work, while the Company doctor disagrees, and in some cases the opinion of a third doctor is solicited.

The possible withholding of the information about the other work the grievant was doing elsewhere, while ostensibly totally disabled from working at Inland, in view of the similar physical work characteristics, therefore raises some serious questions.

On the feature of total disability there can be little serious doubt. Since Section 2 of PIB requires both the fact of total disability and the certification of the physician, the conclusion must be that grievant was not eligible to receive S & A benefits from Inland for any period in which he was working as Millwright at the other plant.

Grievant's claim for hospital and physician's services include misstatements on their face, by their indication that grievant had no other coverage. The effect was that the Company's carrier paid $181 which should have been paid by the other steel company as the older or primary employer. To this extent this had an adverse effect on the Company. Grievant, as stated, received none of this money, and there were no double payments.

Grievant was discharged for "fraudulent insurance claims," specifically the five claims totaling $181 for hospital and physician's services which the other employer should have paid, and two claims for S & A, one in 1970 and the other in 1972, when grievant claimed total disability while he was working at the other company. The amount of S & A paid by Inland's insurance carrier for these periods was $857.72.

It should be noted that grievant's most recent claim growing out of his accident on November 16, 1972 has not been paid although he was certified as totally disabled by his physician and did not perform work at either of his two places of employment.

This grievance can clearly not be sustained as filed. It is not supported by the facts.

The only question relates to the disciplinary penalty. Under Article 8, Section 1 (Paragraph 8.3.1) of the collective bargaining agreement, the possibility of modification of the action taken by the Company is suggested.

The Company's action was based on fraudulent claims made by grievant. Yet his right to claim S & A benefits from two employers simultaneously is acknowledged. On the matter of falsely representing that he had no other coverage with respect to hospital and physician's services, the meager evidence we have tends to support grievant's contention that the clerks in the Company's Insurance Office filled in the check mark without asking grievant about this. The only evidence we had from the Company on this was a description of the training given these clerks and of the enormous amount of detail and work they handle, together with a general statement that they are expected to and do ask employees the questions that appear on the claim form. We do not know who filled in grievant's forms, nor was there any evidence that specifically contradicted that of grievant that the check mark covering other coverage was placed on the form by one of the clerks after he signed.

It would seem therefore that the willfully fraudulent knowledge or intent suggested by the Company's ground for disciplinary action is not as clear as it appeared to be when this action was decided upon. When he claimed S & A benefits the Company had no interest in whether grievant was also working elsewhere. As to whether it may be found that he willfully tried to mislead the Company on the matter of other coverage when he asked for hospital and physicians' benefits there is a good deal of doubt, on the evidence, as pointed out above. Surely, he had no desire to have such benefits paid twice.

It seems therefore that he did not have the guilty knowledge, or what the law calls scienter, to the degree necessary to support a charge of willful fraud as to these two matters. As stated, however, he was on weak and untenable ground in claiming total disability at Inland while he was able to work on his Millwright job at the other company.

But it is appropriate to give some weight to grievant's employment record covering a period of 21 years. Nothing was said in disparagement of his unblemished personnel record. Considering the conditions and handicaps under which he was working, which, it is true, he imposed on himself, this is remarkable.

He is not without fault, however. He received S & A benefits to which he was not entitled, including some $1020 in August-November, 1967. But if he is required to make full restitution of the amounts to which he was not entitled, and suffers in addition the loss of his wages since he was suspended on March 12, 1973, this would be severe enough under the unusual facts of this case. It will put him and all employees on notice that the course he followed is seriously improper and a basis for severe disciplinary penalty.

It is not intended to suggest that this ruling should serve as a precedent in any other instance in which an employee may make a

similarly improper insurance benefit claim.

AWARD

This grievance as filed is denied, but the penalty imposed shall be modified as indicated herein.

Grievant is ordered to return to the Company all sums paid to him for Sickness and Accident benefits for periods in which he worked as Millwright at the other steel company while claiming to be totally disabled from working at Inland, after giving grievant credit for the amount of such benefits due him in his most recent period of disability. Upon making such restitution, or arrangements therefor satisfactory to the Company, grievant shall be reinstated to his position as Hooker in the Material Movement Sequence in the Plant No. 1 Machine Shop, but with no back pay.

Dated: September 5, 1973

/s/ David L. Cole

David L. Cole, Permanent Arbitrator

The chronology of this grievance is as follows:

Grievance filed	March 30, 1973
Step 3 meeting	April 11, 1973
Appeal to Step 4	May 7, 1973
Step 4 meeting	May 10, 1973
Appeal to Step 5	June 12, 1973
Arbitration hearing	August 15, 1973
Award	September 5, 1973