In the Matter of Arbitration

Between

Inland Steel Company

and

United Steelworkers of America
Local 1010

Grievance No. 8-L-80
Appeal No. 1212
Award No. 614

Opinion and Award

Appearances:

For the Company

T. J. Peters, Arbitration Coordinator, Labor Relations
R. H. Ayres, Assistant Director, Industrial Relations
W. P. Boehler, Senior Labor Relations Representative
J. E. Blair, Senior Labor Relations Representative
J. L. Federoff, Assistant Superintendent, Labor Relations
A. R. Zimmerman, Supervisor, Employee Services, Personnel
D. E. Johnson, Supervisor, Hourly and Clerical, Personnel
J. Borbeley, Senior Training Coordinator, Training Department

For the Union

Theodore J. Rogus, International Staff Representative
William E. Bennett, Chairman, Grievance Committee
George Johnson, Griever, 28" Mill
William A. Noble, Griever, #2 Bloomer
Raymond Lopez, Assistant Griever, 28" Mill

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Grievant was hired on September 25, 1973 as a laborer in the 28" Mill of the Plant 2 Mills Department. He was suspended March 8, 1974 preliminary to discharge on March 15 for falsifying his application for employment. This action of the Company is challenged by this grievance as without just cause in violation of Article 3, Section 1 and Article 8, Section 1 of the August 1, 1971 collective bargaining agreement.

Article 3, Section 1 is the plant management clause and affirms among other things management's right to hire, discipline and discharge

employees for cause, stating:

> "...however, that in the exercise of such functions the Company shall not discriminate against employees because of membership in or legitimate activity on behalf of the Union."

Article 8, Section 1 sets forth procedures to be followed in discharge cases, and includes the right of the employee to have a hearing during the preliminary suspension period with the Superintendent of Labor Relations, with the employee's Grievance Committeeman and Union officers present if the employee so chooses.

In the application for employment which Grievant filled out and signed he gave the names of his last four employers, indicating that he had worked for Quality Market for eight years starting September, 1952, and then for almost ten years for Valentine Packing Company, both of Terre Haute, Indiana. He listed two companies in Massachusetts as his employers from June 1970 to July 1973.

Immediately over Grievant's signature on the application form is a statement that the applicant understands that the Company may make an investigation through personal interviews with third parties, which may include information as to his character, general reputation, personal characteristics and mode of living, with applicant having the right to request a disclosure of additional information as to the investigation. The second and concluding paragraph is as follows:

> "2. I understand that any omission or misrepresentation of material fact in this application may be considered as just cause for rejection of this application or dismissal from employment. I further understand that employment with the company is contingent upon passing the company's medical examination."

Following its practice, the Company wrote to the four former employers on September 24, 1973, but no response had been received from those for whom Grievant claimed to have worked from September 1952 to January 1973 when the Company on November 19, 1973 sent Grievant a notice to come in to the Personnel Department's Employee Services Section to explain. He did not respond to this request, so a second one was sent to him through his department superintendent's office on December 11. A third request was sent on January 2, 1974, and he then appeared at the office on January 7, 1974. Upon being asked to explain the lack of response from three of his four former employers, he said he would contact them. On January 21, 1974 a reply was received from the firm for which he had worked from June 1970 to January 1973, but none for the period of 18 years prior thereto.

The Company's investigation revealed that he had been employed for only a brief time in Terre Haute, that in fact one of the two firms he listed had been out of business for some time, and when Grievant was informed that the Company was aware of this he insisted upon discussing the matter only in the presence of a Union representative. The following day Grievant delivered a letter to the Supervisor of the Employee Services Section in which he spoke of "Inland's belated interest in my employment application (long after I successfully passed through my probationary period)," and he enclosed a copy of an arbitration award decided August 30, 1973 by Arbitrator Clair V. Duff in a case at Hofmann Industries, Inc. in which an employee who had falsified his employment application was ordered reinstated.

On March 8, 1974 a meeting was held in the office of the Superintendent, Plant 2 Mills. Grievant admitted he had falsified the statements about his former employment in his application in several substantial respects, and he said that he had delayed responding to the Personnel Department's requests hoping that the investigation would blow over. He did not at this meeting correct the facts about his former employment, and did not attempt to straighten out his employment history until the subsequent suspension hearing. He repeated the falsification admission on March 12 at his suspension hearing at the Labor Relations Department, and again at the Third Step Hearing, and there was no withdrawal of this admission subsequently in the Fourth Step or at the arbitration hearing.

It is the Union's contention that Grievant falsified his employment application in order to conceal the fact that he was a college graduate holding three degrees, because he had been told by someone in the Indiana Harbor area that Inland does not hire college graduates for blue collar jobs. Accordingly,he also misrepresented his educational background, and at the arbitration hearing he explained that he also falsely indicated his rank in the Navy for fear that if he truthfully reported that he had been an officer the Company would know that he must have had a college education. It is also argued on behalf of Grievant that he has been a satisfactory employee and that the Company's desire to be rid of him was motivated by his activity in opposition to the steel industry Experimental Negotiating Act ("ENA").

The Company's response is primarily that Grievant deliberately falsified his employment application in order to conceal facts which the Company considers, and has an established right to consider, important in determining whether to hire a new employee. Its practice of rejecting or terminating employees who falsify facts stated in these applications in reply to the Company's request for information has been consistent. In 1973-4 there have been 42 discharges on this ground. The Company strongly contradicts other contentions of the Grievant, saying he did not cooperate and straighten out his employment record until he was suspended, and his activities in opposition to the ENA had nothing to do with the Company's action in dismissing him for falsifying his application. Other employees also

opposing the ENA were not disciplined. The Company insists, in summary, that it acted promptly to investigate the misstatement of facts in Grievant's application, and although he delayed for some seven weeks responding to the Personnel Department's requests to appear and explain the discrepancies in his statements, his total period of employment was less than five months. Under the circumstances, the Company urges, no arbitrator would hold this period to be of such length as to constitute a waiver of the Company's right to take action against Grievant for the reasons indicated.

The basic right of the Company to require prospective employees to give it truthful information about their personal and work history is unquestioned. The Union has not contested any of the 42 discharge actions taken by the Company thus far in the 1973-4 period for falsification in employment applications, although it feels that this case is somehow different. Apparently, this is because Grievant was not concealing any prior terminations for dishonesty or misbehavior on the job. Nevertheless, subject to legal or contractual restrictions against discrimination because of sex, race or religion, or because of union activity, the employer retains discretion in the choice of its new hires. This carries over into the probationary period. It seems highly dubious that, other than in cases of discrimination of one kind or another, an employer intends to, or is required to, delegate to a third party the right to say what factors it should regard as important in determining whether to hire a new employee.

Truthfulness and reliability are desirable, and no one can gainsay the Company the right to look for employees who have these qualities. Here, an intelligent, educated individual, warned by explicit statements in both the application form and in the Company's General Rules for Safety and Personal Conduct, a copy of which was given to him, that giving false information in applying for employment may be cause for discharge, nevertheless deliberately misstated or omitted a number of facts relating to his employment history, education, and military service. He delayed responding to the Personnel Department's requests for some seven weeks, claiming he had not received their notices. He was not candid even after becoming aware that the Company had become strongly suspicious. Corrections or explanations continued to be made until the day of our arbitration hearing. All this is closely related to the false statements made by him in his application and has a bearing on Grievant's ethical standards.

Grievant's contention that his desire to conceal his college education somehow excused his false statements leaves one unconvinced. Intentional misrepresentations are normally made to gain some advantage. This is of the essence of fraud, and it is a strong reflection on the character of the given individual.

It happens that Grievant was in error in thinking Inland would not hire him if it knew he was a college graduate. There are some 89 employees in blue collar jobs who have degrees, and as a matter of fact the Company

gives financial aid to employees who take courses which may lead to degrees. This highly intelligent individual, however, simply accepted someone's statement without checking with either the Union or the Company, and apparently without making any other effort to ascertain the truth before embarking on the course described.

Numerous awards on this general subject were referred to by the parties. We are not bound by precedent in the sense that courts are, although good reasoning always commends itself. The only prior awards involving the Union's agreements with this Company strongly support the Company's position that deliberate misrepresentation in the employment application justifies discharge. See the awards of Arbitrator Peter Kelliher in Arbitration No. 121, December 15, 1954, and Award No. 486, June 29, 1962. Over the years a sort of unwritten statute of limitations has evolved in arbitrations in other industries or companies, but none in which under facts of the kind we have in this case it would be held that because five months have elapsed the Company has waived or is barred from the right to discipline an employee guilty of such falsification.

As stated above, when he found the Company was concerned about the discrepancies in his application, Grievant submitted an arbitration award in a dispute at Hofmann Industries, Inc., issued by Arbitrator Clair V. Duff on August 20, 1973, 61 LA 929. The grievant in that case also falsified facts about his prior employment and his education, but the Company's discharge of him was held to be without proper cause. The arbitrator found as facts, however, that the employer had an established policy of not hiring college trained employees, that this employee had a good work record extending over a nine month period, that the Company had unduly delayed instituting any investigation, that the employee had been considered an undesirable worker because of his aggressiveness during a strike and that the employer was using the misstatements in the application for employment as a pretext for getting rid of him. The facts obviously distinguish this Hofmann case from ours. Moreover, Arbitrator Duff emphasized that each such case "must necessarily pivot on its own unique facts."

While the arbitration rulings have not been uniform, generally deliberate misstatements in application forms have been held to justify disciplinary action, and certainly so at Inland. See Powers Regulator Company, 56 LA 11, Arbitrator Albert A. Epstein, September 17, 1970. Where an employer has unreasonably delayed taking action, generally a year or more, or where the misstatement has been found to be of a minor nature, some arbitrators have held against the employer, either in toto or by reducing the disciplinary penalty. However, in most instances they have taken pains to say that the company is entitled to truthful answers and that false answers are not to be condoned. See, for example, Continental Can Company, Case No. 153, Arbitrator Milton H. Schmidt, April 28, 1964.

AWARD

This grievance is denied.

Dated: September 18, 1974

/s/ David L. Cole

David L. Cole, Permanent Arbitrator

The chronology of this grievance is as follows:

Grievance filed - Step 3	March 18, 1974
Step 3 hearing	March 27, 1974
Step 3 minutes	April 8, 1974
Step 4 appeal	April 16, 1974
Step 4 hearing	April 19, 1974 May 13, 1974
Step 4 minutes	June 10, 1974
Appealed to arbitration	June 20, 1974
Arbitration hearing	September 4, 1974
Date of Award	September 18, 1974