In the Matter of the Arbitration Between

INLAND STEEL COMPANY AND UNITED STEELWORKERS OF AMERICA AND ITS LOCAL UNION 1010	Grievance No. 6-N-4 Appeal No. 1239 Award No. 641 Grievance of Craig W. Thomas

INTRODUCTION

An arbitration hearing between the parties was held in Harvey, Illinois, on March 1, 1978.

APPEARANCES

For the Company:

Mr. W. P. Boehler, Arbitration Coordinator, Labor Relations

Mr. R. H. Ayres, Manager, Labor Relations, Industrial Relations

Mr. W. C. Wingenroth, Assistant Superintendent, Labor Relations

Dr. P. M. Dunning, Medical Director

Mr. T. L. Kinach, Senior Labor Relations Representative

Mr. J. Surowiec, Labor Relations Representative

For the Union:

Mr. Theodore J. Rogus, Staff Representative

Mr. Joseph Gyurko, Chairman, Grievance Committee

Mr. Don Lutes, Committeeman

Mr. Harry Phillips, Griever

Mr. Larry Walendowski, Griever

Mr. Isaac Villalpando, Jr., Griever

Mr. Jon R. Vasilak, Assistant Griever

Mr. Craig W. Thomas, Grievant

Arbitrator:

Mr. Bert L. Luskin

BACKGROUND

Craig W. Thomas was employed by the Company on August 9, 1973. He was initially employed in the Power Department and in October, 1977, he was working as an oiler at the No. 2 A.C. Station.

On October 24, 1977, Thomas was scheduled to work the 6:30 A.M. to 2:30 P.M. shift at the No. 2 A. C. Station. At approximately 11:15 A.M. Mechanical Foreman Potesta entered the cable duct fan room and observed Thomas sitting on a spare motor reading a newspaper and smoking a cigarette. Potesta suspected that the cigarette might be marijuana. Thomas dropped the cigarette to the floor, extinguished it with his foot and, at the foreman's request, he left the cable duct fan room to perform an assignment which had been given him by the foreman. Foreman Potesta immediately retrieved the suspected cigarette, reported his suspicions to his superintendent and Plant Protection was notified. Two lieutenants of Plant Protection investigated. Thomas was interviewed, admitted that he had brought marijuana into the plant and admitted he had been smoking a marijuana cigarette in the No. 2 A. C. Station cable duct fan room when he was observed performing that act by Foreman

Potesta. The questions asked of Thomas and his answers thereto were incorporated in a statement which was prepared, offered to Thomas for his examination, and thereafter signed by Thomas as representative of the truth of the statements made by Thomas. A chemical test was thereafter made on the contents of the retrieved suspected cigarette. The test reports confirmed that the substance in the cigarette was marijuana.

At the conclusion of the investigation Thomas was suspended for five days preliminary to discharge for violation of Rule 102. b. of the Inland General Rules for Safety and Personal Conduct. Thomas requested a hearing. A hearing was held on October 31, 1977. At that time the Union conceded that Thomas had admitted that the cigarette that he was smoking in the cable duct fan room was a marijuana cigarette. The Union contended, however, that Thomas was addicted to marijuana and the Union requested that Thomas be permitted to enroll in the Company's drug program which should have been established pursuant to the provisions of Article 14, Section 8.

The Union contended that Article 14, Section 8, which originally concerned itself with alcoholism and had appeared in Collective Agreements since 1968, had been amended in the Collective Agreement effective August 1, 1977, by the addition of the words "or drug abuse" and by the addition of the words "Alcoholism and drug abuse are recognized by the parties to be treatable conditions" as the first sentence of the provision. The Union contended

that the Company could not and should not (in view of the newly amended provision) terminate the services of an employee under circumstances where the employee had become an addict and was entitled to the opportunity to join a coordinated program that was to be made available to drug users before he could be terminated from employment for the violation of Plant Rules relating to possession or use of narcotics on plant premises.

The Company denied the Union's request and Thomas was terminated from employment. A grievance was filed protesting Thomas' termination and requesting his restoration to employment with full back pay as a result of the Company's failure and refusal to provide Thomas with the opportunity to become part of a coordinated program directed to the objective of his rehabilitation because of "drug abuse."

The grievance was thereafter processed through the remaining steps of the grievance procedure and the issue arising therefrom became the subject matter of this arbitration proceeding.

DISCUSSION

The parties are in agreement that the Collective Bargaining Agreement permits the Company to "discharge employees for cause." The parties are in agreement that the Company has issued General Rules for Safety and Personal Conduct. The parties are in agreement that the following Rule has been published and is in effect:

"PERSONAL CONDUCT
"RULES AND REGULATIONS

"102. The following offenses are among those which may be cause for discipline, up to and including suspension preliminary to discharge:

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"b. Reporting for work under the influence of drugs not prescribed by a licensed physician for personal use while at work; being in possession of such drugs while in the plant or bringing such drugs into the Plant."

The Union contended that the Company had failed to follow the contractual procedures outlined in Article 14, Section 8. That provision is hereinafter set forth as follows:

"ARTICLE 14
"SAFETY AND HEALTH

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"Section 8. Alcoholism and drug abuse are recognized by the parties to be treatable conditions. Without detracting from the existing rights and obligations of the parties recognized in the other provisions of this Agreement, the Company and the Union agree to cooperate at the plant level in encouraging employees afflicted with alcoholism or drug abuse to undergo a coordinated program directed to the objective of their rehabilitation."

Thomas had originally informed members of the Plant Protection Department and Company officials (including Union representatives) that, although he had smoked marijuana cigarettes outside of the plant, he had never (prior to the incident in question) smoked marijuana inside the plant or brought or had marijuana in his possession inside the plant on any occasion prior to October 24, 1977. In his testimony at the arbitration hearing Thomas conceded

that he had smoked marijuana for some seven years which included a period of three years in the army and four years while employed at Inland. He testified that he smoked regularly and daily and generally smoked a marijuana cigarette at the time that he awakened in order that he could "get started." He conceded that his original statement to Company and Union representatives was partially untrue since he had regularly smoked marijuana inside the plant and the incident which occurred on October 24, 1977, was neither a rare nor an isolated instance. He testified that he had become addicted to marijuana, was dependent upon marijuana, and that he had offered (at the time of termination) to enter any program that would assist him in breaking the drug habit and he would be willing to enter such a program at this time if his entry into such a program would result in his restoration to employment.

The Rule against reporting for work under the influence of drugs (not prescribed by a licensed physician) or being in possession of drugs while in the plant or bringing such drugs into the plant, has been in effect for many years and is well known to all employees. Thomas conceded that he knew of the existence of the Rule and he conceded that he knew that he would be "in trouble" if he was caught smoking marijuana in the plant. He took a calculated risk; he was caught; the Company enforced its Rule and discharged Thomas from employment. Other employees have been discharged for

similar offenses at this plant. In 1973, Umpire Cole sustained the termination of an employee who had brought marijuana into the plant. In December, 1977, an award was issued by Arbitrator Mittenthal sustaining a termination when an employee at this plant was found to have had a quantity of marijuana in his locker. It is conceivable that other employees have smoked marijuana and have not been terminated. The imposition of the Rule and the penalty of termination would depend upon the Company's ability to establish, by competent evidence, that an employee has, in fact, violated the Rule and was guilty of the offense.

The inclusion of the words "and drug abuse" with the word "alcoholism" as a part of a statement by the parties (Article 14, Section 8) that those conditions are recognized to be treatable conditions, means precisely what the words were intended to mean. The fact that they were "treatable" would not necessarily mean that an employee who is an alcoholic or who is addicted to narcotics must be treated or be offered treatment as a condition precedent to termination from employment. The inclusion of the words "or drug abuse" to the language appearing in Article 14, Section 8, in the most recently executed Collective Bargaining Agreement would not serve to change the basic meaning that was attributed to the language when it initially appeared in Collective Bargaining Agreements between these parties and Collective Agreements between the same

International Union and the coordinated steel companies under the 1968 Collective Bargaining Agreements. That language has been interpreted on numerous occasions by this arbitrator and by other arbitrators. In almost every instance where Article 14, Section 8, has been applied in cases involving alcoholism, the arbitrators have found that the provision does not serve to provide an alcoholic employee with immunity from discharge for the breach of company rules which prohibit the consumption or possession of an intoxicant on company premises. The inclusion of the words "or drug abuse" in the language of Article 14, Section 8, cannot serve to provide an employee with immunity from discharge for the breach of a rule against bringing drugs into the plant or using drugs in the plant and any employee who may have become addicted to drugs would be entitled to the same type of treatment under a coordinated program as would employees who had become alcoholics.

When an employee has violated a rule against consumption (or possession) of alcoholic beverages in the plant, the degree of discipline to be imposed against such an employee would depend upon the type of plant rule in effect and the manner in which that plant rule has been applied and implemented. The same would be true with respect to employees who are found with drugs in their possession inside plant premises or on plant property.

The composition of the language appearing in Article 14, Section 8, makes it evident that the parties recognized the existence

of problems relating to alcoholism and drug abuse; agreed that they are "treatable" conditions; and agreed that they would "cooperate at the plant level in encouraging employees...to undergo a coordinated program directed to the objective of their rehabilitation." That would presuppose that the Company or the Union (or both) knew or became aware of the fact that a particular employee was an alcoholic or was addicted to narcotics and should be offered help before he committed a breach of Company Rules that would justify termination from employment.

The Company's Medical Director (Dr. Dunning) testified that he serves as chairman of Inland's program established to provide assistance for employees who are alcoholics or who have become addicted to drugs. He testified that the programs for alcoholism and for drug abuse are identical. He testified that in attempting to rehabilitate an employee who had become an alcoholic, the Company holds personal meetings with such an employee, offers him hospitalization for treatment of the condition, provides him with counseling and with specialized outside medical assistance and eventually aids the employee in entering an Alcoholic Anonymous program. The drug abuse program functions in a similar fashion. The program for alcoholics is well publicized and "advertised" and is well known to Union officials, Committeeman, Stewards, and has been communicated to employees by various means. By contrast, the

drug abuse program is relatively new and was started in 1973. There was no coordinated program developed with the Union and the program was not generally "advertised." A number of employees whose drug problems were brought to the attention of the Company were offered and received treatment. Their problems were handled on a confidential basis. The Company does not have enough statistics to reach a conclusion with respect to the results achieved in the four-year period during which the drug abuse program has functioned. By contrast, the Company has been able to conclude that approximately eighty-five percent of the employees who have entered the Company's program for alcoholics have been helped to a significant degree as demonstrated by improvements in attendance, work performance and their general health. The Company has paid (through its insurance program) for the use of outside agencies and facilities in the administration of the program for alcoholics, as well as for employees with drug related problems.

The Company has its own alcoholism program, as does the Union. The parties have coordinated their efforts and have cooperated in the area of developing a coordinated program directed to the rehabilitation of employees afflicted with alcoholism. Those employees can be helped only if the parties become aware of their problems. The Company (and the Union) may become aware of an employee's alcoholic or drug problem through means of a "hot line"

that was established in 1975, or the problem may surface in the grievance procedure. In some instances the Union becomes aware of an employee's alcoholic problem and unilaterally moves in the direction of attempting to assist that employee. In some instances the Union may enlist the Company's aid in assisting the employee. In some instances the action is initiated by the Company, and in some instances the parties jointly have become aware of a problem at approximately the same time and may attempt to induce an employee to enter an alcoholic program. In every instance, however, help is available to the employee only if the problem becomes known before he commits an offense or a series of offenses that would constitute just cause for his termination from employment.

In most instances an employee's problem with alcohol becomes apparent and evident when he begins to develop a problem with attendance or where he begins to demonstrate problems with respect to his work performance. Having become alerted to a possible alcoholic problem, employees may be cautioned, warned and urged to enter the program. They may be warned that a failure to improve attendance or improve work performance, may reach a point where the employee may have to be terminated from employment. In those cases employees have stopped short of reaching a point where discharge would be justified. Those employees can be encouraged to enter a coordinated program.

The introduction of the words "or drug abuse" to the Section in question does not place employees who may have an addiction to a narcotic in a special category. The parties to this Contract did meet several months after the execution of the Contract for the purpose of discussing between themselves the procedures that would be followed in developing a coordinated program directed to the objective of the rehabilitation of employees who have become addicted to narcotics. A formal program had not as yet been developed at the time that Thomas was terminated from employment. He could have been provided with assistance only if the Company or the Union had become aware of a problem. If Thomas was, in fact, a marijuana addict, he concealed that problem from Union officials and he clearly concealed that problem from members of supervision. Three different supervisors who had occasion to provide Thomas with supervision (at various levels) testified that Thomas had never indicated in his work performance or in his attendance that he had any drug related problems. It had never come to their attention that Thomas had ever reported for work under the influence of alcohol or a narcotic, and they had absolutely no reasons to be alerted to the possibility that Thomas was a marijuana addict. The superintendent of the Power and Fuel Department testified that he had never heard of any drug problem involving Thomas and had never been informed of any work performance problem that Thomas may

have had. He testified that the Company may become alerted from various sources to an employee's problem either with alcohol or with drugs. He testified that when that occurs the Company moves affirmatively to attempt to find out the basis for the problem and to offer assistance in correcting that problem. He testified that on occasions employees may admit alcohol or drug addiction and where that occurs they are referred to the Company's formal programs. In each of those instances, however, the employees had not committed a breach of a Company Rule so serious in nature as to justify termination from employment.

In substance, the procedure followed with respect to the development of a coordinated program directed to the objective of the rehabilitation of employees "afflicted" with "drug abuse" would have to be similar in nature to the procedure followed with respect to employees "afflicted with alcoholism." The Company was not required by virtue of the inclusion of the new language in this Contract to provide Thomas with assistance through a coordinated program before it could terminate him from employment for the violation of Plant Rule 102. b. when he admittedly smoked a marijuana cigarette on Company premises during working hours. Thomas conceded that he has regularly smoked marijuana cigarettes in the plant during a period of approximately four years of employment with the Company. He conccaled that activity. He never informed the Union or any officer that he was an "addict." He sought no help from the Union

and he sought no help from any member of management. Neither the Company nor the Union ever had an opportunity to be alerted to the possibility that he was an "addict" in order that some help might be offered to Thomas before he committed an offense that would justify a termination from employment. Having committed the offense and having been observed in the commission of the offense, the Company had every right to invoke its Rule and to terminate Thomas from employment without being required, as a condition precedent to termination, to offer Thomas the opportunity to undergo a coordinated program directed to the objective of his rehabilitation.

For the reasons hereinabove set forth, the award will be as follows:

AWARD NO. 641

Grievance No. 6-N-4

The Company did not violate the provisions of Article 14, Section 8, of the Collective Bargaining Agreement when it terminated Craig W. Thomas from employment. The Company had proper cause for terminating Craig W. Thomas from employment on or about November 1, 1977. The grievance is hereby denied.

Burt L. Luskin
ARBITRATOR

March 21, 1978

CHRONOLOGY

Grievance No. 6-N-4

Grievance filed (Step 3)	November 4, 1977
Step 3 Hearing	November 17, 1977
Step 3 Minutes	December 2, 1977
Step 4 Appeal	December 8, 1977
Step 4 Hearing	January 6, 1978
Step 4 Minutes	February 8, 1977
Appeal to Arbitration	February 13, 1978
Arbitration Hearing	March 1, 1978
Award	March 21, 1978