

In the Matter of the Arbitration Between

INLAND STEEL COMPANY

AND

UNITED STEELWORKERS OF AMERICA
AND ITS LOCAL UNION 1010

Grievance No. 3-N-27

Appeal No. 1250

Award No. 651

INTRODUCTION

An arbitration hearing between the parties was held in Harvey, Illinois, on November 14, 1978.

APPEARANCES

For the Company:

Mr. T. L. Kinach, Arbitration Coordinator, Labor Relations

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

Mr. A. A. Bracco, Superintendent, Plant No. 3 Coke Department

Dr. R. R. Hooker, M. D., Associate Medical Director, Medical

Mr. T. J. Peters, Assistant Superintendent, Labor Relations

Mr. W. P. Boehler, Assistant Superintendent, Labor Relations

Mr. M. S. Riffle, Senior Labor Relations Representative

Ms. K. Mussie, Labor Relations Representative

Mr. P. J. Comerford, Ovens Clerk, Plant No. 3 Coke Department

For the Union:

Mr. Theodore J. Rogus, Staff Representative

Mr. Joseph Gyurko, Chairman, Grievance Committee

Mr. Phil King, Acting Secretary

Mr. John Dierdorff, Insurance Representative

Mr. Bobby J. Thompkins, Griever

Mr. Jimmie Freeman, Griever

Mr. Stevan J. Parojcic, Grievant

Arbitrator:

Mr. Bert L. Luskin

BACKGROUND

Stevan J. Parojcic was employed by the Company on September 3, 1975, and worked in the Plant No. 3 Coke Department. Parojcic's last day worked with the Company was June 14, 1978. He called his foreman and reported off for his scheduled turns of June 15 through 17, 1978, stating that he was "sick." Parojcic was scheduled off on June 18, 1978, and he failed to report for his scheduled turn on June 19, 1978. On June 21, 1978, he reported off stating that he was sick, would be off for the remainder of the week, and would call in the event that he could not report for work. The Company received no further report offs from Parojcic and his absence continued for the next five days for which he was scheduled (Sunday through Thursday) commencing on June 25, 1978.

On July 3, 1978, the Company wrote to Parojcic advising him that he had been absent from work for five days without notification to the Company.

He was informed that unless he reported "for work or notified the Company within five days from the date of delivery or attempted delivery of this letter, you will be terminated pursuant to the provision of Article 13, Section 11-b-(3) of the August 1, 1977 Collective Bargaining Agreement." That letter was sent by certified mail and was delivered on July 7, 1978, at the home of Parojcic's parents, which he had listed as his address (4120 Grant Street, Gary, Indiana). Someone at that address named "Parojcic" receipted for the letter. The Company heard nothing further from Parojcic in response to that letter, and on July 13, 1978, Parojcic was terminated from employment.

On July 28, 1978, a grievance was filed in Step 3 of the grievance procedure contending that the action taken by the Company in terminating Parojcic from employment was "unwarranted and unjust in light of the circumstances." The grievance requested that Parojcic be reinstated to employment and paid all moneys lost.

The parties held a Third Step meeting on August 16, 1978. The Company informed the Union's representative that the grievance was not properly filed since it was not filed in the grievance procedure within the time limits prescribed under Article 13, Section 11-b-(3) of the Agreement. The Company further informed the Union that no evidence had been submitted which would verify a contention that the grievant was unable to "report for work or to notify because of emergency or other justifiable reasons...."

The Union contended basically that Parojcic had reported to the Company's Medical Department on June 21, 1978, and had been informed by the

Company's doctor that he should return to see his doctor and to receive treatment for the condition which had caused his absence from June 14, 1978. The call that Parojcic made to his foreman on June 21, 1978, emanated from a telephone in the Company's Medical Department. The Union contended that Parojcic continued to absent himself from work because he was ill and that Parojcic was not released for return to work until July 27, 1978, when he visited his doctor and was informed that he could return to work. The Union contended that Parojcic had moved from the home of his parents in Gary to Griffith, Indiana, and that he had no telephone and could not receive a communication from his mother that a certified letter had been delivered to his parents' home in Gary, Indiana, on July 7, 1978. It was the contention of the Union that when Parojcic visited his parents on July 28, 1978, he received the letter of impending termination for the first time, and immediately contacted Union representatives and filed a grievance on the same day.

It was the contention of the Union that since Parojcic was ill, under the care of a physician, and was medically unable to report for work after he had attempted to return to work on June 21, 1978, his seniority with the Company could not be terminated.

The issue arising out of the filing of the grievance became the subject matter of this arbitration proceeding.

DISCUSSION

The provisions of the Agreement cited by the parties as applicable in the instant dispute are hereinafter set forth as follows:

"ARTICLE 13

"SENIORITY

"SECTION 11. CALCULATION OF CONTINUOUS SERVICE AND TERMINATION OF SENIORITY RIGHT.

13.60 "b. Continuity of service and the employment relationship shall be broken and terminated in the manner set forth in paragraph "c" below and when:

- "(1) ...
- (2) ...

13.63 "(3) An employee is absent from work without notifying the Company after having been sent to his last known address by certified mail, return receipt requested, as shown on Company records after the first five (5) workdays of absence a written notice to report for work within five (5) days, unless unable to report for work or to notify because of emergency or other justifiable reasons. Such notice shall be deemed received by the employee as shown by the date of delivery or the date delivery was attempted to be made on the Post Office return receipt. A copy of such letter will be sent to the employee's grievance committeeman. In the event a written grievance under the grievance procedure of Article 6 hereof, beginning with Step 3, is not filed within five (5) days following a termination under this subparagraph (3), such termination shall not be subject to appeal under the grievance procedure.

- "(4) ...
- (5) ...
- (6) ...
- (7) ...

13.68 "c. Subject to the provisions of paragraph b-(5) above, if an employee shall be absent because of layoff or physical disability, he shall continue to accumulate continuous service during such absence for two (2) years, and for an additional period equal to (1) three (3) years, or (2) the excess, if any, of his length of continuous service at commencement of such absence over two (2) years, whichever is less....."

The basic facts are not in dispute. Parojcic last worked on June 14, 1978. He came to the plant on June 21, 1978, where he visited the Medical Department and submitted a release for work prepared by a Dr. VanDam (Ross Clinic) which stated that Parojcic had been under that doctor's care "since June 20, 1978," for "possible ulcer" and Parojcic would be able to return to work on June 21, 1978. When Parojcic complained to the Company doctor that he was ill and unable to work, the Company doctor suggested that Parojcic report off and to have tests made in order to make certain that he was not suffering from a bleeding ulcer. Parojcic did call and report off, stating that he would be off for the remainder of the week.

On June 24, 1978, Parojcic visited the Ross Clinic where an X-ray was taken. The X-ray proved to be negative. The Company did not receive a report from a doctor or a laboratory thereafter until August 16, 1978. On June 27, 1978, Parojcic had obtained an insurance form and that form was returned to the Company on August 16, 1978, signed by a Dr. Goodwin (Ross Clinic). That form stated that Parojcic had been treated for severe anxiety and functional upper GI reaction with hematemesis. That report indicated that the only medication prescribed was "Mylanta." A partially completed claim for sickness and accident benefits was signed by Dr. Goodwin on July 27, 1978, which stated that Parojcic had been treated on June 20 and July 27, 1978. The reports indicated, therefore, that Parojcic had visited a doctor on June 20, 1978, and he had not visited a doctor nor had he been treated medically thereafter until July 27, 1978, some two weeks after the effective date of his termination from employment and one day preceding the filing of the grievance on July 28, 1978.

It is conceded that during the entire period of time between June 15 and July 28, 1978, Parojcic had never been hospitalized, had visited a doctor twice within that period of time, was completely ambulatory and was under no form of handicap which would have prevented Parojcic's notification to the Company of his impending absences from work.

Article 13, Section 11 b (3) is clear and unambiguous. The Company complied with the contractual requirements when it sent Parojcic a letter (by certified mail) directing him to report for work within five days. Parojcic was required to report within that period of time unless he was "unable to report for work or to notify because of an emergency or other justifiable reasons." Although Parojcic contended that he was sick, he could offer no justifiable reason for his inability to "notify." All of the competent evidence in the record would indicate that Parojcic was ambulatory. He was able to make telephone calls and the fact that he may not have had a telephone at his new address would not constitute a justifiable reason for a failure on his part to attempt to communicate with the Company and to provide the Company with notice of his whereabouts, his physical condition and his alleged inability to report for work.

It is conceded that the five-day notice was received by someone at Parojcic's last-known address on July 7, 1978. Parojcic testified that his mother had received the notice and had failed to communicate with him because her automobile was being repaired. Parojcic offered no explanation for his failure to communicate with his mother or to receive messages from his mother in the period between July 7, 1978 (the date of the receipt of the notice at Parojcic's former address) and July 28, 1978 (the date on which Parojcic filed a grievance).

Parojcic could offer no reason for his failure or his inability to notify the Company of his alleged illness. There was no emergency present which would have precluded Parojcic from attempting to communicate with the Company. There was no other justifiable reason offered for Parojcic's failure to communicate with the Company during the period between June 25, 1978, and July 28, 1978. Parojcic's termination from employment, therefore, could not have been subject to appeal under the grievance procedure.

The Union placed primary reliance upon the language appearing in Article 13, Section 11 c. The Union contended that Section 11 c would take precedence over Section 11 b (3) since it deals exclusively with an employee who was absent because of a "physical disability." The Union contended that the provision requires an employee absent from work because of a physical disability to continue to accumulate continuous service. The Union contended that since an employee must continue to accumulate continuous service during a period of illness, it would be impossible for the Company, under those circumstances, to terminate such an employee and to break his continuous service. The Union contended that the procedure followed by the Company in this case would result in making a nullity of Article 13, Section 11 c.

The provision relied upon by the Union stands alone and permits accumulation of continuous service for an employee on layoff or who is absent because of a physical disability. That provision would be applicable and would have to be given full faith and credit so long as the employee does not subject himself to termination from employment pursuant to the provisions of Section 11 b (3) or any of the other reasons for termination of service set forth in

Section 11 b. The application of Section 11 b (3) does not make a nullity of Section 11 c. If an employee is properly terminated under Section 11 b, there would no longer be a contractual obligation to continue to accumulate seniority.

In substance, the evidence in the record fails to establish the existence of an emergency or any other justifiable reason for Parojcic's failure to either report for work or to notify the Company of his inability to report for work because of a claimed physical disability. The Company complied with the procedures set forth in Article 13, Section 11 b (3). A certified letter was sent to Parojcic at his last-known address, and that letter was delivered at that address and received by Parojcic's parent. Parojcic offered no logical reason for his failure to obtain his mail for the period between July 7 and July 28, 1978. He was ambulatory during that period of time. He was not hospitalized, nor was he under the continuing care of a physician. His doctor had released him for return to work on June 21, 1978. He next saw a doctor on July 27, 1978. The Company fully and completely complied with the contractual notice requirements. Parojcic could not establish the existence of an emergency or any other justifiable reason for his failure to notify the Company of the reason for his continuing absence from work. The termination of July 13, 1978, therefore, became effective. Since Parojcic failed to file a grievance within five days thereafter, the termination could not be subject to appeal under the grievance procedure.

For the reasons hereinabove set forth, the arbitrator must find that the Company did not violate Article 3, Section 1, nor did it violate Article 13, Section 11 b (3) or c thereof when it terminated Stevan J. Parojcic from employment.

AWARD

Grievance No. 3-N-27

Award No. 651

The Company did not violate Article 3, nor did it violate any applicable provision of Article 13, Section 11, when it terminated the services of Stevan J. Parojcic. The grievance is hereby denied.



ARBITRATOR

December 6, 1978

CHRONOLOGY

Grievance No. 3-N-27

Grievance filed (Step 3)	July 28, 1978
Meeting between Step 3 Representatives	August 16, 1978
Memorandum of Meeting	August 28, 1978
Step 4 Appeal	September 5, 1978
Meeting between Step 4 Representatives	September 13, 1978
Memorandum of Meeting	October 18, 1978
Appeal to Arbitration	October 20, 1978
Arbitration Hearing	November 14, 1978
Date of Award	December 6, 1978