

In the Matter of the Arbitration Between

INLAND STEEL COMPANY)

AND)

UNITED STEELWORKERS OF AMERICA)
AND ITS LOCAL UNION 1010)

Grievance No. 2-N-24
Appeal No. 1249
Award No. 652

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. E. Underwood, Superintendent, Plant No. 2 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. Massie, Labor Relations Representative

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. James Ross, Griever

Mr. Bobby J. Thompkins, Griever

Mr. Jimmie Freeman, Griever

Mr. Robert L. Brink, Grievant

Arbitrator:

Mr. Bert L. Luskin

BACKGROUND

Robert L. Brink was employed by the Company on February 26, 1975. He worked in the Plant No. 2 Coke Department, where his most recent position in the coal dumper sequence was that of a coal unloading helper.

On April 29, 1976, Brink underwent a lumbar laminectomy of a herniated disc. He was hospitalized until May 25, 1976, and was away from work for approximately four months. Brink was released for return to work by his doctor on August 2, 1976, without medical limitation and, after a review by the Company's Medical Director, Brink was permitted to return to work.

Brink continued in employment thereafter without incident until July 25, 1977, when he reported off due to a back ailment. Brink continued to be away from work because of the back ailment and he thereafter underwent a second surgical procedure for a lumbar laminectomy and decompression of the spinal cord on October 12, 1977. The second surgical procedure involved the removal of scarring in the same area and the same disc that was involved in the surgical procedure of April, 1976.

On March 21, 1978, Brink returned to the Inland Medical Department with a release from the attending physician who had performed the most recent

surgical procedure. The release submitted by Brink was conditional, since it placed a limitation upon Brink to the extent that he could do "no heavy lifting, bending, or stooping, or shoveling." The Inland Medical Director thereupon issued a medical restriction (M-Code) on March 22, 1978. That restriction was reviewed at the Plant No. 2 Coke Department and members of supervision were cautioned that Brink had a medical condition which limited the use of his back. A placement meeting was convened on March 23, 1978. The Company ultimately concluded that Brink could not be permitted to return to his former position of coal unloading helper. The Company also concluded that there were no other jobs available in the Plant No. 2 Coke Department which Brink could safely perform within the limitations of the medical restrictions placed upon him by his physician. Brink was thereupon laid off on March 23, 1978.

On April 11, 1978, Brink returned to the Inland Medical Department and submitted a second release from his physician. That release indicated that Brink could be immediately restored to employment without limitation of any kind. The Company's Medical Director reviewed that release and refused to remove the medical restriction which had been initiated by the Company on March 22, 1978, based upon Brink's original release for return to work.

A grievance was filed on May 16, 1978, requesting that Brink be permitted to return to work without limitation. On July 17, 1978, Brink was examined at the Company's Medical Department and, although the Company doctor found that Brink had a full range of motion and was free from pain, the Company doctor concluded that the surgical procedures of 1976 and 1977 involving spinal

laminectomies were so serious in nature as to preclude the assignment of Brink to his former position which involved stooping, bending, lifting and the performance of duties and functions which the Company's Medical Department considered to be dangerous to the health and safety of the grievant.

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 procedure.

DISCUSSION

Brink's back problem dated back to at least 1972, approximately three years preceding his date of hire with the Company. Following Brink's release for return to work in August, 1976, he was suspended preliminary to discharge after the Company learned that Brink had falsified his pre-employment medical questionnaire when he responded in the negative to questions concerning previous back ailments. Through normal insurance administrative procedures following Brink's back surgery in April, 1976, the Company learned that Brink had undergone chiropractic treatments for a back problem which was diagnosed at that time as "lumbar strain." A grievance was filed. The Union urged that Brink be restored to employment. The Company thereafter agreed to return Brink to employment (without back pay) after he had been on suspension for a period of approximately two weeks.

The Company contended that it had complied with the provisions of Article 14, Section 1, when it refused to permit Brink to return to work in a position which would have required him to perform job duties that would be

hazardous to his back condition. The Company contended that it is required to "...make reasonable provisions for the safety and health of its employees at the plant" and, in accordance with that contractual mandate, it accepted Brink's doctor's original limitation and refused to put Brink on a job which would have required him at times to stoop, bend, push and perform duties which his own doctor at the time of the initial release to work (March 21, 1978) stated that Brink should avoid.

The Company contended that from a medical standpoint any employee with a history of back problems such as that which caused Brink to undergo two spinal surgical procedures, should not perform work functions which place stress and strain on his back. The Company contended that Brink could very well incur further back problems even if his job duties were of a sedentary nature. The Company contended that there was no justification or explanation offered to the Company for the change in Brink's doctor's position in the period between March 22, 1978, and April 11, 1978. The Company contended that Brink had received no further medical treatment within that intervening period of time and no explanation was offered with respect to the reason for the removal of so strong a limitation concerning Brink's work activities within the relatively short period of a little more than two weeks.

The Company contended that Brink's condition is chronic and, although Brink may presently be working elsewhere, to allow him to return to work without limitations could result in permanent back damage. The Company cited Arbitrator's Cole's Award No. 625, wherein the Arbitrator pointed to the fact that the Company should not "wait until an accident or a tragedy occurred before doing what is reasonably indicated."

The Company contended that its Medical Department agreed initially with the judgment of the attending physician (Dr. E. B. Siqueira) and found itself in disagreement with his judgments and conclusions after the doctor had changed his position and had removed the work limitations which he had placed upon the first release to return to work. The Company contended that its Medical Director and its doctors are familiar with the mill environment and Brink's occupation, and are in a position to determine what, if any, medical restrictions should be placed upon an employee to provide for his "reasonable safety and health." The Company contended that sound and reasonable medical evaluation would preclude the return of any employee to the position of coal unloader helper who, within a year and a half, had to undergo two separate surgical procedures for lumbar laminectomies and decompression of the spinal cord. The Company contended that the fact that Brink presently has good range of motion and is presently free from pain should not be the basis for his return to work in a position which could cause Brink to suffer a permanent disability.

The Union contended that the surgical procedure performed by Dr. Siqueira was successful and the surgeon's conclusions that Brink could be restored to employment with the Company without limitation of any kind, should be accepted. The Union contended that the type of work being performed by Brink is included within the range of duties which described the work in a steel mill as encompassing "heavy, physical steel-mill type work." The Union contended that when Dr. Siqueira stated that Brink "may return to work without limitations," that statement should have been accepted since the doctor had access

to X-rays and he was the doctor who performed the most recent surgery on Brink. The Union contended that Dr. Siqueira would not have recommended Brink's unrestricted return to work if he believed that it would cause harm to the grievant.

Brink testified that he is 26 years old. He testified that he was continued on S & A benefits until July 31, 1978. He testified that he wanted to return to work in March, 1978, after having been initially released by his doctor to return to work (with limitations). He testified that he saw his doctor again on April 8, 1978, was examined, was told to "take it easy," and was given a release to return to work without restrictions and without limitations. He testified that since April, 1978, he has received no medical attention and has not found it necessary to receive therapy. He testified that, although he had worked at a marina and had lifted heavy objects, he had refrained from lifting anything that he felt he could not safely handle.

The Company had every right to exercise concern when it received a report from Dr. Siqueira bearing date of April 8, 1978, a little more than two weeks after Dr. Siqueira's initial report. The first report placed a severe restriction on Brink's work activities. The limitation read "no heavy lifting, bending, or stooping, or shoveling." Dr. Siqueira placed no specific period of time on the limitation. A little more than two weeks thereafter Dr. Siqueira submitted a report to the Company wherein he recommended Brink's return to work "as soon as possible." He responded in the affirmative to the question concerning Brink's ability to work "in all areas of a steel mill doing all types of heavy, physical steel-mill type work." He then wrote in the words "may return to work without any limitations."

Dr. Siqueira is a specialist in neurosurgery. He would have to be considered to be eminently qualified to pass medical judgment upon the range and scope of Brink's activities after his recovery from the back surgery. While the Company's Medical Department had every right to exercise a measure of concern, the fact remains that the judgment of the surgeon who performed the laminectomy would have to be respected in a matter of this kind. While the Company would have every right to refuse to accept a medical judgment if it appeared that the judgment was unreasonable, arbitrary or capricious, the fact remains that Dr. Siqueira specifically stated that Brink could return to work without limitation and that he was able to perform the range of duties involved in "steel-mill" type of work.

The position adopted by the Company's Medical Department was not unreasonable. It had every right to be concerned with the medical history of an employee who had undergone two spinal surgical procedures within a period of one and a half years. Under ordinary circumstances the Company's Medical Department had every right to believe that the initial limitation placed upon Brink's return to work by Dr. Siqueira should not have been abruptly eliminated without some form of explanation. The fact remains, however, that after a Company doctor examined Brink on July 17, 1978, and found that Brink had full range of motion and was relatively free of pain, consideration should have been given to removing the lay off and restoring Brink to employment without restrictions or limitations.

The arbitrator must, in this type of case, accept the opinions expressed by Dr. Siqueira. The judgment of a neurosurgical specialist who performed the surgical procedure on Brink would have to be given greater weight

than that of a Company doctor who did not perform the surgery, even though the members of the Company's Medical Department may be intimately acquainted with the type of work to which Brink asked to be returned.

Brink was on S & A benefits until July 31, 1978. Brink should have been restored to employment with seniority rights as of July 31, 1978. He should be compensated for time lost from work for the period between July 31, 1978, and the effective date of his restoration to employment. There should be deducted from the amount found due to Brink any moneys that he earned in outside employment for the same corresponding period of time.

AWARD

Grievance No. 2-N-24
Award No. 652

Robert L. Brink should be restored to employment, with full seniority rights and without medical restrictions.

Robert L. Brink shall be compensated for time lost from work for the period between July 31, 1978, and the effective date of his restoration to employment. There shall be deducted from the amount found due to Brink any moneys he might have earned in outside employment for the same corresponding period of time.



ARBITRATOR

December 10, 1978

CHRONOLOGY

Grievance No. 2-N-24

Grievance Filed	May 16, 1978
Step Hearing	May 24, 1978
Step 3 Minutes	June 22, 1978
Step 4 Appeal	July 5, 1978
Step 4 Hearing	August 17, 1978 .
Step 4 Minutes	October 18, 1978
Appeal to Arbitration	October 20, 1978
Arbitration Hearing	November 14, 1978
Award Issued	December 6, 1978