Award No. 703
In the Matter of the Arbitration Between
INLAND STEEL COMPANY
AND
UNITED STEEL WORKERS OF AMERICA
AND ITS LOCAL UNION 1010
Grievance No. 8-N-48
Appeal No. 1306
Arbitration: Bert L. Luskin
August 13, 1981

INTRODUCTION

An arbitration hearing between the parties was held in Harvey, Illinois, on July 20, 1981. Pre-hearing briefs were filed on behalf of their respective parties.

For the Company:
Mr. R. B. Castle, Senior Representative, Labor Relations
Mr. R. T. Larson, Arbitration Coordinator, Labor Relations
Dr. P. M. Dunning, Director, Medical Department
Mr. A. R. Swatek, Superintendent, Plant No. 2 Mills Department
Mr. R. Johnson, Foreman, Plant No. 2 Mills Department
Mr. M. Budack, Foreman, Safety and Training, Plant No. 2 Mills Department
Mr. R. V. Cayia, Representative, Labor Relations
Mr. J. Follmer, Supervisor, Labor Relations, Inland Steel Mining Company

For the Union:
Mr. Theodore J. Rogus, Staff Representative
Mr. Joseph Gyurko, Chairman, Grievance Committee
Mr. J. C. Porter, Secretary, Grievance Committee
Mr. Jimmie Freeman, Griever
Mr. Raymond Gonzalez, Assistant Griever
Mr. Jackie E. Primos, Grievant

BACKGROUND

Jackie E. Primos has been employed with the Company for approximately 12 years. In May, 1980, Primos held the position of Leverman 1, 2, 4 in the mill operating sequence for the 28" Mill Department. From that position he was being temporarily promoted into the classification of Guide Setter on a regular basis.

On May 14, 1980, Primos visited the Company clinic for a periodic examination. The examination disclosed that Primos had an unusually high blood sugar count and Primos thereafter informed the examining physician that he had been treated for diabetes Mellitus for approximately seven or eight years. Primos was then asked to have a medical clinic form (Form 18) completed by his personal physician. The form was completed by Dr. Pargaonker (Ross Clinic, Inc.) who reported that Primos had a condition of Diabetes Mellitus and that he had prescribed insulin injections as a method of control. In a follow-up communication on June 17, 1980, Dr. Pargaonker reported that he had been treating Primos for diabetes since September, 1979, and in the months of May and June, 1980, a series of checks had led the doctor to conclude that the control of the diabetes condition was "satisfactory." He reported that recent blood sugar tests indicated an acceptable range "for the type of diabetes he has." The doctor concluded by stating that "I do not see any contraindications for the person to undertake his routine activities at the job."

When the Company clinic received the original Form 18 report from Dr. Pargaonker on (May 14, 1980) and after again interviewing Primos on May 19, 1980, the clinic placed a medical restriction on Primos. In the opinion of the Company's Medical Department, the use of insulin for the treatment of his diabetic condition might cause him to suddenly lose consciousness. The action was taken in accordance with the administrative policy followed by the Company clinic in instances where employees who had a diabetic condition were undergoing insulin therapy as a means of control.

The Plant No. 2 Mills Department was notified of the medical restriction, and on May 23, 1980, a placement meeting was convened. Members of the Placement Committee concluded that Primos could not safely perform the job of Guide Setter to which he had been temporarily promoted (on a regular basis) and Primos was denied further promotion to Guide Setter vacancies.

The clinic thereafter notified the Plant No. 2 Mills Department that it could not renew Primos' operator's license. That license was a requirement for any employee holding the position of Leverman 1, 2, 4. That

action was taken on the basis that diabetics on insulin are generally not considered qualified for assignments that require that type of operator's license. That decision necessitated a second placement meeting that was held on June 13, 1980, that resulted in the temporary demotion of Primos from the Leverman 1, 2, 4 position to the job of Roll Builder (the job immediately below the position of Leverman 1, 2, 4 in the mill operating sequence). In order to make certain that Primos would not be working at any significant height above floor level, a modification was made to a working platform and Primos was directed not to climb to any position above the modified platform level. Work that was required to be performed at above that level was to be performed by other employees who worked in the area in connection with the Roll Builder operation.

Oral discussions were held with the grievant's foreman and department superintendent wherein Union representatives challenged the Company's temporary denial of promotional opportunities to Primos and the action taken by the Company when it (temporarily) demoted Primos from the Leverman occupation to that of Roll Builder. On July 22, 1980, a grievance was filed contending that Primos was unjustly denied promotion to sequential positions higher than that of Roll Builder. The grievance requested that Primos be reinstated to his original position, that he be allowed to promote according to seniority, and that he be paid all moneys lost. The grievance contended that the Company action had resulted in a violation of Article 3, Section 1, and Article 13, Sections 1, 3 and 4, of the Collective Bargaining Agreement.

DISCUSSION

The evidence indicated that, although Primos had suffered from Diabetes Mellitus for a period of approximately eight years, he first began taking insulin injections on the advice of a doctor (Dr. Goldstone) on September 19, 1978. When Primos came under the care of Dr. Pargaonker in September, 1979, the course of treatment remained unchanged and the insulin injections continued thereafter without change and without incident. There is testimony in the record that during the entire eight-year period since Primos first became aware of the fact that he was suffering from diabetes, he had never suffered a loss of consciousness. There is no recorded instance of any indication of reaction due to the insulin injections and there is nothing in the record that would indicate that the condition of diabetes and the course of treatment for that condition has in any way resulted in an impairment of Primos' physical ability to carry out the duties of any of the occupations in the sequence which he had performed during his period of employment with the Company.

The Company contended that for many years its clinic policy has been to routinely restrict employees on insulin from working at heights, around moving machinery, and in conditions of excessive heat and stress. That policy is based upon the conclusion of Company doctors and specialists in the field of occupational medicine, that persons suffering from diabetes and who are on an insulin regimen are subject to a loss of consciousness, and employees working in a mill environment who are on insulin therapy have an increased probability of loss of consciousness. Failure to eat after an injection of insulin, eating foods outside of a diabetic's restricted diet, excessive physical exertion and exposure to heat or stress are factors which are most likely to induce loss of consciousness, with the probability of serious harm or injury to an employee if he is (at that point in time) working around moving machinery or working at heights.

The Company contended that its policy has been uniformly applied and has been consistently followed in accordance with the long standing administration of its policy of medical restrictions. The Company contended that its policy regarding diabetics who are on insulin therapy is supported by independent medical authorities in the field of occupational medicine, and the Company contended that its general policy concerning work activities of diabetic employees on insulin therapy has been recognized and is followed in a similar manner in other industries.

The Company contended that its policy has been held to be reasonable in nature by arbitrators at Inland Steel who have held that the medical restriction procedures adopted by the Company and implemented over a period of many years, does not constitute a violation of the contractual rights of an employee who is a diabetic and who is required to take insulin on a regular basis.

The Company contended that since the restriction action taken by the Company is temporary in nature, Primos would be protected with respect to his seniority rights by virtue of the language appearing in Article 13, Section 8, of the 1977 Collective Bargaining Agreement.

The Company contended that its decision to deny Primos promotion to the Guide Setter vacancies was supported by the job description which stated in part that employees in that occupation are occasionally exposed to being struck by a traveling table, suffering a fall or being struck by a hot bar. The Company contended that an employee in that occupation had to work at "Guide Setter heights," around moving tables and in close proximity to hot, moving structural size steel bars.

The Company contended that when the clinic advised the department that Primos' operator's license could not be renewed, it made it impossible for Primos to work in the Leverman 1, 2, 4 occupation. Although the Leverman 1, 2, 4 worked in an air-conditioned pulpit, he is responsible for the movement of controls under circumstances where a snycopal episode could result in serious injury or a fatal accident involving not only the Leverman but other persons working in the areas under the operational control of the Leverman.
The Company contended that when it disqualified Primos (temporarily) from his Leverman 1, 2, 4 occupation, the subsequent placement meeting resulted in the decision to move the grievant to the next lower occupation of Roll Builder. The Company contended that in order to eliminate the requirement that the grievant climb above floor level, it modified the work assignment by lowering the height of the platform and by informing Primos that any duties that required climbing were to be performed by other employees working in conjunction with Primos in the performance of the Roll Building operation.
The Company contended that it had met all of its contractual obligations including its responsibility mandated by Article 14, Section 1, (Safety and Health) . The Company contended that the judgments that it exercised and the action which it took were reasonable, were justified, and were warranted in the light of all of the evidence made available to the Company concerning Primos' condition and the course of treatment prescribed by his doctor.
The Company contended that Dr. Pargaonker's statement concerning Primos' ability to undertake the routine activities of the job did not take into consideration those elements of the jobs which were being performed by Primos that subjected him to serious harm and injury in the event that he might suffer from a syncopal episode at a time when the duties of either of the jobs would have placed him in proximity to moving equipment, moving material, or material generating extreme beat.
The Company contended that arbitrators at Inland Steel have uniformly affirmed the Company's right and obligation to rely upon the reasonable evaluations of its own medical personnel and the Company contended that in instances where medical opinions are conflicting, the opinions of the Company doctors should prevail where it can be demonstrated that the medical decision was based upon reliable medical information and with a knowledge of the operational conditions within the plant.
The Company contended that, although there is no indication that Primos has suffered from any reaction over a period of several years during which he had been taking insulin, the Company's medical policy is based upon his continued use of insulin therapy rather than any specific period of time during which an employee taking insulin may have been free of reaction or complication.
The Company contended that the monetary loss sustained by the grievant as a result of the Company's refusal to permit him to temporarily promote into the Guide Setter classification and the demotion of Primos from Leverman 1, 2, 4 to the Roll Builder classification, resulted in a minor and almost insignificant monetary loss to Primos. The Company pointed to the fact that records for the most recent six-pay periods indicate that the average earnings of employees in the Guide Setter classification to which Primos was being promoted was $11.18 per hour; the average earnings for Leverman 1, 2, 4 in the same period of time was $11.125 per hour; and the average earnings for employees in the Roll Builder classification for the same period of time was $11.095 per hour. The Company contended that in view of the fact that Primos has developed an excellent service record and has received laudatory recommendations from every foreman with whom he has worked, the Company found it difficult to have to demote an employee who has demonstrated superior work abilities. The Company contended, however, that the overriding consideration was the recognition of the fact that it owed a duty to Primos to refuse to permit him to work in an occupation where his medical condition might subject him to serious harm and injury.
The Union contended that Primos has been on insulin since September, 1978, and, while filling vacancies in the Guide Setter classification, he performed all of the duties of that classification without incident while working under the direction of a Roller. The Union contended that Primos had worked as a Leverman for about three years during which time he operated the controls from an air-conditioned pulpit. The Union contended that he was able to control the back and forth movement of the bars without incident and without encountering any problems that could in any way be attributed to the fact that he is a diabetic and has been on insulin for several years.
The Union contended that Primos has never had an insulin reaction either on or off the job. The Union contended that the work duties of a Leverman involve observation and the manipulation of hand controls. The Union contended that by contrast, the Roll Builder job to which Primos was demoted is a physically demanding job that subjects Primos to heat and places him in a position where he has a far greater exposure to those problems which could, in the opinion of medical authorities, induce a loss of consciousness.

The Union contended that the Company has for some period of time contended that the critical period for any diabetic who is on insulin is the first year following the commencement of insulin injections. Since Primos has been on insulin since 1978, the probability of a syncopal episode has greatly diminished.
The Union contended that the eight or nine percent record of syncopal episodes involving Company employees who are diabetics and on insulin would not warrant the blanket disqualifications that result from the implementation of the Company's restriction policy.
The Union contended that an analysis of the job descriptions for the classifications of Guide Setter, Leverman 1, 2, 4, or Roll Builder, would indicate conclusively that Primos has demonstrated that he can perform the duties of those occupations without incident and with complete safety to himself. The Union contended that the Company's decision to place medical restrictions on Primos that resulted in his disqualification from the position of Guide Setter and Leverman were unnecessary, unreasonable and constituted an arbitrary exercise of judgment on the part of the Company's Medical Department and the members of supervision in the department in which Primos is employed.
Matters involving safety of employees, operating conditions relating to employees' safety and the Company's responsibility to take measurable steps to provide for the safety and health of its employees, have been the subject matters of a series of awards at this plant issued by Arbitrators Cole, Kelliher, and by this arbitrator. In Inland Award 697, this arbitrator referred to the fact that medical restriction procedures were adopted and followed by the Company for some thirteen years preceding the filing of the grievance in that case. This arbitrator found that the medical restriction procedure concept was an appropriate area for management concern. The arbitrator found that the procedure adopted and followed by the Company with respect to restrictions placed upon employees who were diabetic and who were receiving insulin on a regular basis was a reasonable exercise of judgment on the part of the Company. The same views had been expressed by other arbitrators in similar issues arising between these same parties. In several similar cases, however, Arbitrator Cole and this arbitrator have pointed out that the restrictions must be reasonable and each situation must be examined and analyzed in order to determine whether the judgments expressed by the Company's Medical Department and implemented by departmental members of supervision are arbitrary, capricious or discriminatory in nature.
In the instant case the grievant was restricted from accepting promotional upgrades to the Guide Setter classification. The reasons for that restriction were based upon sound, medical considerations and the working conditions involved in the performance of the duties of that classification. All of the evidence in this record would support a finding that the decision of the Company to restrict Primos from performing the Guide Setter duties were reasonable and constituted an appropriate exercise of judgment on the part of the Company's Medical Department and its operating supervision.
The decision of the Company to deny Primos an operator's license was the primary cause for his removal from the Leverman 1, 2, 4 classification. Although it might appear that working in a pulpit where temperatures could be maintained at a comfortable level would be an ideal setting for an employee who was a diabetic and who was taking insulin on a regular basis, the operation performed by the Leverman could result in serious damage or serious harm and injury to other employees if the operator suffered a syncopal episode while performing the required duties of the classification. Although it would be most difficult to find an occupation (in a steel plant setting) that would be totally free from some inherent dangers, the fact remains that the Leverman 1, 2, 4 occupation requires that the incumbent obtain an operator's license. Since the Company's policy has been firm and consistent in denying an operator's license to persons who are diabetic and who are on insulin, that fact alone would preclude Primos from working in that occupation.
The physical setting and general working conditions involved in the performance of the duties of the job into which Primos was placed, might appear to be more physically and mentally demanding than the duties of the Leverman 1, 2, 4 classification. The fact remains, however, that the possibility of an injury to the Roll Builder as a result of a fainting episodes would be remote. There would be little if any danger to fellow employees working in that area if Primos (while performing those duties) suffered a syncopal episode. The physical modifications that were made and the working instructions issued to Primos and other employees working in that area would almost preclude such a possibility.
A member of supervision described Primos as the type of employee who "makes a foreman look good." Members of supervision uniformly described Primos as an employee who exercised care in the performance of his functions under circumstances where a supervisor could rely upon the quality of the work performed by Primos. It is evident that the members of supervision who participated in the decision to temporarily deny promotional opportunities for Primos in the Guide Setter classification and to demote

Primos from his Leverman position, were most reluctant to lose the services of Primos in those higher-rated positions. It is difficult to attempt to explain to a conscientious, able and exceptionally well motivated employee that he cannot work in a position to which he would be entitled by virtue of his abilities and his seniority rights.

Primos undoubtedly views the Leverman 1, 2, 4 occupation as a far less physically demanding position than the Roll Builder position. The work is performed in a far more pleasant and comfortable setting than is the Roll Builder occupation. The fact remains, however, that the restriction placed upon Primos is the same type of restriction that has been placed upon all other employees who are diabetics and who are required to take insulin as a means of control for that condition.

In the opinion of the arbitrator, the Company's exercise of judgment was based upon safety considerations. The decision to place medical restrictions upon Primos was not based upon any desire to punish or to discipline Primos. It was a reasonable and humane decision, consistent with the application of a procedure that has heretofore been found to be appropriate. The judgments exercised in this case could not be construed to constitute an exercise of judgment that would be considered to be arbitrary, capricious or discriminatory in nature.

The arbitrator must, therefore, find that the medical restrictions placed upon Primos did not violate any provision of the Collective Bargaining Agreement.

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

AWARD No. 703

Grievance No. 8-N-48

The grievance of Jackie E. Primos is hereby denied.

/s/ Bert L. Luskin

August 13, 1981