Inland Steel Award No. 709
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PENSIONS AND INSURANCE
GRIEVANCE NO. PIB-N24-169
APPEAL NO. 1310
AWARD NO. 709

SUMMARY: The Company was not justified in denying insurance benefits on the ground that grievant's disability was "due to accident ... arising out of or in the course of employment by other than the Company." Grievant was injured while alighting from a tractor which he had been operating on his own property and whether he was moving it to a designated area preliminary to lubricating the tractor or for the purpose of clearing the area in preparation for a family gathering, it could not be found that he was engaged in any commercial enterprise or that his activities constituted a form of "employment by other than the Company."

COMPANY: INLAND STEEL CO.
PLANT: EAST CHICAGO, IND.
DISTRICT: 31
ARBITRATOR: BERT L. LUSKIN
DATE OF DECISION: NOVEMBER 10, 1981
BACKGROUND
Dusan Andjelich was employed by the Company on August 18, 1975. Andjelich, a Diesel Mechanic, reported to the Company that on May 31, 1980, he twisted his ankle, suffered a torn ligament, and was unable to report for work. He reported that he was under the care of his doctor, and on June 2, 1980, he filed a claim for S & A benefits requesting that his disability benefits commence on June 1, 1980.
The Company requested details regarding the accident. On June 10, 1980, Andjelich wrote to the Company. The pertinent portions of that letter are hereinafter set forth as follows:
.... "I received your letter asking for a detailed description of my accident on May 31, 1980.
"On Saturday May 31, I was working around the house with my brother. We were moving our farm equipment so to better position them for greasing or any other work before using them. When I parked my tractor, I was climbing off, and my left foot hit a hole in the ground which I didn't see, thus twisting my ankle. I went to Broadway Methodist Hospital and the doctor told me I had a torn ligament."
On June 25, 1980, Andjelich was visited at his farm, located in a rural area of the City of Crown Point, Indiana, by Cornell Scott, a member of the Company's Personnel Department who serves as an investigator of insurance claims filed by Company employees under the Company's S & A program of insurance benefits.
Scott thereafter reported to the Company that Andjelich owned and operated a 39-acre farm. Scott reported that Andjelich had informed him that Andjelich raised hay and corm in amounts that permitted the sale of the corps on a commercial basis. Scott reported that Andjelich had informed him that he was engaged in breeding pigs and in raising sheep for eventual sale on the commercial market. Scott reported that Andjelich had informed him that he had sustained an injury on Saturday, May 31, 1980, exactly as Andjelich had reported the matter to Inland's Insurance Section in Andjelich's letter of June 10, 1980. Scott also reported to the Company that he had observed Andjelich while Andjelich was showing Scott around the farm, and that Andjelich was able to walk without a limp. Scott further reported that when he had arrived at the farm Andjelich was operating a front-end loader with which he was moving broken pieces of concrete from a concrete pad to a pile fifty feet away. Scott reported that Andjelich informed him that he was clearing the area in order to prepare a site on which a new barn could be erected which would replace a barn that had been destroyed in a fire.
At the conclusion of Scott's visit, Scott informed Andjelich that, in his opinion, Andjelich might not be eligible for benefits under the PIB program since he had sustained an injury while he was alighting from a tractor which he was using in connection with the operation of a commercial venture which constituted "employment" within the meaning of that term under the provisions of Section 2.4 of the PIB plan.

On July 8, 1980, Andjelich's claim was denied on the basis that it did not meet the requirements set forth in the insurance program. When Andjelich was informed of the denial of the claim, he filed an insurance grievance on July 18, 1980, contending that he was denied the benefits to which he was entitled pursuant to the provisions of the PIB Agreement. The grievant requested that he be paid all moneys due him. A hearing was held in August 1980, and was concluded at a second meeting held between the parties on October 13, 1980. In the second meeting, Andjelich contended that he had sustained the injury to his leg when he was alighting from a tractor which he had been using for the purpose of cleaning the yard in preparation for a family gathering that was to be held at Andjelich's home. The Company denied the claim and contended that Andjelich had changed his story in an attempt to achieve eligibility for S & A benefits after he had been denied benefits on the basis of the original version of the accident which he had sustained on May 31, 1980.

Andjelich had returned to work on June 29, 1980, after having been released for return to work by his doctor. His claim, therefore, covered the period of his absence from work between June 1, 1980, and the effective date of his return to work on June 29, 1980. 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:

"SECTION 2

"SICKNESS AND ACCIDENT BENEFITS

"Eligibility

"2.0 If you become totally disabled as a result of sickness or accident so as to be prevented from performing the duties of your employment and a licensed physician certifies thereto, you will be eligible to receive weekly sickness and accident benefits. Benefits will not be payable for any period during which you are not under the care of a licensed physician.

"Duration of Benefits

"2.1 Sickness and accident benefits begin with the first day of total disability resulting from an accident and with the eighth day of total disability resulting from a sickness and are payable: ....

"2.2 ....

"2.3 ....

"2.4 In the event you become totally disabled due to sickness or accident arising out of or in the course of your employment at the Company, the amount of weekly sickness and accident benefits otherwise payable will be reduced by any weekly benefits which you are or could become entitled to receive during the period of your absence from work due to such disability pursuant to any workmen's compensation law or any occupational disease law or other similar applicable law. No benefits are payable in the event of total disability due to accident or sickness arising out of or in the course of employment by other than the Company. Payments under such law for hospitalization or medical expense or specific allowances for loss of members or disfigurements in excess of the portion of such allowances attributable to temporary total disability will not reduce the amount of your sickness and accident benefits....." (Emphasis supplied.)

The Company contended that Andjelich was engaged in the commercial farming of a 39-acre farm where he raised crops of hay and corn and sold the crops commercially to other farmers or to cooperatives. The Company contended that Andjelich also was engaged in raising and selling pigs and sheep on a commercial basis, and the Company contended that a 39-acre farm is considered (under Lake County, Indiana, zoning ordinances) to constitute a "farm" (as distinguished from a "hobby farm") where the parcel of land used for agricultural purposes is at least 20 acres in size and includes buildings and equipment essential to agricultural production. The Company contended that Andjelich's farm was located in an agricultural zone and was listed for zoning purposes as A-1.

The Company contended that there is substantial doubt with respect to the extent or degree of Andjelich's "injury" in view of the fact that on June 25, 1980 (some four days before his return to work), he was able to walk without a limp and was physically able to operate a front-end loader while he was engaged in moving large pieces of stone while preparing a construction site.

The Company contended that Andjelich changed his version of the manner in which his "injury" had occurred only after he had been informed that his claim would, in all probability, be denied on the basis of the original version of the accident provided to the Company at the time that the Andjelich claim was filed.

The Company contended that even if Andjelich sustained a disability which would have prevented him from performing the duties of his occupation at Inland, the accident arose while Andjelich was engaged in a

form of commercial self-employment which would constitute "employment by other than the Company" and would have thereby served to deny Andjelich eligibility for benefits under the language appearing in Section 2.4 of the PIB Agreement.

The Company contended that Roberts' Dictionary of Industrial Relations describes the term "self-employed" as being the "gainfully occupied segment of the work force whose members work for themselves." The Company contended that the same dictionary describes the term "self-employment" as "the act of being employed or working for oneself. Among those who are generally regarded as self-employed or engaged in self-employment are doctors, lawyers, farmers, etc." The Company contended that Webster's Third New International Dictionary describes the term "self-employed" as meaning "earning income directly from one's own business, trade or profession, rather than as a specified salary or wages from an employer."

The Company contended that, although farmers are exempted under the laws of the State of Indiana from a requirement that they must carry insurance under the Indiana Workman's Compensation Act, the Act permits a farmer to waive the exemption and accept the provisions of the Act by giving notice to that effect. The Company contended that Andjelich was "self-employed" and engaged in a commercial operation when he sustained an injury on Saturday, May 31, 1980. The Company contended that Andjelich was "self-employed" and would thereby be considered to have been in a "course of employment by other than the Company," and he would be ineligible for benefits resulting from his disability.

The Union contended that the language appearing in Section 2.4 of the PIB is clear, unambiguous and was designed to limit the Company's liability in instances where an employee was holding down two jobs with two different companies. The Union contended that, if an employee sustained a disability while working for a second employer, Inland, under those circumstances, would not be liable for S & A benefits. The Union contended that there must be actual "employment" with another company, and it was the Union's contention that the words "employment by other than the Company" could not be extended to include "self-employment."

The Union contended that employees who have sustained injuries and have been disabled as a result of performing tasks around and about an employee's home would not be considered as having been engaged in "employment" even though the work performed by the employee could have been performed by a contractor or someone employed by the employee.

The Union contended that the statements attributed to the grievant concerning the circumstances surrounding his injury are not contradictory, and the second statement merely served to amplify the first statement. The Union contended that, in any event, work performed by an employee of Inland around and about that employee's personal farm or his home would not constitute a form of employment that would disqualify him from receiving S & A benefits for an injury he may have sustained as a result thereof.

The Union pointed out that Webster's Dictionary defines an employee as "one employed by another for wages or salary and in a position below the executive level." The Union contended that when the grievant was working around his farm or his yard or his residence, he was not "employed by another for wages or salary," and he did not meet the accepted dictionary definition of an "employee" while performing those functions.

Andjelich's claim was supported by a statement from his doctor certifying to the fact that Andjelich had sustained an injury resulting in a disability that would prevent him from performing the duties of his occupation for the period between June 1, 1980, and June 29, 1980. Andjelich, therefore, complied with the reporting procedures. The fact that Andjelich was observed by an investigator on June 25, 1980, walking without a noticeable limp and operating a frontend loader, would not necessarily mean that Andjelich was not, in fact, disabled as of that date. The investigator's observations may have caused him to become suspicious of the legitimacy of Andjelich's claim of continuing disability, but the medical opinions expressed by Andjelich's doctor would have to be considered to be controlling. There are no other contradictory medical opinions, and the Arbitrator must, therefore, find that, on the basis of the record in this case, Andjelich was in fact disabled during the period between June 1, 1980, and June 29, 1980.

The Union relied in part upon the dictionary definition of the work "employee," and the Company relied upon the dictionary definition of the terms "self-employed" and "self-employment." The precise words used in the PIG Agreement are somewhat different than the terms "employee" or "self-employed." The PIG Agreement provides in part that benefits are not payable in the event of total disability "... arising out of or in the course of employment by other than the Company." It is conceivable that under certain sets of facts and circumstances a form of self-employment could fall within the exclusionary language. The facts and circumstances surrounding each case would determine whether the limiting language would apply.

The Company contended that the two versions of the manner in which the injury was sustained are contradictory, and that the second version offered by Andjelich was designed to avoid a denial of the claim based upon Andjelich's original report and version of the accident. In the opinion of the Arbitrator, it would make very little difference whether Andjelich was moving his tractor to a designated area preliminary to lubricating the tractor or whether he had driven the tractor to a designated area for the purpose of clearing the area in preparation for a family gathering. The injury occurred when he alighted from the tractor and stepped in a hole. He was not at that time engaged in any commercial enterprise nor was he in the act of performing an operation which could be construed to constitute a form of "employment by other than the Company."

On the basis of the facts and circumstances in this record, the Arbitrator must conclude that Andjelich sustained an injury to his leg. His injury was diagnosed by a doctor who reported to the Company that Andjelich would be disabled and unable to report for work for the period between June 1 and June 29, 1980. The fact that Andjelich suffered the injury while alighting from a tractor which he had been operating on his own property, would not constitute a form of "employment by other than the Company" that would serve to make Andjelich ineligible for the benefits which he claimed. The Arbitrator must accept the medical reports submitted in this case, and he must find that Andjelich was entitled by virtue of the applicable language of the PIB Agreement to S & A benefits for the period covered by his claim.

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

AWARD NO. 709

Grievance No. PIB-N24-169

The grievance of Dusan Andjelich is sustained. Andjelich was entitled to disability benefits for the period between June 1, 1980, and June 29, 1980.