Award No. 734
In the Matter of the Arbitration Between
INLAND STEEL COMPANY
AND
UNITED STEELWORKERS OF AMERICA
AND ITS LOCAL UNION 1010
Grievance No. 3-P-29
Appeal No. 1347
Arbitrator: Mr. Bert L. Luskin
April 20, 1983

INTRODUCTION

An arbitration hearing between the parties was held in Harvey, Illinois, on March 30, 1983. Pre-hearing briefs were filed on behalf of the respective parties.

APPEARANCES

For the Company:
Mr. R. K. Scholes, Senior Representative, Labor Relations
Mr. R. B. Castle, Arbitration Coordinator, Labor Relations
Mr. T. A. Dec, General Foreman, Coal and Coke Handling, No. 3 Coke Plant
Mr. F. J. Rocchio, Jr., Project Manager, No. 2 Caster, Engineering
For the Union:
Mr. Thomas L. Barrett, Staff Representative
Mr. Joseph Gyurko, Chairman, Grievance Committee
Mr. William Gailes, Vice Chairman, Grievance Committee
Mr. Don Lutes, Secretary, Grievance Committee
Mr. Mark Thomsen, Griever
Mr. Gilbert L. Serrano, Grievant

BACKGROUND

Gilbert L. Serrano was employed by the Company on May 13, 1965. In June, 1981, Serrano was working in the No. 3 Coke Plant Department. He held the position of an elected area assistant grievance committeeman.

On May 15, 1981, Serrano represented an employee named Clarence Martin who had submitted a step 1 oral complaint on May 13, 1981. Martin's grievance contended that on May 13, 1981, an employee named Martinez had been held over to work a second eight-hour shift in the position of mixer-helper, a job falling within Martin's sequence. It was Martin's contention that he should have been called out to fill the vacancy instead of holding over Martinez who was a non-sequential employee.

In the Step 1 oral complaint meeting the General Foreman (Dec) produced Company records which the Company contended demonstrated that the employee who had been scheduled to work as a mixer-helper on the turn in question on May 13, 1981, did, in fact, work that turn of work. The General Foreman contended, therefore, that in accordance with the records which he produced, no vacancy had existed and there was no need to fill a vacancy. He pointed to the records to illustrate the fact that Martinez (the employee who allegedly had been held over to work a turn) had, in fact, reported off for her scheduled turn on the day in question and was, therefore, not even available to be held over as the grievance alleged. The Step 1 oral complaint form was completed with a notation indicating that the Company could not possibly have made a manpower utilization error as Martin had alleged.

On June 5, 1981, Serrano and Martin met with the No. 3 Coke Plant Department superintendent (F. J. Rocchio, Jr.) and with General Foreman Dec. A Step 2 oral meeting was held concerning Martin's complaint. After a period of discussion, Superintendent Rocchio pointed to the fact that the Company records did not support Martin's contention that a non-sequential employee had worked a turn that Martin should have worked. Superintendent Rocchio thereupon insisted that the grievance should be remanded to Step 1 for further discussion. It was Rocchio's contention that the Union's supporting fact statement was based upon erroneous information and that, if the grievance was remanded to Step 1, it might be possible to determine where the error had occurred.

Serrano insisted, however, that if an error had occurred, the error should be corrected by further examination of the records provided by the Company and, in the event the grievance was to be denied, it should not be remanded to Step 1 but should instead be sent on to the next step of the grievance procedure (Step 3) for disposition thereof. Superintendent Rocchio again insisted that the grievance should be

returned to Step 1. Serrano persisted in contending that the parties should further discuss the fact situation or, in the alternative, refer the grievance on to Step 3. Rocchio thereupon informed the parties present that the meeting was over, and he insisted that Serrano leave his office. Serrano persisted in discussing the matter further, and he continued to take the position that the grievance should not be returned to Step 1. Superintendent Rocchio then ordered Serrano out of his office and, when Serrano did not leave, Superintend Rocchio informed Serrano and Martin that they were "on the road to termination." Superintendent Rocchio informed Serrano that he was being insubordinate, and he threatened Serrano with the imposition of disciplinary measures if he persisted in remaining in the office. Rocchio thereupon informed Serrano that if Serrano did not leave, he (Rocchio) intended to call a plant guard for the purpose of having Serrano escorted out of his office and out of the plant. After some exchange of language, Martin left the office. Serrano did not leave the office and he was thereupon escorted from the office and the plant by a member of the Plant Security Department.

On June 10, 1981, Serrano was informed that he was being suspended for three turns for violation of Rule 127-o of the General Rules for Safety and Personal Conduct. Serrano thereafter submitted a grievance protesting the suspension and contending that just cause did not exist for the imposition of the disciplinary suspension, and further contending that the Company had violated a number of provisions of the Collective Bargaining Agreement.

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

Article 6 establishes a thoroughly comprehensive and highly sophisticated procedure for the resolution of grievances. The history of the development of Article 6 is so well known to the parties that it needs no further amplification in this opinion. It is sufficient to note that the parties went to great lengths to provide a contractual system whereby grievances could be thoroughly discussed in order that all essential fact situations could be explored in the early stages of the grievance procedure (Steps 1 and 2). The parties agreed that every effort possible would be made to resolve fact disputes on the basis of an examination of available records before a grievance is reduced to writing and enters the 3rd step of the grievance procedure.

The grievance submitted by Serrano on behalf of an employee named Martin was precisely the type of grievance that the parties contemplated could be resolved if it was kept in the department in the early stages in order that the fact situation could be developed, explored and resolved before it was moved into the more formal written steps of the grievance procedure.

When the General Foreman was initially informed of Martin's complaint, he checked the records and concluded that the alleged incident could not possibly have occurred on May 13, 1981. The General Foreman, in responding to the Step 1 complaint, informed the grievant (Martin) and the Committeeman (Serrano) that no vacancy had occurred on the turn in question since the employee scheduled to work that turn did, in fact, work that turn. The General Foreman further pointed to the fact that the employee allegedly held over had reported off on the day in question and was not available to work the questioned turn. It became evident to the General Foreman that the incident either did not happen or the complaint was predicated upon a wrong date.

The records were shown to the Grievance Committeeman who insisted that the grievant's recollection was accurate. When the matter could not be resolved between the General Foreman and the Grievance Committeeman, the grievance was then moved to Step 2 and a meeting was scheduled between the Grievance Committeeman (Serrano), the grievant (Martin), General Foreman Dec and Department Superintendent Rocchio. In that meeting the Superintendent insisted that the incident could not possibly have occurred on the alleged date and he pointed to the fact that Company records (including records from which payroll computations were made) would support the Company's contention that the complained-of incident could not possibly have occurred on May 13, 1981.

Superintendent Rocchio showed Serrano the records. The information was contained on one of a number of sheets that consisted of a printout of relevant scheduling data. When Committeeman Serrano could not immediately understand and locate the information contained in the printout, Superintendent Rocchio suggested that the matter be referred back to Step 1. It was Superintendent Rocchio's opinion that if the General Forman, the grievant (Martin), and Committeeman Serrano could sit down and carefully examine the Company records, everyone concerned would be satisfied that the incident could not possibly have occurred on May 13, 1981. It was conceivable that an incident had occurred that might have justified a legitimate complaint, but that incident could not have occurred on the complained-of date of May 13, 1981.

The evidence would indicate that the parties had spent about ten minutes discussing the grievance when Superintendent Rocchio insisted that the grievance be returned to Step 1 for further investigation in order to develop the pertinent fact situation. That might very well have been the logical course to follow since it would have provided Serrano with more time in which to examine Company records and to determine whether the incident complained of by Martin could have occurred on a different date.

The Collective Bargaining Agreement provides for the type of procedure suggested by Superintendent Rocchio. The parties clearly manifested their intention of making every reasonable effort possible to resolve a grievance in the early stages of the grievance procedure and especially at the departmental level where basic facts and records could be explored and examined. Serrano, however, did not accept the suggestion for the return of the grievance to Step 1. It was his opinion that if he could have more time to look at the records and to engage in further discussion with Superintendent Rocchio and with General Foreman Dec, any error that may have been committed could have been discovered and adjusted in the Step 2 meeting. Superintendent Rocchio, however, was obviously unwilling to spend any more time on that grievance, and he insisted that the grievance be returned to Step 1.

Article 6, Section 5, provides for a means whereby a grievance can be returned to a prior step in instances where "the parties may agree." Article 6, Section 5, also provides for the return of a grievance to Step 1 where the requirements of Step 1 had not been met by the parties. In the instant case the requirements of Step 1 had, in fact, been met and the grievance had proceeded to Step 2. The grievance could have been returned to Step 1 if the Committeeman had agreed to the procedure suggested by Superintendent Rocchio. The Committeeman, however, was not contractually required to agree to remand the grievance to Step 1, and he had every right to insist that the grievance be moved to Step 3. The fact that the Superintendent's suggestion may have been the most appropriate one in view of the fact that the records in the possession of the Company indicated that the incident could not possibly have occurred on the complained-of date, is not the issue.

Committeeman Serrano insisted on additional discussion at Step 2. Superintendent Rocchio believed that he did not have to spend any more time in the Step 2 meeting when, in his opinion, the records could be more carefully examined by the Committeeman and by the General Foreman at the Step 1 level.

Serrano was told that the meeting was over. Serrano was told that the grievance would be returned to Step 1. Serrano, however, did not have to accept the decision made by Superintendent Rocchio to return the grievance to Step 1. He did, however, have to accept the Superintendent's direction that Serrano would have to leave the Superintendent's office. Even if the Superintendent had exhibited impatience, he had the right to demand that Serrano leave the office after the Superintendent had declared the meeting at an end.

What emerges from all of the evidence in the record is that Serrano's offense was in failing to immediately leave the office after he had been ordered to do so. He never raised his voice. He did not use profanity. His arguments were made in a respectful fashion and he merely insisted on continuing the meeting in order that there could be a full disclosure of all of the pertinent facts on which the grievance was based. The meeting did not continue for any inordinate period of time.

When Superintendent Rocchio decided to end the meeting, it was incumbent upon Serrano to accept that decision even though he did not have to accept the Superintendent's decision that the grievance would be referred back to Step 1. It was the Superintendent who exhibited a loss of control when he said to Serrano "get your ass out of my office." Almost immediately prior thereto he had threatened Serrano and the grievant Martin with possible termination from employment if they persisted in continuing the discussion. The Superintendent had every right to close the meeting and to ask Serrano to leave his office. If Serrano believed that his contractual rights or the contractual rights of the grievant Martin were being violated by what he believed to be the Superintendent's impatience in refusing to give him a reasonable opportunity to discuss the matter during the Step 2 meeting, then and in that event Serrano had the right of access to the grievance procedure He should not have persisted in insisting on a continuation of the discussion, although he had every right to refuse to allow the grievance to go back to Step 1.

Serrano may have been insubordinate in immediately failing to carry out a direction of the Superintendent to leave the office. The offense which he committed may have justified some form or reprimand, but, in the opinion of the arbitrator, it did not constitute just cause for the imposition of a three-day suspension from employment. When Serrano was about to be escorted from the office by a security guard, his pass was confiscated. That is a rather unusual procedure. That is a procedure that is followed in instances where a employee has committed an offense so serious in nature as to justify a suspension from employment pending discharge.

Serrano had developed an unenviable disciplinary record. In the five-year period preceding the incident in question Serrano had been reprimanded on two occasions for insubordination. He had been suspended for three turns for being out of his work area and for improperly leaving the plant. He was suspended for five turns for being out of his work area and for improperly leaving the plant. He was again suspended for five turns for being out of his work area. He underwent a record review based upon his unsatisfactory record. He was later suspended for being out of his work area, for insubordination and because of his overall unsatisfactory record. He was terminated from employment, and was thereafter restored to employment as a result of an arbitration award that imposed a sixty-day suspension from employment in the place and stead of the termination.

Even taking into consideration the progressive nature of the forms of discipline imposed against Serrano, the record in this case would not support a conclusion or finding that Serrano had committed an offense so serious in nature as to justify the imposition of a three-day suspension from employment. Serrano believed that he owed the grievant Martin a duty and obligation to represent the employee in a reasonably vigorous manner. However, he should not have persisted in his efforts to continue the discussion in the Superintendent's office after the Superintendent had advised him of the fact that the meeting was over. Serrano, however, had not continued the discussion for an inordinate period of time. He did not have to consent to the Superintendent's order to have the grievance returned to Step 1. The Superintendent's impatience is best manifested by the way in which he addressed Serrano when he ordered Serrano to leave his office. The total period of time involved in the incident (including the meeting and discussion) followed by the Superintendent's order to leave the office, consumed approximately twenty minutes Although the Superintendent believed that he had devoted a reasonable amount of time to the discussion, the further effort on Serrano's part to continue the discussion could not constitute an act of insubordination so serious in nature as to justify a three-day suspension from employment.

Serrano contended that the three-day suspension from employment had resulted in a loss of working opportunity totaling forty hours. He based that contention on the fact that if he had not been suspended, he would have worked a turn of work on Saturday, June 6, 1981, at premium pay, and his turn of work on Sunday, June 7, 1981, would have been paid for at double time.

The suspension imposed against Serrano was for the turns of June 7, 8 and 9, 1981 (Sunday, Monday and Tuesday). The suspension should be set aside and Serrano should be compensated for the hours of work that he was caused to lose for the days of June 7, 8 and 9, 1981.

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

AWARD NO. 734

Grievance No 3-P-29

The suspension from employment imposed against Gilbert L. Serrano for the days of Sunday, June 7, 1981, Monday, June 8, 1981, and Tuesday, June 9, 1981, shall be set aside, and shall be substituted by a written reprimand. Serrano shall be compensated for the moneys which he would have earned had he been permitted to work on June 7, 8 and 9, 1981.

/s/ Burt L. Luskin

ARBITRATOR

April 20, 1983