

In the Matter of the Arbitration Between

INLAND STEEL COMPANY)

AND)

UNITED STEELWORKERS OF AMERICA)
AND ITS LOCAL UNION 1010)
_____)

Grievance No. 20-P-104

Appeal No. 1350

Award No. 737

INTRODUCTION

An arbitration hearing between the parties was held in Harvey, Illinois, on July 12, 1983. Pre-hearing briefs were submitted on behalf of the respective parties.

APPEARANCES

For the Company:

Mr. Robert B. Castle, Arbitration Coordinator, Labor Relations

Mr. Rene Vela, Assistant Superintendent, Labor Relations

Mr. George Ross, Assistant Superintendent, Central Mechanical Maintenance Department

Mr. Bernard Iczkowski, Pipe Shop General Foreman, Central Mechanical Maintenance Department

Mr. Harlan Butler, Pipe Shop Foreman, Central Mechanical Maintenance Department

Mr. Larry Yurko, Lieutenant, Plant Protection

Mr. John T. Bean, Clinic Counselor, Medical Department

Mr. Marion M. Roglich, Coordinator, Labor Relations

Mr. John A. Nielsen, Senior Representative, Labor Relations

For the Union:

Mr. Thomas L. Barrett, Staff Representative

Mr. Joseph Gyurko, Chairman, Grievance Committee

Mr. Don Lutes, Secretary, Grievance Committee

Mr. Mike Mezo, Griever
Mr. Rudy Schneider, Griever
Mr. Dennis Shattuck, Griever
Mr. Armando Martinez, Grievant

Arbitrator:

Mr. Bert L. Luskin

BACKGROUND

Armando Martinez was employed by the Company on June 4, 1973. He became established as a pipe fitter welder assigned to the pipe shop of the Central Mechanical Maintenance Department. Martinez entered the military service on September 16, 1974, and was discharged from the military service on September 17, 1978. He thereafter returned to active employment with the Company and worked until an incident occurred on January 7, 1983, that led to his suspension from employment and to his termination from employment on January 31, 1983.

Martinez worked the 7 - 3 turn on Friday, January 7, 1983. On that day Martinez was assigned to perform pipe fitter duties in the Plant No. 1 Galvanizing Department. A foreman (K. Brown) found a wallet in that department. The wallet was checked for identification. The identification in the wallet indicated that it was the property of Martinez. In checking the identification, the foreman noted that the wallet contained what the foreman believed to be three marijuana cigarettes. The wallet was turned over to a general foreman who reported the discovery to plant protection.

The Company's Plant Protection Department conducted an investigation. During the course of that investigation, Martinez informed the lieutenant of plant protection that the wallet belonged to him (Martinez). Martinez admitted that the three cigarettes found in the wallet did contain marijuana. He conceded that the cigarettes belonged to him, but he contended that he had accidentally brought the cigarettes

into the plant in his wallet on that day. In response to several questions, Martinez informed the Company's plant protection investigator that he was aware of a Company rule and regulation against use or possession of marijuana on Company premises, and he conceded that he had been a user of marijuana since 1974. A written statement was taken. Martinez refused to sign that statement. He was escorted from the plant. The cigarettes were thereafter chemically tested and proved to contain marijuana.

A full investigation was thereafter conducted on January 12, 1983. At that time Martinez confirmed the facts which had been provided to the lieutenant of plant protection. He conceded that he had brought the marijuana cigarettes into the plant. He stated, however, that on the preceding evening he had attended a party given in honor of a friend who had just been discharged from the Marine Corps. Martinez stated at that time that his friend had given him the marijuana and asked him to hold the cigarettes for him, and that he had placed the cigarettes in his wallet and had forgotten about them when he came to work several hours thereafter. In response to questions, Martinez stated that, although he had been a regular and frequent user of marijuana, he had never smoked marijuana in the plant nor had he ever brought marijuana into the plant on any previous occasion. Martinez stated at that time that he had become addicted to marijuana while he was serving in the United States Air Force, and that he had sustained some discipline while in the Air Force for marijuana usage. He stated also that he had been enrolled for a short period of time in a drug rehabilitation program conducted by the Air Force.

Martinez was suspended from employment on January 17, 1983, preliminary to discharge for a violation of Rule 127-b of the Company's General Rules for Safety and Personal Conduct. That rule is hereinafter set forth as follows:

"127. The following offenses are among those which may be cause for discipline, up to and including suspension preliminary to discharge:

"b. Reporting for work under the influence of drugs not prescribed by a physician for personal use while at work; being in possession of, or use of, such drugs while on Company property, or bringing such drugs onto Company property."

A suspension hearing was requested and was held on January 21, 1983. On January 31, 1983, Martinez was notified that he was terminated from employment.

A grievance was filed protesting the termination. The grievance contended that the Company did not have just cause for Martinez' termination from employment, and the grievance contended that the Company had violated procedural steps set forth under Article 8, Section 1, of the Collective Bargaining Agreement, and had additionally failed to observe the provisions of Article 14, Section 8, of the Collective Bargaining Agreement. The grievance contended that the Company had failed to follow the procedures set forth in Article 14, Section 8, for employees who had become "afflicted with alcoholism or drug abuse." It was the contention of the Union that Martinez should have been provided with the opportunity to enter a drug abuse program in an effort to provide him with the opportunity to become rehabilitated.

The grievance was denied and was thereafter processed through the remaining steps of the grievance procedure. The issue arising therefrom became the subject matter of this arbitration proceeding.

DISCUSSION

Martinez brought several marijuana cigarettes into the plant. They were admittedly in his possession. He admitted that he knew the existence of Rule 127-b and he knew that the penalty for the violation of that rule was termination from employment.

Martinez' primary defense to his action was that he had not intended to bring the cigarettes into the plant. He contended that he had placed them in his wallet for safekeeping since they belonged to a friend who had given them to Martinez on the evening before they were found in Martinez' possession. Martinez further con-

tended that, although he had smoked marijuana and had been a heavy user since 1974, he had never brought marijuana into the plant on any prior occasion. He pointed to his good work record, and he contended that, although he had never informed the Company (or the Union) that he had been a heavy user of marijuana since 1974, he had entered a drug abuse program after his termination from employment and he has avoided the use of marijuana in any form since that time.

The Union contended that the penalty of termination from employment should be mitigated since there were recorded instances of cases where employees had been found to be in the possession of marijuana on Company premises and those employees had received penalties that did not result in termination from employment. The Union additionally raised the defense of the Company's failure and refusal to invoke the procedures set forth in Article 14, Section 8, that would cover employees who had become "afflicted with alcoholism or drug abuse."

The Company offered evidence to support its contention that it has (almost without exception) terminated any employee who had been found guilty of a breach and violation of Rule 127-b. The Company contended that there was only one instance when an employee had not been terminated after having been found to be in possession of marijuana on Company premises. The Company contended that the single exception resulted from action taken by a departmental superintendent without the knowledge of other Company officials, and could not serve to deny to the Company the right to insist upon the otherwise strict and undeviating policy of invoking the penalty of termination of employees who were found to have used or to have had marijuana in their possession on the Company's premises.

In the period between October, 1977, and April, 1982, twenty-one grievances were filed on behalf of individual employees who had been terminated from employment

for a violation of Rule 127-b. There were a substantial number of other employees who had been terminated for a violation of that rule where grievances had not been filed protesting those terminations. In every instance in the period between 1977 and 1982, the grievances protesting the termination of individual employees for a violation of Rule 127-b had been denied by the Company and were subsequently withdrawn by the Union in either Step 3 or Step 4 of the grievance procedure.

Several former umpires under Collective Agreements between this Company and the Union have sustained terminations of employees who have been found to have violated Rule 127-b. Each of the umpires have stated in unequivocal terms that a violation of that rule constituted just and proper cause for termination from employment. They found that the imposition of the penalty of termination could not be considered to be unusually harsh or severe punishment for the degree of the committed offense.

In Inland Award No. 641 this arbitrator reviewed the Company's drug policy and its enforcement of the rule in question. He found that the rule had been in effect for many years and that employees were aware of the fact that the penalty for smoking marijuana or having marijuana in an employee's possession in the plant was termination from employment. In that decision this arbitrator made reference to a 1973 award by former umpire Cole who had sustained the termination of an employee who had brought marijuana into the plant. This arbitrator also commented upon an Inland award issued in 1977 by Arbitrator Mittenthal who sustained the Company's action in terminating an employee who was found to have marijuana in his locker at this plant. Mr. Mittenthal found that the Company's application of the rule and the form and degree of penalties imposed for the violation thereof had been consistent and un-deviating.

In Inland Award No. 641 this arbitrator also ruled upon a contention advanced by the Union in that case that the Company had failed to apply the procedures set forth in Article 14, Section 8, when it terminated the services of an employee without providing that employee the opportunity to enter into a drug abuse program. The facts in this case are almost identical with the fact situation in Inland Award No. 641. In that award this arbitrator pointed out that "Article 14, Section 8, cannot serve to provide an employee with immunity from discharge for the breach of a rule against bringing drugs into the plant." He further found that, although Article 14, Section 8, provided a means whereby the grievant could have received help under the program adopted by the parties pursuant to the provisions of Article 14, Section 8, it was incumbent upon that grievant to have made known his condition before he committed an offense that would result in his termination from employment. This arbitrator further found that the Company had every right in that case to invoke its rule against possession or use of marijuana on plant premises and to terminate the employee from employment without being required as a condition precedent to termination to offer the employee the opportunity to undergo a coordinated program directed to the objective of his rehabilitation.

The evidence in this case would indicate conclusively that Martinez knew as far back as 1974 that he had become addicted to marijuana. Shortly before his discharge from the military service in 1978 he entered a drug abuse program. He had continued the use of marijuana between the date of his discharge from the military service in 1978 up until the time of his termination from employment in 1983. If Martinez believed that he was addicted to the use of marijuana, he should have made that fact known to appropriate Union or Company officials. Had he followed that course of conduct, help would have been available to him pursuant to the procedures adopted by the

parties by virtue of the language appearing in Article 14, Section 8. Martinez could not wait until he had been found to have been in violation of the plant rule and to subsequently offer to participate in a program designed to treat his continuing problem of marijuana addiction.

The arbitrator must, therefore, find that the Company did not violate Article 3, Section 1, or Article 14, Section 8, of the Collective Bargaining Agreement when it terminated Armando Martinez from employment. The arbitrator will further find that the Company did not violate any of the procedural steps of the Agreement when it terminated Martinez from employment.

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

AWARD NO. 737

Grievance No. 20-P-104

The Company had proper cause for the termination of Armando Martinez from employment. The grievance is hereby denied.

Bert L. Luckin
ARBITRATOR

August 10, 1983

CHRONOLOGY

Grievance No. 20-P-104

Grievance filed	February 2, 1983
Step 3 hearing	February 16, 1983
Step 3 minutes	March 18, 1983
Step 4 appeal	March 28, 1983
Step 4 hearings	April 7, 1983 April 14, 1983 April 21, 1983
Step 4 minutes	July 5, 1983
Appeal to Arbitration	July 5, 1983
Arbitration hearing	July 12, 1983
Award issued	August 10, 1983