In the Matter of the Arbitration Between

INLAND STEEL COMPANY and UNITED STEELWORKERS OF AMERICA AND ITS LOCAL UNION 1010	Grievance No. 28-P-93 Appeal No. 1351 Award No. 738

INTRODUCTION

An arbitration hearing between the parties was held in Harvey, Illinois, on July 11, 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. Sav Amatulli, Services General Foreman, No. 3 Cold Strip Department

Mr. Philip Sievers, Pickle and Tandem General Foreman, No. 3 Cold Strip Department

Mr. Chuck Larson, No. 6 Anneal Foreman, No. 3 Cold Strip Department

Mr. Arlie Sparks, Services Foreman, No. 3 Cold Strip Department

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

Ms. Noreen Mysliwy, Laborer, No. 3 Cold Strip Department

For the Union:

Mr. Thomas L. Barrett, Staff Representative

Mr. Joseph Gyurko, Chairman, Grievance Committee

Mr. Don Lutes, Secretary, Grievance Committee

Mr. Rudy Schneider, Griever

Mr. John C. Hestermann, Grievant

Arbitrator:

Mr. Bert L. Luskin

BACKGROUND

John C. Hestermann was employed by the Company on February 16, 1972. Hestermann worked his scheduled shift that commenced at 11:30 P.M. on January 9, 1983, as a craneman assigned to the No. 29 crane in the No. 3 Cold Strip East Department. That crane services the No. 6 anneal line. The shift was scheduled to end at 7:30 A.M. The anneal line runs on all three shifts, and it is necessary that a craneman be available at all times in order to remove coils from the conveyor when the conveyor becomes loaded. Hestermann was scheduled to be relieved by a craneman who would work the B turn from 7:30 A.M. to 3:30 P.M.

At approximately 6:50 A.M. Line Foreman Larson was notified by a loader (Gabriel) that the conveyor in the No. 6 anneal area was full. He was informed that no craneman was immediately available to remove the coils from the conveyor. Foreman Larson did not hear a siren that would normally sound when the conveyor is full in order to alert operating personnel that coils would have to be removed from the conveyor in order to prevent the line from shutting down. Efforts are made at all times to avoid that eventuality, since it is estimated that a shut down of a line would result in operational losses to the Company of approximately $600 per minute of delay.

Foreman Larson conducted a search for Hestermann (the only craneman assigned to the No. 6 anneal area on that turn). Hestermann could not be found in or near the crane; nor could he be found in the vicinity of the ender or the coil storage area.

At approximately 7:00 A.M. Foreman Larson encountered an employee named Kotsonis. Larson was informed that Kotsonis was a relief craneman for the No. 29 crane, and Kotsonis was immediately directed to board the crane and remove the coils from the conveyor. A further investigation disclosed the fact that Hestermann had punched out and left the plant. Foreman Larson's report of the incident was brought to the attention of General Foreman Amatulli on January 10, 1983. Amatulli conducted an investigation and concluded that the conveyor had become full with its maximum of seven coils at approximately 6:45 A.M. on January 9, 1983. He further concluded that Hestermann was not available at that time to operate the No. 29 crane, and he concluded that Hestermann had left the plant shortly after Hestermann had encountered crane operator Kotsonis at the sign-in desk at approximately 6:50 A.M.

General Foreman Amatulli interviewed Hestermann on January 13, 1983, after Hestermann returned from his scheduled days off. Hestermann informed Amatulli that he had left the crane at 6:40 A.M. and that there were no coils on the conveyor at that time. In response to a question posed by General Foreman Amatulli, Hestermann did not answer when he was asked at what time he had received his timecard from Foreman Larson. Hestermann made no answer when he was asked if he had taken the timecard without permission.

General Foreman Amatulli concluded that Hestermann had left his crane unattended; had left the general work area; had removed his timecard from Foreman Larson's office without permission; and had left without properly following the relief procedures. General Foreman Amatulli thereafter checked Hestermann's record of imposed discipline for the period between August 26, 1980, and the date of the incident of January 9, 1983. General Foreman Amatulli concluded that Hestermann had violated the Company's General Rules for Safety and Personal Conduct (Rules 127-l and 127-m). A suspension hearing was convened on January 19, 1983, and continued until January 24,

1983. The Company thereafter concluded that just cause existed for the suspension action, and on February 2, 1983, Hestermann was informed that he was terminated from employment.

A grievance was filed and was processed through the preliminary steps of the grievance procedure. The Union contended that just cause did not exist for Hestermann's termination from employment. The Union also contended that the Company had failed to follow the procedural steps under the grievance procedure when it did not notify Hestermann that his suspension had been converted to discharge within the contractually required maximum period of time. The grievance was denied and was thereafter processed through the preliminary steps of the grievance procedure. The issue arising therefrom became the subject matter of this arbitration proceeding.

Hestermann was charged with violating General Rules for Safety and Personal Conduct (Rules 127-l and 127-m). Those rules are 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:
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> ***
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> "l. Leaving employee's working place or visiting around the Plant away from your usual or assigned place of duty at any time, either during or outside of your regular working hours, without permission of your supervisor.
>
> "m. Leaving the Plant without compliance with Plant rules."

The Union contended that the Company had violated Article 8, Section 1, of the Collective Bargaining Agreement. The provision of the Agreement cited by the Union as applicable in the instant dispute is hereinafter set forth as follows:

"ARTICLE 8

"DISCHARGES AND DISCIPLINES

> "Section 1. In the exercise of its right to discharge employees for cause, as set forth in Article 3, the Company agrees that an employee shall not be peremptorily discharged, but in all instances in which the Company may conclude that discharge is warranted, he shall first be suspended for five (5)

days and notified in writing that he is subject to discharge at the end of such period. A copy of such notice shall be furnished to such employee's grievance committeeman promptly. During such five-day period, if the employee believes that he has been unjustly dealt with, he may request and shall be granted during this period a hearing and statement of his offense before the Superintendent of Labor Relations, or his designated representative, with the employee's grievance committeeman and officers of Union present if the employee so chooses. At such hearing, facts and circumstances shall be disclosed to and by both parties.

"If a hearing is requested, the Company shall, within five (5) days after such hearing, decide whether such suspension shall culminate in discharge, or whether it shall be modified, extended or revoked, and the employee and the Union shall be notified in writing of such decision. If no hearing is requested within the five-day period, the discharge shall become final at the end of such period without further notice or action by the Company, unless the Company shall modify, extend or revoke the suspension or discharge."

The Company submitted the following discipline record established by Hestermann during the period between August 26, 1980, and the date of his termination from employment on February 2, 1983:

"Date	Infraction	Action
8-26-80	Left early without proper relief	Discipline - Loss of 1 day
9-8-80	Left early without proper relief	Discipline - Loss of 2 days
9-25-80	False testimony and left early without proper relief	Discipline - Loss of 3 days
4-28-81	Left early without proper relief and overall unsatisfactory work record	Five day suspension preliminary to discharge
4-29-81		Suspension concluded with discharge
11-10-81		Reinstated on "final chance" basis; all time lost to serve as discipline
11-23-81		Record review with assistant superintendent and final warning
1-14-83	Violation of Rule 127 l (leaving work place without permission) and Rule 127 m (leaving plant without compliance with plant rules)	Five day suspension preliminary to discharge

2-2-83 Suspension concluded with discharge"

DISCUSSION

Some of the facts relating to time elements and sequence of events are in substantial dispute. The grievant was charged with having committed three separate, distinct acts that (in the opinion of the Company) have justified the imposition of disciplinary measures and constituted proper cause for the grievant's termination from employment.

Hestermann was charged with (1) leaving his crane unattended, (2) leaving his immediate work area during working hours, and (3) removing his timecard from his supervisor's desk without receiving permission from his supervisor.

There is a compelling need for the services of a crane operator on the No. 29 crane. The conveyor holds seven coils, and when the Tandem Mill is in production the coils must be removed or the Tandem Mill will be shut down causing a costly delay for every minute that the Tandem Mill does not operate.

All of the competent evidence in the record would indicate conclusively that Hestermann left his crane unattended after 6:30 A.M., almost one hour before the end of his shift. Hestermann contended that he had deboarded the crane at 6:40 A.M. and that there were no coils on the conveyor at that time. All of the competent evidence in the record, however, would indicate conclusively that at approximately 6:45 A.M. the conveyor was filled with seven coils and Hestermann was away from the crane and from any area adjacent thereto from which he could have observed the condition of the conveyor. Hestermann had no right to rely on a siren to alert him to the possibility of a filled conveyor. It is evident that Hestermann had made plans to obtain his time-card and to leave the plant as soon as he could determine that the crane operator who was scheduled to relieve him had appeared in the vicinity of the sign-in desk.

The evidence would indicate conclusively that when Hestermann entered his supervisor's office at approximately 6:15 A.M. he picked up his timecard which had been left on the desk by his supervisor. He thereafter left the office without having obtained permission to pick up his timecard or to leave the office with the timecard in his possession. Hestermann left the crane unattended during a period of time when he was required to either be on the crane or in the immediate vicinity thereof, and he additionally removed his timecard from the foreman's desk without permission and left his immediate work area without following the proper relief procedures.

Although the foreman was at all times available, Hestermann did not follow the correct relief procedures. He should have informed the foreman that his relief had arrived, after which he could have received permission from his foreman to leave. He could, at that point in time, obtain his timecard from the foreman in order that he could punch out before leaving the premises.

What Hestermann did on January 9, 1983, was to commit an offense similar to and practically identical with offenses that he had committed on prior occasions that had resulted in the imposition of three separate suspensions followed by his discharge in April, 1981, for a prior similar offense. It is difficult to believe that any employee who had been suspended on three different occasions and terminated on a prior occasion could possibly misunderstand or be unaware of the precise procedures which he was to follow when he was to be relieved by another craneman at the end of his shift.

Hestermann's record indicates that on August 25, 1980, he left his assigned crane one-half hour early, entered the Tandem Mill office, secured his timecard, and went home. As a result of his actions the crane which he had been operating went down for lack of a craneman for a period of approximately one-half hour. He was informed that he had violated a safety rule and had violated Rule 127-m. He was suspended for

There can be no question but that just and proper cause existed for Hestermann's suspension and termination from employment. The Company had followed and had observed the principles of corrective and progressive discipline. It had imposed increasingly more severe penalties for the commission of each offense until such time as Hestermann was terminated from employment. The Union had interceded on Hestermann's behalf, and ultimately induced the Company to modify its discharge penalty of 1981. Hestermann was provided with one further opportunity to demonstrate that he would observe the rules and the working procedures in exactly the same manner expected of any other employee. Despite the compassion exhibited by the Company on that occasion, Hestermann committed an identical offense that clearly and unequivocally constituted a violation of Plant Rules 127-l and 127-m. In the light of the record in this case the Company's decision to terminate Hestermann from employment in February, 1983, could not and should not be modified in any respect.

The Union has raised a serious procedural defense to Hestermann's termination from employment. It contended that the Company violated the procedural steps of the grievance procedure (Article 8, Section 1) when it failed to notify Hestermann that he was terminated from employment within five days after the completion of his suspension hearing. The Union contended that the language in question requires that the procedures be followed as a mandatory condition preliminary to termination, and it argued that any failure to follow such a procedure should result in setting aside the action taken by the Company.

The Company contended, in response to that argument, that the defense raised by the Union in this case goes to a procedural rather than a substantive matter. The Company contended that any failure to follow the time elements involved in the notice requirements to Hestermann would not and could not justify setting aside the termination action taken by the Company.

was restored to employment on a last chance basis after losing six and one-half months from work, and he fully and completely understood the terms and conditions and the basis for his restoration to employment. Despite that record, on January 9, 1983, Hestermann again left his crane unattended and he again failed to follow the appropriate procedures for relief before leaving the plant. He again improperly took possession of his timecard without having received permission from his foreman to do so.

The parties have adopted the concept of "last chance" agreements in some selected cases as a means of providing an employee with one last opportunity to demonstrate that he can and will comply with Company rules and regulations in the same manner as that expected and required of all other employees. Arbitrators have almost consistently held that a "last chance" understanding can be a highly important and valuable means of salvaging a good or a potentially good employee. Where the Company is convinced that a "last chance" agreement can have a salutary effect on such an employee and where the Company can be convinced that an employee is worthy of such an opportunity, it may (in certain select situations) reach an agreement and understanding with the Union (and with an employee) that would result in the employee's restoration to employment on a "last chance" basis. Any such agreement carries with it the understanding that it constitutes a final effort on the part of the Company to induce an employee to correct his habits and attitudes and to conform with the terms and conditions of the "last chance" agreement. Such agreements lose their effectiveness unless the terms and conditions of "last chance agreements" are respected and given the same full faith and credit that should be given to any agreement. The failure to enforce a "last chance" agreement serves to dilute its effect and to reduce its significance, meaning and usefulness. The elimination of the concept of "last chance" agreements could serve to deny other employees of the opportunity to be restored to gainful employment and to preserve for such employees the benefits they had achieved during their period of employment with the Company.

was resolved by agreement of the parties. Hestermann's record was fully and completely reviewed at that time, and an agreement was reached between the parties (with Hestermann's full concurrence and consent) that served to resolve the grievance by restoring Hestermann to employment. Hestermann had been away from work for six and one-half months. The agreement provided that his restoration to employment would be without back pay, with the intervening period of time to be considered to be a disciplinary suspension from employment. The parties (with Hestermann's concurrence) further agreed that Hestermann's restoration to employment would be on a "last chance" basis, with the understanding that any repetition of the type of conduct which led to his suspension and discharge or any other violation of a Company rule or regulation would be cause for Hestermann's immediate suspension preliminary to discharge. Hestermann also agreed to accept a final record review, at which time Hestermann's record was fully reviewed, and he was again cautioned and warned that any failure to carry out the terms and conditions of the "last chance agreement" would result in his termination from employment.

The incident which led to Hestermann's most recent suspension and discharge from employment occurred on January 9, 1983, less than fourteen months after his last chance reinstatement in November, 1981.

The record in this case leaves no room for doubt with respect to Hestermann's violation of Company rules and regulations with which he was completely familiar. He knew and had been reminded and warned on any number of occasions that the improper removal of his timecard and/or his failure to maintain his working position at the crane until he was properly relieved, would result in his termination from employment based upon the state of the record in this case. It is impossible to believe that Hestermann misunderstood what had occurred in the past. He committed almost identical breaches of conduct which resulted in three suspensions and his termination from employment. He

one turn, and was informed that future incidents of that nature would result in more severe disciplinary action. Hestermann indicated at that time that he was fully aware of his duties and obligations and the proper procedures to follow in accepting a relief at the end of his shift of work.

On September 11, 1980, less than three weeks after the August 25, 1980, incident, Hestermann was again charged with the commission of an identical offense. He was charged with removing his timecard without permission and leaving his crane without being properly relieved. He was suspended for two turns for that offense, and informed that more severe discipline would be imposed for any future offense of a similar nature.

Approximately two weeks after the second suspension had been imposed for the commission of identical offenses, Hestermann was again charged (on September 25, 1980) with entering the office and informing his foreman that his relief had arrived. He thereupon received permission to leave prior to the end of the shift. As a matter of fact, the relief had not arrived and later reported off. The crane could not be covered for service for some period of time, and Hestermann's breach of conduct coupled with his misleading and untrue statement to his foreman resulted in his suspension from employment for a period of three turns. He was again informed that a continuation of that type of conduct would lead to his termination from employment.

In the normal course of events infractions of the type committed by Hestermann would result in a one-turn suspension for the first offense, a two-turn suspension for the second offense, a three-turn suspension for the third offense, and termination from employment for any subsequent offense of a similar nature.

On April 18, 1981, Hestermann again removed his timecard without permission and left his crane unattended. Hestermann was thereupon terminated from employment. A grievance was filed and, in the Step 4 level of the grievance procedure, the grievance

The Company offered evidence to support its contention that for a period of years it has (on numerous occasions) delayed the notification to a grievant (that his suspension had been converted to a discharge) beyond the five-day period referred to in the Collective Bargaining Agreement (Article 8, Section 1). The Company contended that in many instances delays were occasioned by requests from the Union that the Company withhold notification to a potential grievant in order that the Union might have further opportunity to attempt to induce the Company to alter or modify its position with respect to the degree of the penalty to be imposed. The Company contended that, although the five-day period had been extended on many occasions, the Union had never in the past raised a contention that a failure to comply with the five-day provision of the Agreement should result in the setting aside of the Company's decision to terminate.

The Collective Bargaining Agreement under Article 8, Section 1, uses the word "shall." That word is a mandatory term, and the Union has every right to contend that a failure to follow a contractual procedure that is based upon mandatory language can result in a finding that the Company may not exercise its right to terminate if it fails to follow the time limits set forth in the Collective Bargaining Agreement.

All of the evidence in this record would indicate that this issue has never been raised by the Union in the past. The record would also indicate that in substantial numbers of cases the Union has urged and requested the Company to withhold notification for more than five days after the suspension hearing in order that the Union might have an additional opportunity to attempt to induce the Company to modify its action.

On the basis of the record in this case, the Union cannot now argue that the discharge action taken against Hestermann should be set aside merely because Hestermann received notice of his final termination from employment seven days after the hearing instead of five days after the hearing.

The fact that the Company has refused to process grievances in some cases where they were untimely filed would not be determinative of the issue in this case. Since the Union has allowed the Company to take more than five days to notify an employee of his termination from employment after a suspension hearing, and since the Union has never in the past informed the Company of the Union's intention to demand strict compliance with the time limit provision of the Agreement, the Union cannot in this case raise the issue for the first time until and unless it has put the Company on notice that it will, in all future cases, demand and require strict and undeviating compliance with the five-day provision under the language appearing in Article 8, Section 1.

In the light of the record in this case, the arbitrator must find that the failure to notify Hestermann within five days after the suspension hearing of the Company's decision to terminate, has in no way impaired Hestermann's right to due process. It had absolutely no impact upon his right to file a grievance and to have his grievance heard on the basis of the merits thereof. The arbitrator must, therefore, deny the Union's request that Hestermann be restored to employment based upon the Company's failure to notify Hestermann of its decision to terminate Hestermann within a five-day period after the conclusion of his suspension hearing.

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

AWARD NO. 738

Grievance No. 28-P-93

1. The Company had just and proper cause for terminating John C. Hestermann from employment. The grievance is hereby denied.

2. The Union's request that Hestermann's grievance be sustained on the basis of a procedural violation of the Agreement is hereby denied.

August 10, 1983

Burt L. Luskin
ARBITRATOR

CHRONOLOGY

Grievance No. 28-P-93

Grievance filed	February 7, 1983
Step 3 hearing	February 16, 1983
Step 3 minutes	March 24, 1983
Step 4 appeal	March 31, 1983
Step 4 hearings	April 7, 1983 April 21, 1983 April 28, 1983
Step 4 minutes	July 5, 1983
Appeal to Arbitration	July 5, 1983
Arbitration hearing	July 11, 1983
Award issued	August 10, 1983