Arbitration Award No. 811
IN THE MATTER OF ARBITRATION Between
INLAND STEEL COMPANY
Indiana Harbor Works
and
UNITED STEELWORKERS OF AMERICA
Local Union No. 1010
Grievance No. 30-S-12
Arbitrator: Clare B. McDermott
Opinion and Award
February 9, 1990
Subject: Discipline for Alleged Absenteeism.
Statement of the Grievance: "The aggrieved Judith Tellado, Check No. 11908, contends the action taken by the Company, when on January 9, 1987, her suspension culminated in discharge is unjust and unwarranted in light of the circumstances.
"Relief Sought The aggrieved requests that she be reinstated and paid all monies lost.
"Violation is Claimed of Article 3, Section 1, and Article 8, Section 1."
Agreement Provisions Involved: Article 3 of the August 1, 1986 Agreement.
Statement of the Award: The grievance is sustained, and grievant shall be reinstated to employment with full seniority and made whole for all earnings and other contractual benefits lost because of her improper suspension and discharge.

Chronology	
Grievance Filed:	1-13-87
Step 3 Hearing:	1-27-87
Step 3 Minutes:	4-27-87
Step 4 Appeal:	5-19-87
Step 4 Hearing(s):	7-10-89
	8-4-89
	8-10-89
Step 4 Minutes:	9-11-89
Appealed to Arbitration:	9-19-89
Arbitration Hearing:	9-27-89

Appearances
Company
Robert V. Cayia -- Section Mgr., Union Relations
Don Cox -- Section Mgr. Auxiliaries, No. 11 Coke Battery Dept.
Union
J. Robinson -- Arbitration Coordinator
J. Tellado -- Grievant
J. Ross -- Griever
J. Gunn -- Steward
J. Carr
BACKGROUND
This grievance from No. 11 Battery of Indiana Harbor Works claims that grievant's suspension and discharge for failure to work as scheduled and for an overall unsatisfactory work record were without cause, in violation of Article 3 and Article 8, Section 1, of the August 1, 1986 Agreement.
In March of 1985 the Department initiated a formal attendance-control program, similar to those in all other departments. Under it, attendance information for each employee is entered daily to a data-processing system. It keeps count and tells Supervision when any employee has exceeded the absence ratio allowed for either daily absences or extended, consecutive-day absences. The plan treats the two types of absences separately and compares them to the number of turns the employee was scheduled during the calculation period.
The absences monitored include those due to illness or accident of the employee, sickness in the family, transportation difficulties, personal reasons, failure to report off, absence for unknown reasons, tardiness, and early quits. Those not included are excused absences, and those resulting from military service, funeral

leave, jury duty, Union business, leave of absence, vacation, layoff, classroom training, Company-directed time off, and absences due to plant injury.

A daily absence is defined as failure of an employee to work a scheduled turn for one of the included reasons. A tardy or an early-quit instance is counted as equal to one-half of an absence, and two tardies or two early quits or a combination of both equal one daily absence. A failure to report off is equivalent to three daily absences. An extended absence is one of three consecutive days due to personal illness or injury. The evaluation period for daily absences is a rolling ninety-day span or the time from the date of the last disciplinary letter, whichever is shorter. The evaluation period for extended absence is a rolling 182-day span or the time since the last disciplinary letter, whichever is shorter.

The program is set to trigger attention when an employee is absent 6 percent or more of scheduled turns but, when an employee's past absenteeism has brought him to the two-day disciplinary stage, further absences will catch him up if he should be absent 5 percent or more of scheduled turns.

Grievant began with the Company in August of 1978. She was established in the Coke Conveyerman occupation at No. 11 Battery in December of 1986.

Grievant was scheduled to work the 3-11 turn on December 13, 1986. She did not work it and did not report off until one hour and ten minutes after beginning of the turn. Because of that absence, the data-processing system signaled to Management that she had exceeded the absence ratio. At that time grievant had passed the two-day disciplinary stage and, therefore, she was in the category where absences of 5 percent or more would trigger attention to her case. The Company says in this ninety-day evaluation period grievant's absence ratio was 7.81 percent of scheduled turns.

As a result of that absence record, grievant was interviewed regarding her absenteeism by Section Manager Cox. Because of that absence, when seen in light of her prior absenteeism record, grievant was suspended on December 18, 1986 subject to discharge, for failure to work as scheduled and for an overall unsatisfactory work record. Following a suspension-period hearing on December 23, 1986, grievant was discharged on January 9, 1987 and this grievance followed.

During the last five years of grievant's employment she had the following disciplinary record:

Date	Infraction	Action
12/28/81	Work Performance	Discipline - 1 turn
03/25/82	Absenteeism	Discipline - 3 turns
06/17/82	Absenteeism	Discipline - 5 turns
06/17/82	Absenteeism	Record Review
02/04/83	Work Performance	Reprimand
05/08/85	Absenteeism	Discipline - 1 turn
08/12/85	Absenteeism	Discipline - 2 turns
11/08/85	Absenteeism	Discipline - 3 turns
11/27/85	Absenteeism	Record Review
03/03/86	Horseplay	Discipline - balance of turn

The Company says grievant had nine individual absences in 1982. She had 145 absences in 1983, 140 of which were extended absences because of illness. In 1984 grievant was absent 168 days, 160 of which were days of extended absences because of illness and injury. At this hearing, the Company said that the days of extended absence, 300 in 1983 and 1984, were not counted by it as scheduled days.

In 1985 grievant was absent thirteen days, was tardy once, and left early once. In 1988 grievant had twelve days of absence, was late once, and left early once.

Management concludes that in the five-year period (approximately 1200 available working days, excluding vacations and holidays), grievant was absent 351 days. That total count necessarily includes the 300 days of extended absences which Management said at this hearing it did not count.

The Company stresses also that, following grievant's record review with Section Manager Cox on November 27, 1985, at which she was warned of the serious consequences of her continued absence, her absenteeism continued when she again was identified on June 30, 1986 as having exceeded the allowable absence ratio. In that case Cox did not take the machine-recommended action of suspension preliminary to discharge, however, because he said there were extenuating circumstances, as explained by grievant.

The Company notes that even so, grievant continued to miss work at an unacceptable rate. She was absent in October, November, and three times in December. That record brought her to the present suspension and discharge.

The Company notes that the parties have agreed that the Attendance Improvement Program is not itself in issue in this proceeding.

Management urges that grievant's absenteeism problems had reached the point at which the reason for her absences had become immaterial and that the issue now is whether or not it was compelled to keep on the rolls an employee who was consistently absent. It says regular attendance is an employee obligation, citing five Inland arbitration decisions and three in other bargaining relationships. Management contends that the arbitration principles arising from those decisions show that grievant breached her most basic duty, that is, regularly to report for work as scheduled. Contrary to that duty, the Company says her attendance record over the past five years reflects a distinct pattern of chronic and excessive absenteeism. It insists it was very patient with grievant and made every reasonable effort to have her correct her unreliable attendance.

At Step 3 the Union said that much of grievant's absenteeism was caused by marital conflicts, which ultimately led to a divorce in December of 1987, and that some was attributable to her own illness (gynecological) and to complications in getting reliable babysitters for her two children.

The Company stresses, however, that grievant admitted she had not recently consulted a physician about her medical problems.

The Union urged in the grievance proceedings that grievant's problems relating to babysitting were resolved and, therefore, that she should be returned to employment since most of her problems had been cured.

The Union argues that many of grievant's absences were caused by illness and by other personal problems which were legitimate reasons for her absences. When those absences are eliminated from grievant's record, it is said it is not so bad as to warrant discharge.

The Company answers that, regardless of the reasons for grievant's absences, she had reached a point where it no longer had any obligation to retain her on the rolls, since it allegedly is entitled to insist upon minimum standards of attendance, and grievant's record had become one which simply was unacceptable in an industrial environment, no matter what the reasons.

Management says the goal of an attendance program is not to issue discipline but to improve attendance. It is said, therefore, that there is no ground for mitigation in the claim that some absences were justified.

The Union points out that for 1986 grievant's absenteeism was below 5 percent, and it wonders why she was discharged in light of her improved attendance. The Company says that came about because, although grievant's average for the year was below 5 percent, her absenteeism ratio for the relevant ninety-day calculation period was above 5 percent.

Grievant said her extended absence in 1983 was caused by her pregnancy, and that she returned to work after delivery of her baby. She said her extended absences in 1984 resulted from her falling off a tar truck in the plant.

In 1985 she says she missed seven days, according to the Company's count, which were caused by her not having any transportation. She said her problem then was that her husband, since divorced, would take their car and stay out all night. She thus had no car and could not leave her children. She says she separated from her husband in early April of 1986, and the divorce became final in late June of 1987. She now has the car.

Grievant says her illness was caused by an ovarian cyst, diagnosed as endometriosis (bleeding). Her physician's December-1986 statement was sent to the Company on January 6, 1987. It reads as follows:

"PRINN K. STANG, M.D.

". . .

"Date: 12-29-86

"This is to certify that Tellado, Judith has been under my care since 1984 for gynecological disorder, and is able to return to work on - Patient did have - right ovarian cyst which accounting for pain - Patient in the process of treatment, able to go back to work - by now.

[Signature] M.D."

Grievant said she was being treated for that condition as of hearing time here, and that it is helping, and that she then was able to work steadily.

She said she had no friends or relations who were in position to help her with her transportation problems in the past.

The Company suggested that an hourly supervisor in Coal Chemicals also lived in Portage, Indiana, and thus that grievant could have arranged to ride with him. Grievant said he was not always on the same shift as she was.

The Company agrees the two long periods of grievant's extended absence in 1983 and 1984 were justified and thus were not counted against her.

Management says, however, that the most significant years for viewing grievant's absences were 1985 and 1986. The Company thus says that grievant's absenteeism record for 1985 and 1986 is one of the worst in 11 Battery and in the plant, as shown by the following table:

"Year	Employee	Department	Plant
1985	5.6	2.7	1.9
1986	4.7	2.5	1.8"

The Company notes that grievant would excuse some absences by reference to her marital problems and her husband's taking the car, but it stresses that her record shows absences for several reasons after she separated from her husband in 1986.

The Company notes an inconsistency in grievant's explanation for her December 13, 1986 absence and failure to report off on time. She said here that that was because there was no telephone in her apartment building, but she had said at Step 3 that that absence and untimely report off were caused by her oversleeping.

The Company argues that an employee with a long and good record would not be disciplined for an extended absence resulting from illness, but it insists that is not this case.

Management says grievant still is subject to her medical problems and, therefore, wonders if she could be regular in attendance if given another chance.

The Union contends that the attendance-control program is not in issue here. It insists that, whatever standards the Company uses to focus on an employee's attendance record is not especially relevant at discharge time, when the sole standard is that of "cause," as in Article 3.

The Union then notes arbitration decisions in this bargaining relationship from as long as thirty years ago, stressing (Award No. 252) that what is excessive absenteeism must be determined by the facts of each case. That was reinforced later by statements (Award 666) to the effect that each case must turn on its own facts. Looking carefully at grievant's absence record, then, the Union notes that, considering absences over a one-year period, grievant exceeded the 6 percent absentee rate only once, when she was over it by a fraction. The Union urges that grievant's pregnancy and accident absences should be disregarded here because they are nonrecurring. Her divorcing her husband then solved the transportation problems.

FINDINGS

The first need is to get a more exact understanding of grievant's absenteeism, of both kinds, and more particularly, of which absences Management actually counted against her for this suspension and discharge. In its brief the Company stated absence figures for each year from 1982 through 1986 and then arrived at a grand total of 351 absences over the five-year period, and it repeated that in closing argument here.

But, twice in closing argument at this hearing the Company said also that it did not count as days scheduled grievant's extended absence periods in 1983 and 1984, because it viewed them as justified. Thus, since days scheduled are the denominator in the Company's calculation of absenteeism percentages, its not counting the 140 days of extended absence (pregnancy, delivery, and illness) in 1983 and the 160 days of extended absence (illness) in 1984 mean that, at most, it could charge her with only five individual days' absence in 1983 and eight in 1984. Perhaps it should be noted also that Company Exhibit 10, introduced as grievant's five-year disciplinary record, has no entries for 1983 or 1984.

Accordingly, the absence figures that properly can be charged against grievant from 1982 are nine individual absences in 1982, five in 1983, eight in 1984, thirteen plus one tardy and one leaving early in 1985, and twelve in 1986, with one tardy and one leaving early.

Thus, grievant had forty-seven chargeable indivdual absences over the five-year period from 1982 through practically all of 1986, or nine plus individual days per year.

These calculations are stated here, not to make light of grievant's absenteeism record, but to indicate that the very great bulk of it already had been excused by Management. The 300 days of extended absence in 1983 and 1984 were seen by the Company as arising from grievant's real illness and thus were not to be counted against her. The Company cannot stipulate that those absences were not counted by it as scheduled days and then include them in a five-year total of 351 absent days. That was not the case. The five-year total of chargeable absences was forty-seven individual days.

The Company then contends, however, that grievant's 1985 and 1986 absences, as if considered alone, would be sufficient to support its position here. But Management really is not willing to rely solely upon those two years, for it insists that grievant's record for those two later years be assessed in light of the prior ones, It argues, that is, that grievant still is suffering from her medical problem and thus likely would be as prone to indifferent attendance in the future as it says she was in the past.

Grievant's own record, however, accepted by the Company, appears to undercut that argument. She had nine absences in calendar 1982. Then she had 300 absences in 1983 and 1984, clearly caused by the only factors suggested in this record, that is, her personal physical condition, pregnancy, delivery, and later endometriosis. The Company agreed those absences were adequately explained, and it did not count them against her.

Since 1984, however, there has been no such extended absence. Grievant has been treated for her gynecological problem by her physician since then, and there is no evidence that that or any other condition has caused more than a now and then, single day's absence here and there.

The Company has not scouted the legitimacy of any of grievant's explanation for her 1985 and 1986 absences. Indeed, it has not even attempted to do so in any sense of investigating their legitimacy or of submitting contrary evidence on the points. It has doubted the legitimacy of grievant's assertions, but doubt is not sufficient in a case where there is objectively verifiable and, indeed, verified, evidence of gynecological problems certified by a physician and believable absence of transportation, sufficient reasons to excuse the individual absences.

The dispositive point then is that, excluding the two long extended absences, as the Company did, the 1985 and 1986 individual absences were satisfactorily explained and were not so excessive in any event as to constitute cause for grievant's suspension and discharge, which Management must establish. Thus, the grievance will be sustained.

AWARD

The grievance is sustained, and grievant shall be reinstated to employment with full seniority and made whole for all earnings and other contractual benefits lost because of her improper suspension and discharge.

/s/ Clare B. McDermott

Clare B. McDermott

Arbitrator