IN THE MATTER OF THE ARBITRATION BETWEEN

INLAND STEEL COMPANY

and

UNITED STEEL WORKERS OF AMERICA
LOCAL UNION 1010

OPINION AND AWARD

Introduction

This case concerns a grievance filed on behalf of grievant Larry McMahon, protesting a three day suspension he received as a result of an incident that occurred on January 27, 1989. The suspension was the result of an alleged violation of rule 132r, which I will discuss below. The hearing was held at the company's offices in East Chicago, Indiana on November 15, 1990. Bradley Smith represented the company and Jim Robinson presented the union's case. Both sides filed prehearing briefs. Grievant was present throughout the hearing and testified in his own behalf.

Appearances

For the Company

M. Gronewold, Mechanical Superintendent, IRMC/Field Services Dept.
K. Osorio, Project Engineer, IRMC/Field Services Dept.
J. Roznowski, Maint. Supervisor, No. 11 Coke Battery Dept.
M. Ryan, Project Safety Engineer, Safety Dept.
R. Cayia, Section Manager, Union Relations

For the Union

Ted Rogus, International Staff, Sub-Dist. Director
Mike Mezo, President USWA Local 1010
Don Lutes, Sec. Gr. Committee
Phil King, Contracting-Out Committee
Don Jones, Vice Chair, Safety Committee
Lupe Rodriguez, Sec. Safety Committee
Larry McMahon, Griever Area 19, Grievant

Larry Young
Phill Avalos
Larry Graves
Chuck Wothke
Luis Aguilar, Griever Area 20
Jesse Jacob, Asst. Griever Area 19
J. Robinson, Arbitration Coordinator

Background

The grievant, Larry McMahon, is an elected grievance committeeman who, at the time of the incident giving rise to his discipline, represented a group of employees known as fabricators who were working at number 11 battery. This assignment was in a coke plant which, both sides concede, is a dangerous place to work. There is also no question that over the term of the employment in that location, the employees had some significant concerns over exposure to ammonia, cyanide and asbestos. Moreover, the employees felt that the company had not taken proper measures to address their concerns. I have no opinion about whether the concerns were legitimate since that issue has not been given to me for decision. It is fair to conclude, however, that the employees' concern was genuine and that they experienced real frustration about what, in their view, was the company's inability or unwillingness to respond to them in a timely fashion.

In response to those concerns, the company agreed to a meeting with the employees and various company representatives to discuss the safety issues. The meeting was held on January 27, 1989. Not surprisingly, the union and the company have different views about how successful the meeting was. The company representatives thought it was a very good meeting, that the feelings resulting from the meeting were positive and that everyone felt good about it. The union representatives and employees in attendance do not take an opposite view, but their enthusiasm was somewhat more reserved. They acknowledged that some

questions were answered and that on the whole the meeting was positive, but they felt there was some sidestepping of the issues.

Grievant attended the meeting in his representative capacity. That is, because he was not assigned to work in the area and did not himself experience the safety hazards under discussion, there was no reason for him to be there except on behalf of the employees he represented. Grievant arrived for the meeting a few minutes late (apparently because of some transportation problems) and, during the course of the meeting, made no comments and asked no questions. There were perhaps 15 people in attendance, including Mark Gronewald, the superintendent of the machine shop to which the fabricators were assigned. The attendees included a mixture of management and bargaining unit employees. Several of the employees asked questions.

The incident at issue occurred as the meeting was breaking up. Grievant and Gronewald were fairly close to each other at the back of the room. As the other employees and supervisors were leaving the room, Gronewald testified that grievant went up to Gronewald and grabbed him by the jacket with both hands. At the same time he said "I want to fucking talk to you ... you're a no good motherfucker ... you have no fucking concern for safety." Gronewald testified that grievant was visibly angry, that his face was red, and that he spoke in a loud tone within hearing distance of other bargaining unit employees. Gronewald said other employees had been talking as they left the room and that after grievant's outburst, they stopped and paid attention to the confrontation. Gronewald said the incident was demeaning and embarrassing, that grievant's tone and manner were abusive and that he felt physically threatened.

Gronewald said he told grievant he did not want to talk to him, that he put his hands to his side and walked out of the room. He said he went to the

hallway and told another management official to call plant protection and have grievant removed from plant. He said as grievant left the room he told him to wait because he (Gronewald) was having him removed from the plant.

Another management official -- Ken Osorio -- witnessed the incident and told essentially the same story as Gronewald. In addition, John Roznowski, area maintenance supervisor, heard, but did not see, all of the confrontation. He did say, however, that he saw grievant hold Gronewald by the jacket. Both Osorio and Roznowski testified that Gronewald did not say anything during the meeting that could have prompted grievant's response. Indeed, even grievant did not claim that any particular comment by Gronewald accounted for grievant's conduct. For that matter my review of the tape of the hearing failed to indicate any testimony that Gronewald said anything at all during the meeting.

Grievant does not really deny Gronewald's assertions about what was said. His account is slightly different, but he acknowledges calling Gronewald a no good mother fucker. He also said his voice was louder than usual because he wanted the other employees to hear "some answers" and, presumably, his comments to Gronewald as well. He did say, however, that he did not think his manner was intimidating and he was not trying to threaten Gronewald physically. He did deny grabbing Gronewald's jacket, but acknowledges putting his hands on him. He said Gronewald did not want to talk to him and brushed away and left the room. Grievant said as he left the room Gronewald stopped him and said he wanted to talk but grievant replied "no, I ain't going to talk to you right now." He said Gronewald did not tell him to wait for plant security. He learned that plant security was looking for him from his department manager.

On cross examination grievant acknowledged that he asked no questions during the meeting. He said the men were asking a lot of questions and he

thought it was best to let them continue. He said he was learning a lot. He also testified that he thought it was appropriate to confront Gronewald after the meeting because he had been getting a lot of comments and inquiries from the employees and at that time he had everyone together. He could not explain, however, why it would not have been appropriate to raise his concerns during the meeting, before the employees started to file out. He did say he was upset by both the questions and the answers during the meeting.

The union also called several other employees. The primary purpose of their testimony, as I understood it, was to put grievant's comments in context. That is, the union asserts, among other things, that grievant's exchange with Gronewald was nothing but mill talk, and thus not worthy of discipline. I must say, in all candor, however, that I found the testimony of both Larry Young and Larry Graves to be quite evasive and not particularly helpful. Because I think they knew more than they would say (although I understand their instinct to protect a fellow worker, especially a union representative who they thought was acting on their behalf) I have difficulty crediting their testimony about how the incident appeared.

The union raises two principal claims. First, as noted, it asserts that grievant's comments to Gronewald were mill talk and not deserving of discipline. The union witnesses described the fabricators as a "rough and tumble" crew. It is also obvious that grievant is not a waiter in a tea house. Rather, he works in a steel mill, itself a "rough and tumble" industry, and clearly the rules of the parlor do not apply. More important, the union claims that the grievant's discipline was improper because he was acting within the scope of his authority as a union representative. As observed above, grievant did not attend the meeting for his own personal benefit. Rather, he was there

solely in a representative capacity. Moreover, his conversation with Gronewald was an attempt to represent the interests of the employees. As such, and citing previous authority, the union asserts that grievant was essentially the equal of Gronewald and could not have been insubordinate.

The company denies that grievant's representative status shields him from a violation of Rule 132r, "use of profane, abusive or threatening language toward supervisors or other employees or officials of the company...." The company portrays grievant as the aggressor in this case. It does not deny that steelworkers sometimes use profane language and on occasion such comments pass between supervisors and the employees they supervise. Nevertheless, the company asserts that grievant's conduct was both threatening and abusive and therefore not properly characterized as mill talk.

Discussion

This cases raises hard issues and I have had some difficulty resolving them. In general, I agree with the union's contention that union representatives must be afforded significant leeway in their representative dealings with management or supervisory officials. Clearly, they cannot be seen as under the thumb of their supervisors at such times and they may indeed make comments that, in a different context, would justify a harsher reaction. Even though I think union representatives are entitled to such treatment, however, I do not think that principle applies to this case. In short, despite grievant's status and his reasons for attending the meeting, I think he provoked a confrontation with Gronewald for no legitimate representative purpose.

I have some difficulty believing grievant's claim that he approached Gronewald to talk about safety. In general, I agree with the union's assertion that the company has no right to control the union agenda and that the union is not relegated to discussion of certain issues at times deemed advisable by the company. Thus, the company could not require grievant to discuss safety at the meeting on January 27 and it could not preclude him from discussing safety concerns at other times and in other forums. Nevertheless, I have difficulty crediting grievant's claim that he intended to have a safety discussion with Gronewald immediately after a meeting called for the express purpose of discussing safety at which grievant himself said nothing whatsoever.

I thought grievant's own testimony was instructive. He said he went up to Gronewald after the meeting because that was the appropriate time. In his words, everyone was there and he spoke loudly because he wanted the employees to hear. Clearly, if he wanted the employees to hear his questions and concerns about safety, he could have raised those in the meeting that had just ended. All of the employees were still there at that time and their attention was focussed on the topic of safety. Grievant, however, chose to wait until after the meeting. While he certainly violated no rule and is subject to no discipline for asking Gronewald about safety concerns at that time, I don't think it is fair to believe that safety was his only -- or even his main -- concern. Rather, I think he became angry in the meeting (although I am not sure why) and that he decided that he was going to have a confrontation with Gronewald after the meeting. He approached Gronewald red faced, obviously angry, and talking in a loud voice. Both his manner and his tone were abusive and his language was profane and threatening. These are hardly the actions of someone who has legitimate safety concerns which he wants to raise in the

interest of those he represents. They are, instead, the actions of someone who wants to show his audience that he is willing to have a confrontation with a supervisor. I don't know the reason for grievant's action. I suspect he simply lost his temper and acted foolishly with no real objective. In any event, I am unable to conclude that his outburst had any legitimate relationship to his representative status.

I should emphasize that I do not think grievant was subject to discipline merely because he disagreed with Gronewald, merely because he spoke in a loud voice to him, or merely because he used profane language with him. In fact, if grievant had become engaged in a heated discussion with Gronewald in the safety meeting itself, and even if he had used the word "fuck" one time or five times or fifteen times during that meeting, he most likely could not have been subjected to discipline. In my view, discipline is justified here not merely because grievant lost his temper and not merely because his language was profane. In context, however, those actions were threatening and confrontational with no apparent cause or provocation.

I also believe that grievant's actions after the confrontation raise a question about his assertion that he wanted to talk to Gronewald about safety. Admittedly, Gronewald refused to talk to him about anything at the time of the confrontation, in my view a reasonable reaction given grievant's attitude and demeanor. However, grievant exited the room only a minute or so after Gronewald and, by grievant's own testimony, at that point Gronewald grabbed him by the sleeve and said he wanted to talk. Grievant, however, declined. If grievant really wanted to talk to Gronewald about safety, then why not seize that opportunity? Grievant did not testify that Gronewald said he wanted to talk about the confrontation. Rather, grievant merely testified that Gronewald said

he wanted to talk. I think grievant declined because by that time his audience was gone. He hadn't really wanted to talk to Gronewald in the room a moment or so earlier. Instead, he wanted to have a confrontation for the benefit of the employees who were about to file from the room. That opportunity having passed, grievant then lost interest in a real discussion with Gronewald.

I find equally unpersuasive the union's contention that grievant's language was mere mill talk. I understand that what goes on in a steel mill might offend the sensibilities of gentle people. I also understand that rough and profane language is not exclusively within the province of the employees but is also used by supervisors. The point here, however, is that it is not the mere words which gave offense. It is not particularly damning that grievant used the word "fuck" three times in three sentences or that he called his supervisor a motherfucker. Rather, what matters most is the context. It is one thing to stand across the room from someone and tell him he is a no good motherfucker. It is not necessarily damning to utter the same words in the context of a grievance meeting or other legitimate union-management discussion. It is quite another thing, however, to grab someone by the jacket[1] while you are visibly angry and yell at him that he is a no good motherfucker, that you want to fucking talk to him, and that he has no fucking concern about safety. This was no idle conversation; it was not mill talk. No one, whether supervisor or employee, should be subjected to such threatening and intimidating tactics. That, however, is exactly what grievant did here.

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[1] I understand that the company did not discipline grievant for putting his hands on Gronewald. That does not mean, however, that such action is irrelevant. Rather, the fact that grievant grabbed Gronewald's jacket -- or at least put his hands on Gronewald -- at the same time that he was angrily berating him helps give meaning to the words grievant used. That is, the fact that grievant laid hands on Gronewald contributes to the abusive character of grievant's verbal assault.

I have read and reread each of the cases submitted by the union in support of its contention that grievant's representative capacity shielded his actions. In my view, each of them is distinguishable from the case at hand. In the Bucyrus-Erie Company case the facts were much different than they are here. The arbitrator noted that the confrontation took place in the privacy of an office and not in a work area in plain view of other employees. In addition, the arbitrator observed that a foreman may have provoked the grievant's conduct and that, in any event, some foremen participated in and condoned the discussion. The arbitrator observed, "there is no doubt that if the grievant's remarks were made in Z's department, while the grievant was working for Z, or if a number of other employees were present, at the time the remarks were made, disciplinary action would be upheld." (emphasis added) Similarly, the arbitrator in the Georgia Pacific case noted that the grievant's conduct did not occur in the presence of other workers. The same was true in the Wheeling-Pittsburgh Steel case cited by the union.

The Continental Can Company case is not in point at all. It does recognize the status of employees on union business. However, the case involved a union representative who was investigating a grievance who refused to comply with the direction of a supervisor to unjam the can lines. The arbitrator found that there was no clear abuse of the union representative's authority. Moreover, and of particular importance to the instant case, there was no confrontational or abusive conduct.

The most significant case raised by the union is Inland Award No. 805. In general, as I have already noted, I agree with arbitrator McDermott's observation that

> "Effective grievance prosecution often requires firm, bold, aggressive, and even militant action and words, which sometimes might

be in bad taste or verge on disrespect for the other spokesman. Healthy and realistic debate in adversary proceedings cannot exclude that. Since the spokesmen are equal, bad taste and disrespect are not insubordination."

I think there was more at stake in the instant case, however, than bad taste or conduct that verged on disrespect. The grievant's actions were abusive, intimidating, and threatening. He was not merely being a bold and aggressive advocate. Rather, he was provoking a confrontation under circumstances in which he had not been provoked himself. I cannot condone that conduct and I do not believe arbitrator McDermott would do so either.

The union has not attacked the reasonableness of rule 132r. Instead, its argument is that the rule was not legitimately applied to these circumstances. I disagree. Grievant subjected a supervisor to threatening and abusive conduct without provocation or other justification. I think his actions warrant discipline and I cannot find that a three day suspension was an unreasonable penalty in the circumstances.

AWARD

The grievance is denied.

Terry A. Bethel
Bloomington, IN
January 8, 1991