Award No. 842
IN THE MATTER OF THE ARBITRATION BETWEEN
INLAND STEEL COMPANY
and
UNITED STEELWORKERS OF AMERICA
LOCAL UNION 1010
Grievance No. 11-T-73
Appeal No. 1453
Arbitrator: Terry A. Bethel
February 22, 1991
OPINION AND AWARD
Introduction
This case involves the discharge of grievant Sherman Bryant. The hearing was held in the company's office in East Chicago, Indiana on February 7, 1991. Jim Robinson represented the union and Bradley Smith presented the company's case. Both sides filed prehearing briefs. Grievant was present throughout the hearing and testified in his own behalf.
Appearances
For the Company
B.A. Smith -- Project Representative
E. Kantowicz -- 100" Plate Mill
V. Soto -- Union Relations
R. Cayia -- Section Manager, Union Relations
For the Union
J. Robinson -- Arbitration Coordinator
B. Donaldson -- Griever
S. Bryant -- Grievant
Background
This case involves the discharge of Sherman Bryant for violation of the company's attendance program. The union does not contest the validity or reasonableness of that program in this arbitration, but also does not concede that a violation of the terms of the program necessarily justifies discharge. Rather, the union asserts that the issue under the collective bargaining agreement remains one of cause. The company, too, concedes that a violation of the terms of the program doesn't necessarily constitute cause for discharge, but it also argues that the violation in this case does establish cause.
Most of the material facts are not in dispute. Grievant was discharged initially on October 6, 1989, following repeated instances of absenteeism and failures to report off (FRO). Following progression of his grievance to the third step of the grievance procedure, the parties agreed to grievant's reinstatement pursuant to a last chance agreement effective April 18, 1990. The agreement provides, among other things, that "any repetition of the conduct which led to his suspension/discharge . . . will be cause for Mr. Bryant's immediate suspension preliminary to discharge." Grievant acknowledged that the terms of this agreement were explained to him.
The incident that precipitated the discharge that is the subject of this arbitration was an FRO on November 11, 1990. That was not, however, grievant's first absenteeism problem following his reinstatement. Indeed, grievant had three other absences prior to the November FRO. He was absent on June 19 as the result of car trouble and again on August 1 and August 7, both listed as resulting from personal reasons. On August 10, grievant met with his supervisor, E. Kantowicz, who counseled him about his absenteeism problems and gave him a memo that read, in part:
Absenteeism is a repetition of the problem that led to your suspension/discharge action. You were reminded that failure to meet any of the conditions set forth in the agreement . . . will be cause for your immediate suspension preliminary to discharge.
Kantowicz said he told grievant that, as the result of his three most recent absences, he could discharge him, but that he had decided to give him a pass.
Kantowicz said he wanted to work with grievant and try and help see him through his problems. He testified, however, that he told grievant there were limits to what he could do. He said that grievant was thankful and gave him assurances that he would not regress into the kind of behavior that had led to his initial discharge. Unfortunately, grievant experienced just that kind of problem on November 1, 1990. On that day he failed to report off. Indeed, he did not call at all either during his shift or the following day.

Kantowicz said he agonized over what to do for some time, but ultimately decided to suspend grievant preliminary to discharge. He said he was influenced by grievant's past record and the fact that this offense was the same sort of thing that had caused his previous discharge.

There is no question, as the union asserts, that grievant's record had improved somewhat following his reinstatement. That fact is of some importance, but improvement is only one of the relevant considerations. It is also permissible to take into account the reasons offered by grievant for his absences. Unfortunately, those do little for grievant's cause in this case.

Grievant claimed that he missed work on June 19 because of car trouble. His two subsequent absences were more problematic. Kantowicz said grievant explained that his absences on August 1 and 7 were for personal reasons. At the hearing, however, grievant said he was "pretty sure" he had a cold on those days. Apparently, he had never tendered that excuse before.

He also claimed, however, that his absences were caused in part because he had been moving and because he was trying to get himself together.

Grievant explained his November 1 FRO by saying that he has gone to a local school to run shortly before his 11:30 p.m. reporting time. He said he got over-tired and laid down for a few minutes before leaving for work. He fell asleep and did not wake up until the following morning, when his shift was already over. He said he didn't call in because he didn't understand why it would matter -- he had already missed work.

Discussion

There are difficult aspects to this case. I recognize that grievant's first discharge was apparently caused by a drug and alcohol problem. Grievant is to be commended for his efforts to overcome those difficulties. What I find troubling, however, are the excuses he offered for some of his absences. Grievant claimed to have been absent on August 1 and 7 because he was "pretty sure" he had a cold, a claim about which I have significant doubt. But he also gave a rambling and not entirely persuasive answer about personal problems due to moving and "getting his life together." I was equally unimpressed with his explanation for the FRO on November 1.

As I have observed in credibility cases before, I wasn't with grievant and I don't know what happened to him. But I just didn't believe his story and, even if it were true, I can't understand his failure call in after he woke up. Surely he understood the importance of explaining any absence. Surely he understood just how precarious his situation was. Simply stated, his actions on November 1 just do not make sense. They certainly don't resemble the actions of a man who recognized the seriousness of his difficulties and who was determined to improve.

I can't say whether grievant's previous problems revisited him in August and November of 1990. I can say that I did not believe the excuses he offered at the hearing. Regrettably, I cannot conclude that grievant was serious about his vow to improve. Perhaps, if given another chance, the grievant would put his problems behind him. It isn't easy to know where to draw the line. But certainly the company can't be faulted for its effort. It has already reinstated grievant once. It may have had cause to discharge grievant in August 1990, but it gave him one additional chance. The company's tolerance has to have some limit. At some point the company has to be able to say that it has tried hard enough. Given the feeble excuses offered by grievant for his most recent absences, I think the company has reached that point in this case. It had cause to discharge grievant.

AWARD

The grievance is denied.

/s/ Terry A. Bethel
Terry A. Bethel
Bloomington, IN
February 22, 1991