Award No. 892
IN THE MATTER OF THE ARBITRATION BETWEEN
INLAND STEEL COMPANY
and
UNITED STEELWORKERS OF AMERICA
LOCAL UNION 1010
Arbitrator: Terry A. Bethel
June 14, 1994
OPINION AND AWARD
Introduction
This case concerns the discharge of grievant Jimmy Brooks. The case was tried on May 17, 1994 at the company's offices in East Chicago, Indiana. Brad Smith represented the company and Alexander Jacque presented the case for grievant and the union. Grievant was present throughout the hearing and testified in his own behalf. The parties submitted the case on final argument.
Appearances
For the Company:
B. Smith -- Arb. Coord., Union Rel.
C. Lamm -- HR Generalist, MMS
L. Selby -- Proj. Rep.
For the Union:
A. Jacque -- Chrm., Grievance Comm.
J. Brooks -- Grievant
D. Jones -- Griever
L. Aguilar -- Vice Chrm., Gr. Comm.
D. Lutes -- Secretary, Gr. Comm.
Background
The facts are not in dispute. Grievant was a long service employee working in Mobile Maintenance Services at the time of his discharge. His absenteeism record for his previous five years is not enviable. From May, 1988 to May 1993, grievant was disciplined a total of 17 times for absence or absence related incidents. He had, in fact, already progressed through the three day discipline level on two different tracks, including failure to report off, meaning that the next step was suspension preliminary to discharge. Grievant was not, however, discharged solely, or even principally, as a result of those occurrences. Rather, the company discharged grievant following his incarceration in the spring of 1993. The facts surrounding that incarceration are a little unusual.
There is no dispute that grievant was convicted of reckless homicide in 1982 as the result of a traffic accident which involved driving under the influence of alcohol. The court sentenced grievant to two years in prison, but allowed him to remain free on an appeal bond. For reasons that are not disclosed in this record -- but which can only be the result of the court's own error -- grievant remained free until 1993, when sentence was executed. In accordance with the usual "good time" practices of the State of Indiana, grievant served a total of one year in prison. Obviously, he was not available for work during that time. The company did not excuse the absence and did not grant grievant's oral request for a leave of absence. This case concerns the company's decision to discharge grievant for his record of absenteeism, including the incarceration.
Discussion
As Mr. Jacque correctly pointed out, I have seen (and heard) cases involving employees who have worse absentee records than grievant, at least if one ignores the period of incarceration. Moreover, as Mr. Jacque also argues, if one makes certain allowances, there are glimmers of improvement in grievant's record. Thus, if one ignores the 13 personal days grievant took from January to May, 1993, then he had only one other occurrence, which was a failure to report off. Of course, one would also have to ignore the incarceration, which began in 1993. Similarly, if one ignores the 90 days of extended absence in 1992 or the 38 days of extended absence in 1990, grievant's record looks better than it actually is.
The problem with this argument, however, is that I am not at liberty to ignore the record. I am aware that grievant is a long service employee and I recognize that length of service played an important -- perhaps a decisive -- role in my decision to reinstate another grievant in Inland Award 858. No matter what rationalizations they may offer for their decisions, arbitrators often take extraordinary steps to protect long service employees from discharge, especially those whose age makes it unlikely they will find work

elsewhere. As Mr. Smith argues in this case, however, and as other arbitrators have recognized, length of service does not immunize an employee from discipline. The company, after all, has interests to protect, too, and it did bargain for the right to discharge employees for just cause.

Perhaps the outcome of this case would be different if I had to consider only grievant's absence record prior to May 1993. Unfortunately for grievant, his extended incarceration is also a part -- and a large part -- of the record before me. It may be that neither the absence record or even the incarceration, standing alone, would be sufficient. As to the absence record, however, I note that the union is hard pressed to find evidence of recent improvement or the correction of a cause -- like alcoholism -- which led to the absences. Unlike Award 858, the union has little to offer in mitigation, save grievant's length of service.

As for the incarceration, I agree in general with the comments of Arbitrator Ralph Seward, quoted with approval by Arbitrator Mittenthal in LTV Steel Co. Grievance No. 3-68-87. In particular, I recognize that the mere fact of incarceration may not, in itself, justify a company's decision to discharge an employee. And, in that regard, length of service plays an important role. But there are other factors to consider as well. Here, I must view grievant's incarceration against the background of 17 absence related disciplinary actions in a five year period. While arbitrators may impose on employers special responsibilities to long service employees, those employees have responsibilities to the company as well, with one of the most important being the responsibility to report to work. In this case, grievant does not appear to have taken this responsibility seriously. At least, the record is poor and there was nothing offered by grievant to justify it. And, in contrast to Award 858, there was no evidence that grievant had corrected the problem that led to his many absences.

Also of great significance is the length of grievant's incarceration. At the time he was imprisoned, the company could not know whether grievant would qualify for the "good time" that would effectively cut his sentence in half. Even if he did, grievant would still remain in prison for one year. <FN 1> As arbitrator Seibel said in Jones and Lauqhlin Steel Corp. No. 10-545, the decision to discharge an employee who is incarcerated for that length of time is not unreasonable. Nor do I find evidence that the company's action was discriminatory.

In his opening statement, Mr. Jacque said that he would present evidence that other employees who were similarly situated had been reinstated by Inland. There was no such evidence. Even if there had been, the question before me is not merely whether the company and the union have settled some previous case short of arbitration (under circumstances that may or may not apply in this case) but whether the company had just cause to discharge grievant in this case. Given his prior absence record and his extended period in prison, I am persuaded that such cause existed. And I have no basis for determining that other employee have been treated differently in like circumstances.

AWARD

The grievance is denied.

/s/ Terry A. Bethel

Terry A. Bethel

June 14, 1994

<FN 1> I realize that grievant's incarceration was delayed for an extended period of time. This, however, does not change the fact that grievant was imprisoned as the result of his own fault. Moreover, I have no way of determining that an earlier imprisonment would have not also have led to grievant's discharge.