Award No. 911
In the Matter of Arbitration Between:
Inland Steel Company
and
United Steelworkers of America,
Local No. 1010.
Grievance No. 25-V-49
Appeal No. 1522
Arbitrator: Jeanne M. Vonhof
December 22, 1995
REGULAR ARBITRATION
INTRODUCTION
The Undersigned Arbitrator was appointed according to the rules of the applicable collective bargaining agreement. This hearing was held on November 9, 1995 at the Company's offices in East Chicago, Indiana.
APPEARANCES
UNION
Advocate for the Union:
A. Jacque, Chairman, Grievance Committee
Witnesses:
J. Cadwalader, Members' Assistance Committee, Local 1010
H. Perkins, Griever, 80" Hot Strip
C. Brown, Grievant
COMPANY
Advocate for the Company:
P Parker, Senior Representative, Union Relations
Witnesses:
J. Bean, Coordinator, EAP Program
T. Smith, Section Manager, Operations, 80" Hot Strip
B. Smith, Arbitration Coordinator, Union Relations
BACKGROUND:
This is a case of a long-term employee being discharged for absenteeism. The Grievant has worked for the Company since 1970. The Grievant is classified as a Bander Marker in the rolling sequence at the 80" hot strip mill, but frequently works in a higher-rated job. Because the Grievant usually works in a skilled job halfway up the sequence, it is difficult to replace him when he is absent, according to the Company's witness.
The Grievant had been previously discharged for poor attendance in December, 1989. The Union grieved the discharge and in July, 1990, the Union agreed that the Company had just cause to discharge the Grievant, but the Company agreed to return the Grievant to work under the terms of a Last Chance Agreement (LCA).
The Last Chance Agreement required the Grievant to maintain a certain absenteeism rate for a period of eighteen (18) months. The Agreement also stated that it represented a final chance at employment and that failure to meet any of the conditions of the Agreement or any repetition of the conduct which led to the discharge, or any violation of other Company rules would be cause for immediate suspension preliminary to discharge.
That Last Chance Agreement also stated that the Grievant stated without reservation that he had no problems with drug and/or alcohol addiction. The agreement stated that any drug and/or alcohol problems would not be considered as mitigating circumstances with respect to any breach of the terms of the Last Chance Agreement.
The Grievant was in trouble again with attendance before the expiration of the eighteen month period in the Last Chance Agreement. In January and February, 1991, he was interviewed concerning absenteeism, but no discipline was issued. In April, 1991 a one-day discipline was issued. He was formally counseled for absenteeism again in December, 1991, and in August and September, 1992; on each occasion a two-day discipline was held in abeyance. A two-day discipline was issued in October, 1992.
He was not disciplined again until October, 1993, when he was formally counseled and a three-day suspension was held in abeyance. The three-day discipline was issued in December, 1993, and in February, 1994 the Grievant was given a record review. He was told at that time that his continuing failure to work on

time and as scheduled would lead to suspension preliminary to discharge. That step was reached in July, 1994, after about seven more absences. There is no record that any of the earlier disciplinary measures was grieved.

On each occasion of formal counseling or discipline, the Grievant was asked whether he had an alcohol or drug dependency problem. The Grievant answered "yes" on one instance in January, 1991, and on every other occasion, including one a month later, he answered "no." His Section Manager testified that when an employee states that he has a problem with drugs or alcohol, he is told where he can get help, including the Company's EAP program.

At the Grievant's hearing following the current suspension preliminary to discharge the Grievant blamed his attendance problems on a drug and alcohol dependency problem. Mr. John Bean testified that the Grievant had entered the Company's EAP program first in 1987 after a three-week absence for hospital treatment associated with cocaine use. According to Mr. Bean, the Grievant completed the EAP program for drug and alcohol abuse in September, 1988 and almost immediately went into the program again. He had some problems in meeting the attendance requirements of the program. After last seeing the Grievant in the program in December, 1988 and trying to contact him by letter and telephone, he was discharged from the program in April, 1989, according to Mr. Bean. He did not enter the program again.

The Grievant testified at the arbitration hearing about a number of personal and family tragedies that had led to his absences and drinking. He also testified that he does have problems with drugs and alcohol, as he raised in his suspension hearing. He testified that he began taking drugs and drinking again after the brutal murder of the mother of one of his children in about 1990 or 1991. He testified, however, that he signed truthfully that he did not have a problem with drugs or alcohol when the Company asked him about such problems when counseling or disciplining him for poor attendance, at least until late 1993. Even when he signed that he did have a problem on one occasion in 1991, he testified that he did not have a problem at that time. He testified that he never came to work under the influence, and would never put anyone's life in jeopardy that way.

The Grievant testified that if he called off sick, he was sick. He testified that a lot of his sick days were the result of his hemorrhoids, but that problem has now cleared up on its own. He also testified that he must take one of his children to the hospital who runs very high fevers, and that at least one of his absences was due to a transportation problem.

The Grievant also testified that he has been disciplined only once for poor work performance, and that was due to an equipment failure. He testified that he has saved the Company a lot of money, including the time he alone knew how to put out a fire when a coiler caught fire. The Company put forth evidence of another discipline for poor work performance. The Grievant also testified that he has another job, and has not been late or absent for that job.

The Grievant also testified that he had problems with denial, but was attending some Alcoholics Anonymous programs on his own as early as October, 1993. He testified that he has not had a drink in over one year's time.

Mr. Jerry Cadwalader, long-time veteran of the Union's Members' Assistance Committee, testified that he saw the Grievant when he was discharged, and then did not see him for the next six (6) months. At that time the Grievant came to him and acknowledged that he had alcohol and drug problems. Mr. Cadwalader testified that the Grievant has "religiously" followed through on his commitment to recovery since that time. He has attended five meetings a week, and has walked as long as one and a half hours to meetings because he did not have a car. He has helped other employees who were having problems, and has accomplished his goals in recovery with very little family support.

Mr. Cadwalader also testified about the Grievant's very reliable hard work for a contractor friend. He also testified about another Grievant who had several hospitalizations and many absences related to his drinking problems, but was reinstated through arbitration.

THE COMPANY'S POSITION

The Company contends that the Grievant was discharged for just cause. The Company notes that the Grievant already has been discharged for absenteeism, that Last Chance Agreements are kept on an employee's record for five years, and that the five-year period had not expired at the time of the Grievant's second discharge.

The Company notes that the evidence shows that since his Last Chance Agreement the Grievant has been counseled and progressively disciplined on many occasions. His absences continued, both before and after his record review, and he was finally discharged because there was no improvement in his attendance, the Company urges.

The Company argues that the Grievant does not blame his absences on drugs or alcohol, even now. He has offered other excuses for his absences since the last record review, including transportation problems, his own illness, and a sick child. The Company also argues that the Grievant's testimony and conduct in regard to whether he has an alcohol or drug problem has been very inconsistent.

If there were a nexus between the Grievant's absences and his alcohol or drug problems, the Grievant is still in denial, the Company urges. If there is no such nexus, then evidence of post-discharge rehabilitation is irrelevant, according to the Company. The Company also notes that the Grievant has been given two previous opportunities to deal with his drug and alcohol problems through the Company's assistance program and has not been able to do so.

The Company also raises the long period between the Grievant's discharge and his rehabilitation. To reinstate the Grievant might send a message to other employees that they need not get serious about rehabilitation until months after their discharge.

The Company also argues that the Union has scheduled this case for a long time after the Grievant's discharge in order to build up a good record of post-discharge rehabilitation. The Union is asking the Arbitrator not to look at the entire fifteen (15) months after the discharge, but just the last several months, according to the Company. The Company should not be expected to hold open an employee's job indefinitely, while he pursues rehabilitation, according to the Company.

THE UNION'S POSITION

The Union argues that the Arbitrator should not base a decision in this case on how long it has been since the Grievant's discharge. According to the Union the Grievant did not have control over that factor.

The Union also argues that the Arbitrator should not be swayed by the fact that the Grievant's job has been filled. There has been no increase in the permanent workforce, the Union argues, and the filling of the Grievant's job is part of the sequence support program initiated by the Union, and no one would be fired if the Grievant is returned to work.

According to the Union, the Grievant deserves another chance. He testified that he is on the right track, and has not used drugs or alcohol in over one year. There is no way to prove that the Grievant has been rehabilitated, the Union argues, but we can look at the records of his attendance at Alcoholics Anonymous meetings. The Union also points to the Grievant's attendance at his current job, and argues that representatives of the Members' Assistance Committee do not testify on someone's behalf unless they truly believe he can be successful.

The Union notes that the Grievant has been a good employee for twenty-five (25) years and that he only began having problems in the past five (5) years, after some terrible personal tragedies. The Union notes that he has only been given one chance and he was not terminated for violating the terms of the Last Chance Agreement.

The Union also argues that the Grievant did not testify that none of his absences were due to drug or alcohol use. Rather, he testified that some weren't due to drug or alcohol use. The Grievant should not be expected to remember what occurred in relation to each absence, the Union argues.

The Union also argues that other employees have been reinstated with worse records than the Grievant's record. The Grievant should be given another opportunity, the Union argues, to demonstrate that he is a rehabilitated, responsible employee.

OPINION:

This is a case involving the discharge of a long-term employee for excessive absenteeism. The Grievant's absenteeism record has been described in detail in the "Background" section of this opinion. There is no record of any grievances filed about any of the other disciplinary measures the Grievant received, other than his two discharges.

The major argument put forth by the Union in the Grievant's defense is that he has problems with alcohol and drug abuse, which he now has successfully addressed through an intensive recovery program. In connection with this discharge, the Grievant first raised the issue of his drug and alcohol problems at the suspension hearing. He had been asked in writing every time he was formally counseled or disciplined over the past five years whether he had a problem with substance abuse and, all but one time, he responded, in writing, that he did not have a problem.

When he was discharged in 1989, his Last Chance Agreement specifically stated that he did not have a problem with drug or alcohol abuse. Unlike many Last Chance Agreements for absenteeism, this one did not contain a provision that the Grievant attend the Company's EAP program.

The only occasion on which the Grievant responded that he did have a problem, before the current discharge occurred on January 21, 1991. At the arbitration hearing the Grievant testified that he signed

incorrectly at that time, because he did not have a problem at that time and any problems he had with chemical dependency started after that time period.
The Grievant also testified that he began drinking in 1990 or 1991, after the murder of the mother of one of his children. On cross examination he went through statements he had signed in February, April, and December, 1991 and August, September and October, 1992 in which he had stated that he had no problem with drug or alcohol dependency. At the arbitration hearing he testified that he had answered correctly, that he had no problems with drug or alcohol dependency at that time. He also testified that he was using alcohol and/or drugs during this period.
He testified that by late 1993 he probably did have a problem with substance abuse, and he was going to some Alcoholics Anonymous and Narcotics Anonymous meetings on his own. On four separate occasions from late 1993 through his record review and suspension preliminary to discharge he answered "no" in writing when asked whether he had such problems. He also testified that he was in denial.
At the arbitration hearing the Grievant also testified that even during the period when he now believes he had a problem with drug or alcohol dependency, his absences generally were not caused by those problems. He testified several times that on the occasions when he called in sick he was sick. He stated specifically that he did not call in sick because of alcohol or drug problems.
When asked about his most recent specific instances of absence, i.e. those between his last discipline, the record review in February, 1994, and his suspension preliminary to discharge in July, 1994, he stated that they were due to transportation problems, the sickness of his child, his own illnesses and in particular his problems with hemorrhoids. He did not contend that any of these specific absences were related to his alcohol or drug addiction.
The Union argues that the Grievant cannot be expected to remember the cause of a specific absence which occurred in early 1994. I have taken that into consideration. However, I cannot conclude from his testimony at the arbitration hearing which, if any, of his absences he himself attributes to his alcohol or drug dependency.
The Grievant appeared to take some pride in the fact that his alcohol and drug problems had not caused him to be absent from work. While I can understand his feelings, there is no basis for me to consider his alcohol and drug problems as a mitigating factor to his absenteeism record, if they were not a cause for a significant number of his absences. There is no basis to consider any evidence regarding his efforts at rehabilitation after the discharge if there is not sufficient evidence that his alcohol and drug problems were a major factor in his poor work record. In this case that connection has not been established.
The Grievant acknowledged that he was using drugs and alcohol during the period when he accrued the attendance record which led to this discharge. It is difficult for many people to admit the role that alcohol or drugs may have played in their past mistakes and I have considered whether the Grievant may still be in denial over the connection between his substance abuse problems and his absenteeism. However, from the record before me I cannot conclude whether one was the cause of the other, and without strong evidence of this connection, I cannot consider the substance abuse issue. <FN 1> In addition, if the Grievant is still in denial, then he has not reached a point in his rehabilitation where reinstatement is even a possibility.
Because there is no basis to consider the substance abuse issue, there is no need to consider most of the other arguments raised by the Parties here. <FN 2> However, the issue of disparate treatment raised by the Union is relevant, particularly in regards to Inland Award 903. There are significant differences between that case and this one, however. The most important difference is that in that case the grievant's lengthy absence clearly was due to his alcoholism, as he was absent due to his participation in a long substance abuse program. Here, it is not clear that the Grievant's absences were due to alcohol or drug problems.
In addition, as I read Inland Award 903, the reinstatement in that case was based in large part upon conversations between the grievant and various individuals which gave him reason to believe that he would not be discharged if he continued missing work in order to attend his rehabilitation program. That situation did not exist here. Therefore, I conclude that there is a significant difference between Award 903 and the facts of this case.
In conclusion, I note the evidence that the Grievant was a good employee for many years, except for his absentee problems. It appears that the Company took into consideration his serious family problems over the past five (5) years. The Last Chance Agreement and the fact that Management did not automatically move to the next step of discipline on every occasion when it could have done so are evidence of that. Company representatives asked the Grievant if he had a drug or alcohol problem in connection with his absenteeism and he declined help on many occasions.

The Union argued that the Grievant has been given only one chance and deserves another. I presume the Union means the Last Chance Agreement in 1990. A "last chance" is supposed to be just that. The Grievant never really sustained an improvement in his attendance record after that agreement, and the Company was patient in moving through the progressive discipline system again with the Grievant after his Last Chance Agreement. On the basis of this record it appears that the Company gave the Grievant many opportunities to correct his attendance problems, and took into consideration his years of service in the way that it treated him. Under all the circumstances, therefore, there is no basis for overturning the discharge.

AWARD

The grievance is denied.

/s/ Jeanne M. Vonhof

Jeanne M. Vonhof

Labor arbitrator

Acting Under Umpire Terry A. Bethel

Date this 22nd day of December, 1995

<FN 1> The Union presented impressive evidence of the Grievant's commitment to rehabilitation, including many attendance sheets from the meetings he attended, the testimony that he walked an hour and half to meetings, and he has helped other employees.

<FN 2> Because the rehabilitation is not relevant here, there is no need to address the issue of whether the rehabilitation efforts should not be considered because the Grievant did not really begin them until six (6) months after his discharge.