
In the Matter of Arbitration Between:)

ISPAT INLAND)

and)

UNITED STEELWORKERS OF)
AMERICA, Local 1010.)

Award No. '993

INTRODUCTION

The Undersigned Arbitrator was appointed according to the rules of the applicable collective bargaining agreement. This hearing was held on December 14, 2001 at the Company's offices in East Chicago, Indiana.

APPEARANCES

UNION

Advocate for the Union:

D. Reed, Secretary, Grievance Committee

Witnesses:

H. Garcia, Grievant
I. Quinones, Former Employee
F. Azcona, Union Benefits Representative
M. Beckman, Griever, Area 20
L. Aguilar, Vice President, Grievance Committee

COMPANY

Advocate for the Company:

P. Parker, Section Manager of Arbitration and Advocacy

Witnesses:

D. Fox, Plant Nurse
J. Bean, Coordinator, Employee Assistance Program
Dr. D. DeMichael, Plant Medical Director
T. Kinach, Section Manager, Union Relations

BACKGROUND

The Grievant had worked for the Company for 29 years at the time of his discharge. He was off on disability at the time of the incident giving rise to his discharge. Nurse D. Fox, R.N., had been hired by the Company as a Case Manager for a new program called ASAP. The Company Doctor described the program as an intensive program to monitor employee absences due to sickness or accidents. Her duties include talking to employees and their doctors, with the goal of returning employees to work in a safe and timely manner. She testified that she had met the Grievant twice prior and that she had had no problems with him on those occasions.

Nurse Fox testified that the Grievant had missed his appointment with the Company for June 29, 2001. She reported that she had received two voice mail messages from him on Monday regarding this missed appointment. She tried to call him and could not reach him on Monday. On Tuesday morning she called him at about 8:30 a.m. She testified that she told him that when he misses an appointment he must let the Benefits Department know or else they will cut off his benefits, but that she would call Benefits and tell them that he had called in. She said that she then told the Grievant that his doctor had released him to return to work, and he "erupted in a tirade of anger." The Nurse testified that the Grievant started screaming "What?!" and "No!" and that she had difficulty understanding him. She said that the Grievant then calmed down and told her that

he had tried to kill himself before, "but not this time," and then said, "I'm going to take you out and a lot of others. I have a list."

The Nurse testified that then she told the Grievant that he should come in for an appointment at 1:00 p.m. that day. She told him that he should bring in his doctor's supporting information and that she would not tolerate any threats or "acting out" when he came in. She said that when she made the appointment with the Grievant for later in the day she was "in Case Manager mode." On redirect, she said that if she had it to do over again she would not have made an appointment for the Grievant to come in later in the day.

The Nurse testified that after the telephone call Mr. J. Bean, Coordinator of the Employee Assistance Program, walked into her office. He testified that when he walked into the Nurse's office she looked upset and said that she had had a conversation with an employee and had been threatened. He asked the Nurse if she felt threatened and she said, "Yes." Mr. Bean told the Nurse that they had to report the incident to her supervisor. Mr. Bean testified that he has worked with Nurse Fox for one and a half years, and she is not rattled easily, especially with her background in emergency room medicine. At the Arbitrator's request the EAP Coordinator testified twice about what Nurse Fox reported that the Grievant had said to her. He testified that she said that the Grievant said that he had tried to commit suicide before and that he was going to do whatever he had to do and that Nurse Fox was on the list, or that he had a list.

The Company doctor testified that on the morning in question the Nurse and the EAP Coordinator came to him with the report that the Nurse had been threatened. He said that he asked what the Grievant had said and was told that he said that he was going to "take her out" and that he had a list.

The Grievant testified that when the Nurse called him on the morning in question she was very angry and boisterous. She told him that they were going to cut off his benefits because he had missed his appointment. He said that he told her, "You do what you gotta do and I'll do what I gotta do." He explained that he meant that he would go to the Union and file a grievance against the Nurse. The Grievant explained that when these comments were made the Nurse was mad and he was "kind of mad" as well. Then the Nurse made an appointment for him to come in that afternoon and bring his doctor's papers. When he did come in, however, he was met by a Security Guard who led him to another building. On cross-examination the Grievant said that he had seen Nurse Fox on once or twice prior and that she had treated him professionally on those occasions.

Mr. I. Quinones testified that he was with the Grievant when he received the telephone call from Nurse Fox. He said he was sitting with the Grievant on the sofa drinking coffee when the telephone rang and that he heard all of the Grievant's side of the conversation. He said that he did not hear the Grievant threaten to kill the Nurse. He said that he heard the Grievant say, "You do what you have to do. I'll do what I have to do. I'll go to my Union." He noted that it is difficult to understand the Grievant's English when he is speaking fast, as he was on the day in question.

On cross-examination Mr. Quinones acknowledged that he never offered this information during the initial investigation, even though he was present. He said he was not about to get involved at that time. He came to accompany the Grievant but it was his first time at such an investigation and he did not feel that he had a part in the proceedings. The Witness said that he would have gladly answered any questions put to him. He also acknowledged that the Grievant

was married to Mr. Quinones' niece. On rebuttal the Section Manager of Union Relations testified that Mr. Quinones testified at the suspension hearing and said that he had not heard the whole conversation between the Grievant and Nurse Fox. He said that he had a conversation after that hearing with the Secretary of the Grievance Committee indicating that the Secretary had agreed that Mr. Quinones had not heard the whole conversation.

The Union Griever testified that he was present at the investigation. He said that Nurse Fox said that the Grievant was loud and upset throughout his entire conversation with her, and that she had a difficult time understanding him. The Union also presented evidence that other employees had complained to the Union about the Nurse's behavior. The Union did not provide names of other employees who have complained and there have been no grievances filed about the Nurse's conduct.

The Company's Position

The Company argues that workplace violence has grown to epidemic proportions. The Nurse has a difficult position, getting employees back to work who do not want to come back to work. The Company cannot allow her to be intimidated in this position. There is nothing to support the argument that the Nurse somehow brought this action upon herself, the Company argues. In addition, the Company points to courts which have held Employers liable for not taking action against employees who had threatened others at work years earlier.

The Company argues that the Grievant's only defense, his denial that he threatened the Nurse, is not credible and is cowardly. He has denied threatening her because he knows that by making this threat he put his job in jeopardy. His refusal to own up to it indicates that he is

without remorse, and for this reason he should not be reinstated. The Company's Witnesses are credible, the Company argues. The Nurse had no reason to fabricate a story about the Grievant, according to the Company, and her testimony was supported by the other Company Witnesses.

The Union's Position

At the outset the Union contends that the Union does not approve of or condone the making of threats in the workplace. However, in this case the Union disputes that any threat was ever made. The Union relies upon the testimony of Mr. Quinones to support the Grievant's testimony that he did not make a threat to the Nurse. In addition the Nurse's actions do not indicate that she felt threatened, the Union argues.

The Grievant testified convincingly that he felt threatened by the Nurse's conduct, according to the Union. She was loud and boisterous, yelling at the Grievant that she was going to cut off his benefits. In addition the Union relies upon the evidence that other employees have complained about the Nurse's conduct. On the basis of all the evidence, the Union argues that the grievance must be sustained and discharge overturned.

Findings and Decision

This is a case involving the discharge of the Grievant for threatening the Company Nurse. The Nurse testified that she believed that the Grievant threatened to "take her out," as well as others on a list. The Arbitrator understands the phrase to "take out" someone as either killing or doing serious physical harm to that person. The Union argues that the Grievant did not utter a threat.

In this case the Grievant was discharged solely on the basis of several brief statements he made in the course of one telephone conversation from his home. Verbal threats may be the basis for a discharge. However, in order to sustain the discharge, particularly the discharge of a very long-term employee on the basis of one brief incident, there must be persuasive evidence that the employee made a threat to do serious harm to someone.

The situation in which this conversation occurred was fraught with tension. The position in which the Nurse works is prone to conflict. Part of her job is to return employees to work who have been injured or sick and who may not, in some circumstances, feel that they are ready to return to work. The third step minutes indicate that either the Grievant was not aware of or did not believe that his own medical practitioners had released him to return to work, at the time of the telephone call. The Grievant testified convincingly that he believed that the Nurse was threatening him with cutting off his benefits. The testimony of both the Company and the Union witnesses supports the view that he became upset. In addition, the Nurse may well have been upset, at the start of the call, with the fact that the Grievant had missed an appointment with the Company, since the appointments are important to the duties she must perform for her program.

Complicating this highly-charged conversation was the fact that English is not the Grievant's native language. The facts substantiate that it can be difficult to understand his English when he is upset or speaking fast. The difficulties in communication posed by these problems can be exacerbated when the conversation is by telephone rather than in person.

The only other person who testified that he heard at least part of the conversation was Mr. Quinones. The Company discounts his testimony on several grounds. The Company argues that the Union agreed during the grievance procedure that Mr. Quinones admitted that he had not

heard the entire conversation. The Arbitrator concludes that the parties may not have had a meeting of the minds about this admission -- it appears that the Company understood his statement to mean that he did not hear all of the Grievant's words, and the Union understood it to mean that he heard only the Grievant's half of the conversation, but that he heard all of that. That is what he convincingly testified at the hearing, and the Arbitrator cannot conclude that his testimony should be discounted entirely, because the parties may not have understood each other during the grievance procedure. However, Mr. Quinones did not speak up immediately about hearing the conversation at the initial investigation. In addition, he is related by marriage and apparently a close friend of the Grievant's. These factors tend to weaken his testimony and the Arbitrator has given it less weight than if they were not present.

No one was present with the Nurse when she was speaking on the telephone. However, the EAP Coordinator was the first person she spoke to after the call. At the Arbitrator's request, the Coordinator, a thoughtful, careful and credible witness, testified twice about the words that the Nurse reported to him that the Grievant had said. In neither case did he testify that the Nurse told him that the Grievant said he would "take her out" or that he was planning to "take out" others. The Coordinator did report that she said that the Grievant said that he had attempted suicide before, that he was going to do whatever he had to do, and that she was on a list, or that he had a list. The Coordinator's testimony that the Grievant said that he was "going to do whatever he had to do" is consistent with the Grievant's but not the Nurse's testimony at arbitration.

The Arbitrator also notes that the EAP Coordinator then asked the Nurse if she felt threatened by the Grievant's statements. Often such questions are asked in order to determine

whether a serious threat has been issued, taking into account the speaker's expression and tone of voice, for example, when the words were uttered. The fact that the Coordinator asked the question, however, at least raises the possibility that the words that the Nurse had reported to him were somewhat ambiguous.¹

Certainly the Nurse's actions after hearing the words were ambiguous. Her immediate response to the Grievant making the statements was to get him to agree to come in later in the day with his medical papers in order to straighten out the situation. This is not the conduct of someone who feels that she has just had her life threatened. If she felt that she had just received a death threat then one would expect her to call Security or someone in Management immediately to prevent the Grievant from coming anywhere near her. She did not pick up the phone and call anyone to report the threat. She did not summon the Coordinator or anyone else to her office. No calls were made to prevent the Grievant from coming in until after she talked to the Coordinator and to others. Thus it appears that at the moment the statements were uttered, the Nurse regarded them as "acting out," rather than as a serious threat. The Arbitrator has considered whether it took some time for the Nurse to emotionally absorb the full impact of the Grievant's statements. However, it would not take long to absorb the situation, if the Grievant really had said that he was going to "take her out" or "take out" others on a list.

Here a very long term employee has been discharged on the basis of several sentences he made in the course of one conversation. The evidence that the Grievant made the statements regarding "taking out" the Nurse or others is not sufficiently strong, so as to end the career of a

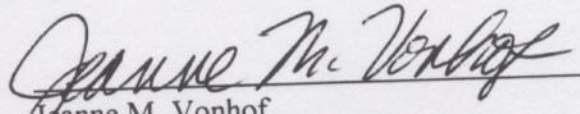
¹Although the doctor's testimony supports the Nurse's, the Arbitrator has given substantially more weight to the EAP Coordinator, who talked to her first and closer in time to the event. In addition the EAP Coordinator testified with more specificity about what was said.

29-year employee. Her actions and the testimony of the EAP Coordinator cast doubt upon whether the Grievant made such threats.

The other comments which can be attributed to the Grievant are not clear threats to cause physical harm to the Nurse or to others. Nevertheless, even if the Grievant's comments were not a direct threat, they were the kind of statements which merit significant discipline. The Arbitrator concludes, on the basis of the testimony of the Nurse and the EAP Coordinator, that the Grievant made comments about attempting suicide in the past and that he had "a list." In these times, an employee can be expected to understand that a statement that he is keeping a "list" of people at work might well be understood to mean that he intends to physically harm the people on the list, not just complain about them. Comments like these can create substantial fear among other employees who hear them, or hear of them, even if they are not real threats. Although there is not sufficient evidence to conclude that the Grievant was threatening physical harm, rather than Union action, these comments are sufficiently serious to merit significant discipline. Being upset over a cut-off of benefits, or any other situation at work, may help explain but does not excuse such conduct. Therefore the discharge here will be reduced to a suspension lasting since the Grievant's discharge, and the Grievant will not be awarded backpay.

AWARD

The grievance is sustained in part. The Grievant shall be reinstated without backpay. The discharge is reduced to a suspension lasting from the time of the discharge until reinstatement.


Jeanne M. Vonhof
Labor Arbitrator

Decided this 28th day of January, 2002.

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GRIEVANCE COMM. OFFICE