
In the Matter of Arbitration Between:)

ISPAT INLAND STEEL COMPANY)

and)

UNITED STEELWORKERS OF)
AMERICA, LOCAL 1010.)

Award No. 1003

Gr. No. 26-W-35

INTRODUCTION

The Undersigned Arbitrator was appointed according to the rules of the applicable collective bargaining agreement. This hearing was held on July 23, 2002 at the Company's offices in East Chicago, Indiana.

APPEARANCES

UNION

Advocate for the Union:

W. Cary, International Representative

Witnesses:

D. McKee -Grievant

E. Campos Jr - Griever Area # 26

COMPANY

Advocate for the Company:

P. Parker, Section Manager, Arbitration

Witnesses:

W. Calhoun - Section Manager - Rail Operations

R. Hafner - Hot Metal Coordinator

Background:

The Grievant here was discharged for the violation of the Company's rule prohibiting an employee from leaving his worksite, without permission of a supervisor, the rule against neglect or carelessness in the performance of his duties, and his overall work record. At the time of the discharge the Grievant was an R.C. Operator, using a remote control device to operate locomotive engines. The Grievant had more than 25 years of service.

According to the Section Manager, the Grievant's position requires "footboard relief," i.e. the employee is required to stay on the job until the employees sees his or her relief, dressed and ready to work. The Section Manager discussed the importance of the R.C. Operator's duties at the Blast Furnace. The Blast Furnace runs continuously and when a locomotive is needed to reposition a ladle, for example, an R.C. Operator is needed immediately.

The Hot Metal Coordinator on the night in question testified that he has worked 29 years as a supervisor. He explained that he has a very complex job, making sure that iron goes from the Blast Furnace to the steel-making shops and that the ladles are returned. He uses computers, web cameras and radio communications to make sure that the process flows properly. Six R.C. Operators work per turn, some moving pugh ladles in and out of furnace areas, others shuttling metal from the furnace to BOF's and back, and others moving slag from the furnace to a dump area. Normally an R. C. Operator is assigned one of these assignments, but the Coordinator testified that on any given night he might add to it. He said that the R.C. Operators have a lot of idle time, but that it is critical to have engines available immediately when they are needed.

On the turn in question the Grievant was assigned to the No. 6 Engine, used to service the No. 6 Furnace. The Coordinator testified that he began to try to reach the Grievant shortly after

9:00 p.m., using the plant general radio. He testified that he wanted the Grievant to remove empty pugh ladles from the hot metal station. Only six empty pugh ladles may be stationed there before the Company loses the ability to position full pugh ladles in the right place. He explained that he did not want the empty pugh ladles being removed right at the end of the turn, at the time that personnel was changing.

The engines are equipped with radios with speakers mounted outside the engine, since the R.C. Operator normally operates the engine from the ground. The outside speakers can be heard at least 30 feet away. The R.C. Operator is supposed to carry a portable hand-held radio as well. Another radio which transmits directly from the No. 6 Furnace to the No. 6 Engine was used to try to contact the Grievant, without success.

The Hot Metal Coordinator was attempting to reach another R.C. Operator, Mr. Medina, at the same time. Failing to reach either Operator by radio, he telephoned to the lunchroom/locker room, where the R.C. Operators eat lunch. The two employees were not there. The Hot Metal Coordinator then left his work area to look for the Grievant and Mr. Medina, arriving at their area at about 9:30 p.m., according to his testimony. He checked the Grievant's engine at about 9:30 p.m.; neither the Grievant, his portable radio, nor the remote control device he uses to control the engine were in the engine. He found the latter two items in the lunchroom. With the help of another supervisor the Coordinator checked the parking lot, the south yard, and other nearby lunchrooms. He received information about the car normally driven by the Grievant, but could not locate it in the parking lot. The Hot Metal Coordinator found Mr. Medina at about 9:40 p.m., took him out of service, docked his pay for the rest of the turn, beginning at 9:30 p.m., and told him that he could not return until he talked to the Section Manager.

The Coordinator testified that he became concerned about the Grievant's safety. He enlisted Plant Protection in the search for the Grievant, which ended when Plant Protection verified that the Grievant had clocked out at 10:20 p.m. The evidence showed that the Grievant was clocked out by the punching in of his identification numbers, rather than by swiping his identification card in the machine. He was punched out at Lot 40, which the Company said was at least a mile from his assigned workplace.

The Hot Metal Coordinator stated that it did not make sense for the Grievant to leave out of Lot 40 if he needed to get home to an ill wife, as the Grievant had stated, because that exit would add at least 6-7 minutes to the Grievant's departure time. In addition, he said that there was more chance of being blocked by trains at that exit. Both the Hot Metal Coordinator and the Section Manager of the Rail Department stated that the fact that the Grievant did not swipe out made it possible for him to have someone else clock him out. The Hot Metal Coordinator also questioned the Grievant's statements that he was trying to pick up a harness at the end of the turn, especially if he were trying to hurry home to a sick wife, as he had originally claimed. The Section Manager of the Rail Department noted similar reservations about the Grievant's version of the events. He noted that the Grievant never requested a new harness during the turn, and it would not make sense for him to wait to get one at the end of the turn, if he needed one.

The Company presented information concerning the Grievant's past disciplinary history. The record is as follows:

March 23, 1997	One Day Discipline	Absenteeism
October 30, 1997	Two Day Discipline	Absenteeism
January 7, 1998	Reprimand Letter	Neglect in performance of duties
October 13, 1998	Record Review	Attendance
December 2, 1998	One Day Discipline	Running through switches

June 4, 1999	Three Day Discipline	Poor work performance
October 18, 1999	Three Day Discipline, Record Review	Leaving work without proper relief
April 21, 2000	Final Warning, Record Review	Work stoppage

The Section Manager of the Rail Department testified that after a Record Review and a Three Day discipline the next step is normally suspension preliminary to discharge. He also testified about some of the incidents which led to the Grievant's earlier disciplinary actions for poor work performance. He stated that in January 1998 the Grievant failed to block certain rail cars correctly. In December 1998 he ran a switch, which caused a locomotive to derail and damage the track. In June of 1999 the Grievant was disciplined for leaving rail cars "in the foul," i.e. he did not make sure that rail cars were pushed completely out of the way of other equipment. In addition, several days earlier the Grievant had returned from the #4 BOF with four pugh ladles which were uncovered. The ladles need to be kept covered, even when empty, in order to maintain proper heat levels in the ladles.

The Grievant also was disciplined, in October 1999 for leaving his work assignment without proper relief. The Section Manager also characterized the April 21, 2000 incident as the Grievant walking off the job without proper relief. He said that the Department could not get anyone to work at the Blast Furnaces at that time, and that five (5) employees claimed they were too ill to work.

The Section Manager stated that the Grievant had engaged in severe violations of plant rules on a number of occasions. He said that especially when the current offense is considered in light of his past record of serious violations, discharge is appropriate. On cross-examination he

acknowledged that on the night in question the Grievant's absence did not result in any delay in production, spillage, or slowdown of the furnaces.

The Grievant testified that on the night in question he was in his engine at 9:15 at the No. 2 BOF. He said that he does not normally wear a watch, but at about 9:40 p.m. he said that he believed that his work was done, and parked his engine. According to the Grievant, he went to E Yard to obtain a harness he left hanging in a locker in that area on the previous day. It was an older harness, which could be adjusted better to fit his height. He used his Social Security number to key out, the same way that he had keyed in when he came into work that night. He testified that he keyed out in this manner because he had left his identification badge in his other car. No one else keyed out for him that night, he said.

On cross-examination, the Grievant testified that the speakers on his engine do not always operate properly. He acknowledged that he has no evidence that they were not working on that night. He said that at times he is five (5) pugh ladles away from the engine, and cannot hear the speakers. He usually pays attention to the radio he is carrying, he attested.

The Grievant admitted that he knew that he was supposed to wait for his relief, particularly on a Blast Furnace job. He acknowledged that he had been disciplined for leaving the work area on the same job, and knew the kinds of things which could happen if an R.C. Operator were not available. The Grievant acknowledged that the Hot Metal Coordinator had told him on the prior turn that he had a problem reaching the Grievant. The Grievant also acknowledged that he understood that he had to use two radios on his job. The Grievant said that he informed R.C. Operator Medina when he was leaving to get the harness. Mr. Medina did not testify at the hearing.

The Grievant stated that leaving before his proper relief came, and the other incidents which led to his discharge are the biggest mistakes he has ever made in his life. He said that they would not happen again, if he were returned to his job.

Another R.C. Operator testified that the newer harnesses are not very adjustable and do not fit him correctly. On cross-examination he testified that if he had a bad harness, he would want to replace it immediately.

The Company's Position

The Company contends that the grievance should be denied and the discharge upheld. The Company requires that engines be staffed at the Blast Furnaces around the clock. For many years train operators have been required to provide "footboard" relief at the Blast Furnaces, as is demonstrated by Inland Award No. 733, according to the Company. Award No. 733 states that the Company established a policy in 1979 that "blast furnace locomotive engineers and switchmen must remain on the job site until their relief arrives." and "leaving earlier may be cause for discipline up to and including suspension preliminary to discharge." The Company argues that this is an old and established rule, and that train operators know that if they violate this rule they are subjecting themselves to discipline and even discharge.

The Company contends that what the Grievant did is even more egregious, because the Grievant was not present for a long time before the end of his shift. The Grievant admitted that he did not wear a watch, while the Hot Metal Coordinator must be aware of the time at work, and is therefore more credible about the time during which he searched for the Grievant on the turn in question. The evidence shows that the Hot Metal Coordinator called the Grievant on several

radios, and searched for him personally in and around his work area. No one can vouch for the Grievant's whereabouts on that night. The Company has established that the Grievant was not in his work area.

The Company argues that the Grievant has been disciplined with three days off on two prior occasions for not performing his work, and for being out of his work area. He was given a Record Review and told that he was at the point of discharge. The Company contends that Management could not have made more clear to the Grievant that he was at risk of losing his job if he left the work area again. His long service and the fact that he is now contrite does not change that result, the Company argues, and there is no basis for mitigating the penalty. The Company relies upon Inland Award 751, which upheld the discharge of an employee for returning 35 minutes late from his lunch break to his crane operator job.

The penalty imposed for the Grievant's action is very severe because it is so important for the Grievant to be present in his work area. The Company disputes the Union's argument that the Grievant's conduct was not so serious because there is no documented loss of production. According to the Company, "luck" should not be the standard upon which an employee's actions are judged, and therefore the fact that there was no production loss should not serve as mitigation.

The Union's Position

The Union notes first that Inland Award No. 751 involved an employee with significantly less seniority and a record of more discipline than the Grievant. The Union and the Grievant acknowledge that the Grievant made a mistake when he left his work place. However, the Union argues that the Company has not established that any loss was caused by the absence of the

Grievant from his work station. At most, the Company has established that some work which should have been performed by Mr. Medina was not accomplished, but the Union argues that it could have been performed once Mr. Medina was located. The Hot Metal Coordinator would not have knowingly put the operation at risk. He knew that sending Mr. Medina home did not endanger the operation, even though the Grievant was still missing, because there was an engine at the No. 7 Blast Furnace which could perform the work.

The Union also disputes the Company's contention that the Grievant was gone beginning at 9:00 p.m. on the night in question. The Union disputes that it would have taken the Hot Metal Coordinator from 9:00 until 9:40 to get to the place where Mr. Medina was found. Mr. Medina was docked for only an hour and a half, and applying the same standard to the Grievant supports his testimony that he left sometime after 9:30 p.m., according to the Union.

There is evidence that there are two kinds of harnesses. The Grievant is small in stature, so it is reasonable that he would try to find his old harness, the Union argues. This lends credibility to his version of the events on the night in question.

The Union disputes the suggestion that the Grievant had someone else punch out for him. The Company keeps records of when employees punch out, but has not identified any co-conspirator. Employees are permitted to use their Social Security numbers to punch in and out, and the evidence shows that the Grievant keyed in using his Social Security number when he came to work that day.

The Union argues that the Grievant's long tenure with the Company should weigh heavily in the Arbitrator's decision in this case. The Union also cites several Inland awards which it

believes support its case. The Union requests that the Arbitrator sustain the grievance and put the Grievant back to work under whatever conditions the Arbitrator believes are appropriate.

Findings and Decision

The Grievant and the Union acknowledge that the Grievant was missing from his assigned workplace on the night in question, without permission from a supervisor. While the parties disagree about exactly how long he was missing, the evidence establishes that he was missing from his assigned place of work for a considerable amount of time. The Company also has established the general importance of locomotive operators being available at the time they are needed. The Union has argued that the evidence shows that the Grievant's presence was not crucial to the operation at the time in question, since the Company sent another R.C. Operator home, at the same time that the Grievant was missing. In addition, there is no evidence of any loss of production due to the Grievant's absence. Nevertheless, there is sufficient evidence in the record that R.C. Operators have been told that it is important to be available when needed, especially at the Blast Furnace. The Grievant has acknowledged that he knew that it was important for him to be available for his duties and to wait for "footboard" relief before leaving.

In addition, the Grievant's excuse for being out of his work area, that he went to another part of the plant to replace his harness, is not convincing. This is an item which R.C. Operators use all the time while they are working, to hold the equipment they use to operate the locomotives. If it were uncomfortable, as the Grievant claims, it is difficult to believe that he would not replace it before or during the turn, rather than at the end of the turn. Furthermore, even if he did engage

in that errand at the end of the turn, it is not clear why he did not inform his supervisor and seek permission before leaving.

Having concluded that the Grievant was out of his work area without permission, the question before the Arbitrator is whether discharge is the appropriate penalty. The other R.C. Operator who was missing from his work area at the same time as the Grievant received far less serious discipline than the Grievant. Although the Grievant was missing for a longer period of time, the Company contends that both employees were missing from their work area for a considerable length of time. The evidence suggests that the Grievant's past record is the primary reason for the difference in the discipline assessed to the Grievant, as compared with the other R.C. Operator who was away from his work area in the same department on the same turn.

The Grievant's work record has been reviewed in the Background section of this opinion. His most recent similar offense was a record review and a three-day discipline for leaving work without proper relief in October 1999. The Company argues that a record review and three-day suspension usually constitute the final disciplinary steps before discharge. The Grievant knew that this was a final warning, the Company urges, and has committed the same type of offense again in this case.

The Record Review occurred nearly two and one half years prior to the incident giving rise to the discharge at issue here, however. The only disciplinary action against the Grievant during that two and one-half year period does not involve the same type of misconduct at issue here. In addition, the Grievant's record demonstrates a substantial improvement in his attendance. The Grievant had been experiencing serious problems with attendance for some time, which led to a

Record Review in October 1998. However, there is no evidence of any discipline for attendance problems in the three and one half years before the incident leading to the Grievant's discharge.

Thus, at the time of his discharge, the Grievant was in a significantly different position with regard to discipline than he was during the late 1990's, when he had a series of disciplinary actions relating to attendance, poor work performance, and being out of his workplace. The purpose of progressive discipline is to correct an employee's behavior, and the Grievant demonstrated that the discipline had the corrective effect by remaining free of any discipline for the rule violations and attendance problems he had been experiencing, until the incident at issue here. His improvement was substantial and did not extend over only a few months, but for years. However, there is no evidence that the Company gave any consideration to the very significant improvement in the Grievant's record when Management imposed discharge upon the Grievant, based in part upon that record.

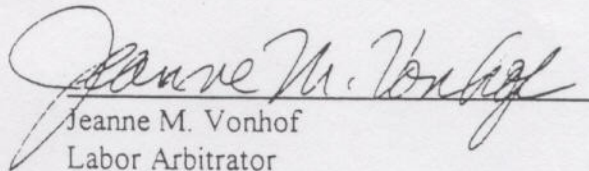
The Grievant is an employee who provided satisfactory service to the Employer for many years, in order to build up 25 years' tenure with the Company. He had some serious discipline problems in the past, but he did respond to progressive discipline. In this respect the Grievant's situation is very different from that of the grievant in Inland Aw. No. 751, cited by the Company, who did not have any substantial period without a serious violation in the several years before the final rule violation. In Inland Award No. 476 Arbitrator Kelliher stated that the discharge of a long service employee is not sustained in the absence of evidence that "the probability does not exist that the employee's conduct can be corrected by any form of discipline short of discharge." The record does not establish that the Grievant is the type of employee who cannot be salvaged, through the use of progressive discipline. It appears that progressive discipline did have an effect

on his behavior. In addition, he appeared to demonstrate sincere remorse at the hearing over his most recent rules violation.

Nevertheless, the Grievant should have known that he was committing a serious violation on the night in question, especially given his past record. Under the circumstances, therefore, an award of backpay is not appropriate in this case. The Grievant shall be reinstated without backpay.

AWARD

The grievance is sustained in part. The Grievant is reinstated without backpay.


Jeanne M. Vonhof
Labor Arbitrator

Decided this 1st day of November, 2002.

Under the Authority of Umpire Terry A. Bethel.