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In the Matter of Arbitration Between:)
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ISPAT INLAND STEEL COMPANY)
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and) **Award No. 1005**
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UNITED STEEL WORKERS OF AMERICA, LOCAL 1010)
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INTRODUCTION

The Undersigned Arbitrator was appointed according to the rules of the applicable collective bargaining agreement. This hearing was held on December 6, 2002 at the Company's offices in East Chicago, Indiana.

APPEARANCES

UNION

Advocate for the Union:

D. Reed, Secretary, Grievance Committee

Witnesses:

D. Lomellin, Counselor Union EAP
B. Collier, Anneal Furnace Man - #3 Cold Strip West
F. Chablis, Qualified Grinder - 4A Roll Shop
P. Chomo, Grievant, Roll Grinder - Roll Shop

COMPANY

Advocate for the Company:

P. Parker, Section Manager, Arbitration

Witnesses:

R. Hughes, Union Relation Representative
J. Murray, Turn Supervisor - Roll Shop
T. Sanders, Employee of Modern Hard Chrome
D. Miller, Material Transporter - 4A Roll
J. Gordon, Manager - Flat Rolling Operations

Background:

This is a case involving the discharge of a long-term employee for reporting for work under the influence of intoxicating beverages (Rule 135d); using profane, abusive or threatening language towards supervisors or other employees (racial slurs) (Rule 135 r); and his overall work record, including his status at the time as a discharged employee working under the Justice and Dignity clause of the Agreement. The Grievant had been employed by the Company since 1981 at the time of his discharge.

The record shows that the Grievant has had attendance problems going back for much of the prior five year period. He had a record review in May, 1998 and was discharged in July, 1998 for his poor work attendance record. He was reinstated in August,1999, but the parties agreed, in that reinstatement, that the Company had not acted unjustly in discharging the Grievant. The Grievant began having significant problems again almost immediately, so that by January, 2000 he had progressed to the three-day discipline level. In February, 2000 and in August, 2001, he had two more record reviews for his failure to work as scheduled. In addition to the record reviews, the Grievant had many other disciplines for poor attendance: many instances of one, two and three-day disciplines, as well as several five-day suspensions. On November 12, 2001 he reported off work for five consecutive turns. He reported off for four

consecutive turns on January 6, 2002, on January 22 for family sickness, and again on January 23, for the next three turns. The Company presented evidence that the Grievant had missed 67 days in the past five years, had 17 tardies, and three early quits.

When employees receive significant written discipline for attendance problems, they are asked whether they have alcohol or drug dependency issues. The Grievant answered "yes" to that question on the discipline form once in 1997, and once in early 1998. He was enrolled in the Company's Drug and Alcohol Program at that time. The parties have stipulated that the Grievant did not complete the Company's program, which normally requires one year of participation. There was evidence that he went for about three months, the period mandated by a court in relation to an alcohol-related automobile offense. After he left the program, he consistently marked "no" to the question regarding alcohol or drug dependency issues on later disciplinary forms.

The Grievant was suspended preliminary to discharge on February 4, 2002 for attendance problems. He admitted having alcohol problems at the suspension hearing. The Company asked for additional information from the Grievant but he failed to provide it. The Grievant was discharged. After his discharge, he continued to work, under the Justice and Dignity provision of the Labor Agreement. The evidence shows that he was absent six days from February to August, 2002, and tardy on one occasion.

The Turn Supervisor for the Roll Shop testified about the problems which occur when an employee fails to report off on time. The supervisor may not realize that the employee is missing for some period of time, and then the supervisor must find another employee to stay over, or call

in someone early. In a worst case scenario, he must work short-handed and modify the production for that turn.

On August 18, 2002, the Turn Supervisor received a call from the supervisor at the No. 5 Roll Shop, with the report that the Grievant was calling other employees "niggers." The Turn Supervisor went to the area and talked to the Grievant. He testified that the Grievant's eyes were glassy, and he admitted using the racial epithet, but not directed at anyone on his crew. The Turn Supervisor sent the Grievant to the clinic for a fitness-to-work evaluation. The Grievant failed his fitness-to-work evaluation, with a blood alcohol level of .137. He was driven home, because Management considered his condition to be unsafe for driving. The Turn Supervisor acknowledged on cross-examination that the Grievant is normally a good worker.

Mr. T. Sanders, an African-American employee of a contractor, testified that he was in a lunch room on Company property, when the Grievant entered the room, complaining about an employee who had left a coffee pot on, referring to him as a "low-life n_____," a racial epithet. Mr. Sanders took offense, and made a comment to the Grievant that no one talks that way anymore. He tried to reason with the Grievant, but the Grievant told him it was not his problem and to "get f_____." According to Mr. Sanders, the Grievant was talking very loudly and belligerently. He acknowledged on cross-examination that the Grievant was not speaking to him at the time he made the original comment. He also acknowledged that the racial epithet used by the Grievant can be used in different ways, some of which are not offensive. However, he said that the way it was used in this case was offensive to him.

Mr. D. Miller, an African-American Material Transporter at the 4A Roll Shop, said that he entered the lunchroom at about 1:45 p.m. on the date in question. He said that he told someone

in the lunchroom that he was going to get gloves, and the Grievant said that he had gloves. Mr. Miller said that then he heard Mr. Sanders and the Grievant having an argument. The Grievant left the room, and Mr. Miller asked Mr. Sanders what had happened. Mr. Sanders told him about the Grievant's "low life n_____" comment. When the Grievant returned he handed Mr. Miller the gloves and said, "If I offended you I'm sorry. I should have said faggot." When Mr. Miller replied that that was better, but still offensive, the Grievant said something like, "If you and him have a problem with this, we can go outside and settle this in the parking lot." Mr. Miller said that he believed the Grievant was threatening a fight. Mr. Miller testified that he responded, "Get out of my face. I'm not going there with you." The Grievant responded, "Don't you forget, this Yankee freed you from the South." Mr. Miller said he then told the Grievant, "Get out of my face" and walked away. On cross-examination the Witness testified that he had had no earlier problems with the Grievant, and he was offended by his comments on that day.

Mr. D. Lomellin, Vice Chairman of the Union's Alcohol and Drug Abuse Committee for the past four years, and a recovering alcoholic himself, testified about alcoholism and denial. He testified that alcoholism is the only known disease that tells the person with the disease that he does not have a disease. Breaking through that denial is a major accomplishment, he said, and he believes that the Grievant has done so. He presented documentation showing that the Grievant had attended meetings of Alcoholics Anonymous on most days between August 29 and December 4, 2002. He said that the Grievant had a slow start, but had been disciplined in his attendance since that date. He also introduced a copy of a diary that the Grievant had been keeping of his daily activities, to improve his discipline. Mr. Lomellin testified that the Union Committee had

recommended to the Union that the Grievant was a candidate for a Last Chance Agreement. He was doing more than was required of him.

On cross- examination the Witness testified that he had talked to the Grievant personally about five or six times. He said that when he first met the Grievant he took down the Grievant's history, and the Grievant did not mention that he had been in the Company's Drug and Alcohol Program previously. The Witness acknowledged that the Grievant was eligible to participate in the Company's EAP after his discharge in February, 2002, while he was working under the Justice and Dignity clause. However, he was still in denial at that time. He also acknowledged that relapse is not uncommon among alcoholics.

Mr. B. Collier, an African-American employee of the Company, who works at the No. 3 Cold Strip West, testified that he worked alongside the Grievant for five years, and the Grievant is his friend. He said that the Grievant never had used racial slurs towards him. He testified that the Grievant is a generous person, who gave him truck tires. He said that as soon as he heard that the Grievant was discharged, he told the Grievant that he needed to get help. On cross-examination, he testified that he could understand why Messrs. Sanders and Miller were offended, but he doesn't let anyone bother him. He acknowledged that racial slurs should not be used, however.

The Steward for the 4A Roll shop, who is also African-American, testified that he had never had an altercation with the Grievant, and had never filed any grievances for him, or over his conduct. He acknowledged on cross-examination that the Company should not tolerate the kind of language the Grievant used. He said that whether the language is offensive depends upon how it is used.

The Grievant testified that he has worked in the Roll Shop since 1998, performing all the jobs in the sequence. He said that the top job, the Roll Grinder, is a high-tech job, with a lot of responsibility. He testified that he has not been disciplined for poor workmanship.[1]

The Grievant said that he has been drinking alcohol since his early teens. Although he thought sometimes that he had a drinking problem, he did not accept that he was an alcoholic until recently. He said that in 1997, after receiving a DUI, he entered the Inland EAP, in lieu of serving 180 days in jail. According to the Grievant, he quit drinking in the program, and drank only rarely thereafter, until the summer of 2002, when he began drinking heavily. He testified that at that time he was experiencing a lot of personal problems and "had to drink to be normal." On the day before the incident he attended a wedding, and drank until 6:00 a.m. He went to bed, arose at 11:30 a.m., he said, and began drinking again before he went to work.

The Grievant said that his memory about the incident which led to his discharge was not too clear. He said that he has Black friends, that he was very sorry for his actions on that day, and that he apologized. He testified that he is of Hungarian and Czech descent, and that none of his family fought in the Civil War. The Grievant said that prior to this incident, he had not used the "n_____" word.

On cross-examination the Grievant acknowledged that he continued to drink alcohol during the period after August 18th. He said that he was still in denial at that time, until his friend Brian called him. He said that even when he received a DUI in 1997 he did not realize that he

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[1] The Grievant's disciplinary record, as presented by the Company, does contain at least one written reprimand for violating Rule 135 p, "neglect or carelessness in the performance of duties."

was an alcoholic. He thought that he was just unlucky in being caught that time, that he was in the wrong place at the wrong time, that one less drink would have made a difference.

The Company's Position:

The Company contends that what is unusual in this case is that the Grievant was discharged for three separate offenses, any one of which would be grounds for discharge. With regard to absenteeism, the Grievant's conduct, if left unchecked, would result in discharge. He had 12 disciplines for poor attendance, three record reviews, and had attendance problems on 80 days in the past five years, according to the Company. Since he was discharged for poor attendance, and permitted to remain working under the Justice and Dignity clause, he had six more days absent and one tardy. The Company disputes the Union's argument that this was an improvement over his past record, arguing that this is a very poor record for someone already discharged for poor attendance.

The Company also points out that the Grievant was caught coming in to work with a blood alcohol level of .135, which is very dangerous. The Company cannot tolerate employees coming to work intoxicated. In addition, the Company questions the Grievant's rehabilitation. He had spent time in the Company's rehabilitation program in the past, but did not stop drinking. He was asked when he was disciplined after that if he had a drug or alcohol problem. He did not admit that he had or seek any additional help. Even after he was discharged for absenteeism in February, he did not stop drinking. He did not enter a rehabilitation program until he was actually on the street. The Company argues that he has been discharged for 10 months, but in a rehabilitation program for only 3 months, and this is not much of a record of rehabilitation.

In addition, the Company argues that the Grievant could be discharged solely for the threatening and abusive language he used towards people in the lunchroom. The Company contends that it cannot and will not tolerate the fear and intimidation which results from these kinds of threats or abuse. According to the Company there are both moral and business reasons for this policy, since the Company is beginning to hire new employees, needs an excellent reputation in the community, and good employers do not tolerate conduct like the Grievant's in this case. The Company requests that the grievance be denied and the discharge upheld.

The Union's Position:

The Union contends that the discharge should be overturned. The Union argues that substance abuse is a serious problem which can be treated and cannot be ignored. The Union argues that the Company has not given the Grievant any consideration for his efforts to remove the yoke of alcoholism from his life. The Union has presented evidence that the Grievant suffered from denial for a very long time, until sometime after August 18th. Since that time he has been diligent in his efforts to control and eventually eliminate a long term illness. The Union notes that the Grievant did not even remember what happened on August 18th and he has been very humble and apologetic about his behavior. The Company could send him for diversity training, in response to the comments he made.

The Union also argues that when the Company reinstated the Grievant in 1999, they should have put him back to work under a Last Chance Agreement. That would have put him on notice as to the seriousness of his absences, and might have encouraged him to address his alcohol problem. Discipline should be corrective, not punitive. The Grievant, who has been drinking for

30 years, needs to be policed more than the average adult, and the Last Chance Agreement would have been an effective method to do that, the Union contends.

The Union also cites a number of steel industry awards (not Inland cases) in support of its position. According to the Union, in at least one of these cases the employee had a worse attendance record than the Grievant here, but was reinstated when the Arbitrator found that the Company and the Union had not worked in a coordinated effort to effect his rehabilitation, as required by the contract. The grievant in that case, like the Grievant here, had denied his alcoholism, even after his discharge. The Union relies upon other cases to argue that the Company here has not met its responsibility, under the labor agreement, to recognize that alcoholism is a treatable condition. The grievance should be sustained and the Grievant reinstated, according to the Union.

Decision:

The Union has filed a grievance over the discharge of the Grievant, an employee with more than 20 years of service. The Grievant was discharged for three offenses, any one of which is grounds for discharge, according to the Company. There is no real dispute over the facts which led to the Grievant's discharge. His attendance record has been very poor for at least the five years prior to his discharge. He was disciplined many times and discharged twice on the basis of that record. The Union argues that his attendance improved after his latest discharge for absenteeism in February, 2002. However, he still had six days of absence and one tardy in the six months after that discharge, when he was working under the Justice and Dignity clause, while the

grievance over his discipline was being processed. It would be reasonable to expect an employee in the Grievant's situation to have very few, if any absences or tardies.

The Union does not deny that the Grievant made the abusive and threatening comments attributed to him on October 18, 2002. The Company has sound reasons for disciplining employees for engaging in such conduct. The testimony of the two African-Americans in the room indicates that his comments were especially offensive to them. His behavior not only reflects badly on the Company, but is the kind of conduct which can lead to fights and injuries.

The Union relies upon the evidence that the Grievant was intoxicated on the day in question as the explanation for his offensive comments. There was evidence suggesting that the comments may have been out of character for the Grievant. Although his intoxication may explain his behavior on that day, it does not excuse it. No lengthy discussion is necessary on why it is dangerous to have an intoxicated employee working in a steel mill.

The Union argues, however, that even if these offenses normally would provide grounds for discharge, there are grounds for mitigation here because of the Grievant's alcoholism, and his rehabilitation. The Union relies upon the language of Marginal Par. 14.10, which states,

> Alcoholism and drug abuse are recognized by the parties to be treatable conditions. Without detracting from the existing rights and obligations of the parties recognized in the other provisions of this Agreement, the Company and the Union agree to cooperate at the plant level in encouraging employees afflicted with alcoholism or drug abuse to undergo a coordinated program directed to the objective of their rehabilitation.

Here the Grievant did enter the Company's EAP five years ago, as a result of an arrest for driving while intoxicated. He stayed in the program only for the period of time mandated by the court, not the one year which is normal under the Company's program. The program normally requires him to meet with the Union Committee at least monthly while he is in the program, and there is no

evidence that he did so. He was given additional opportunities to acknowledge his alcohol problem and seek help, on the many occasions when he was disciplined for his attendance after he left the program, but he did not do so.

The Union argues that the Grievant did not seek the help he needed because he was in denial over his problem, and now has rehabilitated. Denial is a significant obstacle for many alcoholics. Here the evidence shows that the Grievant continued to have alcohol problems even after many events occurred which could have thrust him out of denial: his arrest and being faced with jail because of a DUI, participating in the Inland Alcohol and Drug Program, being discharged from his job and off work for a year for poor attendance, and then being discharged again. None of these events were enough to bring the Grievant out of denial. It is clear that the Grievant has had a very serious drinking problem. He admits that he has been drinking since his early teens. Even when he was in the Inland rehabilitation program he never really concluded that he was an alcoholic, left the program early and continued to drink. On his last day of work he came to work intoxicated, with a .135 alcohol level, after a night and morning of drinking, even though he was working after a discharge, only because of the Justice and Dignity clause. Even this most recent discharge did not jolt him immediately into entering rehabilitation – he admits that he was ready to give up his job, after being discharged, until his friend called.

Balanced against this long record of alcoholism is three months of attendance at Alcoholics' Anonymous meetings. The Grievant's record of attendance at these meetings has been frequent and constant. However, the Grievant appears to have a very long history of alcoholism. He has two earlier discharges for attendance problems, and very serious offenses leading to this most recent discharge. He has been through rehabilitation with the Company

program before, but only when forced to do so, and he left the program early. The Arbitrator cannot conclude that the Company erred in deciding that only three months' attendance at AA meetings is not sufficient evidence of rehabilitation to merit reinstatement of the Grievant, given his prior record of alcoholism, alcohol-related work problems, and failed rehabilitation.

The Union argues that the Grievant should have been put back to work under the stricter requirements of a Last Chance Agreement after his first discharge, in order to help him realize the seriousness of his situation. There is no evidence about what occurred at that time, and it seems unlikely that the Union requested a Last Chance Agreement, when the Company was willing to reinstate the Grievant without one. The Company is not required to reinstate a troubled employee under a Last Chance Agreement, in order to impress him with the severity of his situation, or to shake him out of denying alcoholism.

The Arbitrator has considered the other cases introduced by the Union. In several of the cases the grievants participated in longer or more comprehensive post-discharge rehabilitation programs. In none of these cases had the employee been discharged twice previously. Furthermore, in none of the cases had the employee already been through the employer's rehabilitation program before the most recent discharge.

The Company's actions toward the Grievant here do not support the Union's argument that the Company has violated Marginal Paragraph 14.10 or has not recognized that alcoholism is a treatable condition. It may be that the Grievant has finally accepted the challenge of beating his alcoholism. However, given the Grievant's past record, and the conduct which led to his third discharge, the Company did not violate the labor agreement when Management concluded that his

rehabilitation efforts are too little and too late to provide grounds for mitigating the penalty of discharge.

AWARD

The grievance is denied.

Jeanne M. Vonhof
Labor Arbitrator

Decided this 31st Day of January, 2003.