IN THE MATTER OF THE ARBITRATION BETWEEN

ISPAT INLAND STEEL COMPANY

And Award 1006

UNITED STEELWORKERS OF AMERICA
LOCAL UNION 1010

OPINION AND AWARD

Introduction

This case concerns the Union's claim that the Company constructively discharged Grievant Jesus Reyes when it refused to allow him to retract his resignation. The case was tried in the Company's offices in East Chicago, Indiana on January 14, 2003. Pat Parker represented the Company and Darrell Reed presented the case for the Union. Grievant was present throughout the hearing and testified in his own behalf. The Company questioned whether the case was arbitrable, asserting that, because Grievant had resigned, he was not eligible to use the grievance procedure. The parties submitted the case on final argument.

Appearances

For the Company:

P. Parker.....Section Manager, Arbitration and Advocacy
G. DeArmond.....Contract Admin. Resource, Union Relations

For the Union:

D. Reed.....Secretary, Grievance Committee
J. Reyes.....Grievant

Background

Under the Justice and Dignity provisions of the parties' Agreement, employees who have been discharged can continue to work up to the third step grievance meeting. Whether the employee continues working past the third step meeting depends on whether the Company grants the grievance. In the year prior to his separation from employment, the Company asserts Grievant had only worked about 19 days. On August 5, 2002, Grievant received a letter from the Company directing him to provide justification for his numerous absences. He did not respond to the letter. On August 14, 2002, he received a letter informing him of his suspension pending discharge, although Grievant continued to work on Justice and Dignity. His suspension hearing was held on August 20, 2002, where his suspension was converted to discharge. Again, Grievant continued to work on Justice and Dignity.

On Monday, August 26, 2002, Grievant was scheduled to report at 3:00 p.m. At 2:30 p.m., he called Denise Hines, Business Generalist for Manufacturing Maintenance and Plant Services, which was Grievant's department. Grievant told Hines he was resigning from the Company's employment. Hines said she is the one employees contact when they quit and that she has received 50 to 75 such calls over the years. Hines testified that she had known Grievant for years and that she expressed surprise and asked Grievant what he was going to do. She said she told Grievant that his job was his livelihood. Grievant responded that she should not worry about

him. Hines said the two spoke for about 15 minutes and that Grievant seemed to be himself. Hines then processed the resignation in the normal fashion. This involved preparing a letter from Section Manager Scott Tavarczky, which was sent to Grievant. The letter reads as follows:

> This letter is to confirm the telephone conversation between yourself and Denise Hines from Ispat Inland, Inc. on August 26, 2002 at 2:30 p.m. in which you stated your desire to terminate from the Company.
>
> Your termination is effective August 26, 2002, per your conversation and you are no longer an employee of Ispat Inland, Inc. per this written confirmation.

Grievant did not report for work for the rest of the week. Because of his resignation, he was not scheduled for the following week. On cross examination, Hines acknowledged that she received a voice mail message from Grievant saying that his resignation had been a mistake. She did not remember when she got that message. Another Company witness, Gayla DeArmond of Union Relations, said it is not unusual for discharged employees to resign before their third step hearing and that resignations usually occur by telephone.

Grievant testified that he has suffered from migraines for the past 15 to 20 years and that this accounted for many of his absences. He said when he went to the third step meeting, he was concerned because the Company wanted medical verification and his doctor was out of town, making it difficult for him to get the information. Presumably, Grievant was referring to the suspension hearing, since his third step meeting had not been scheduled. Grievant said he was also bothered by stress from having been demoted to labor, the result of a medical finding that he could not work at heights. A letter from a doctor dated November 26, 2002, three months after the resignation, says that Grievant was under his care from May to August, 2002, and was unable

to work due to stress and anxiety. Grievant says he continues to take Paxil for anxiety, though he had stopped taking all medication in the time period before he resigned.

Grievant acknowledged that he called Hines and told her he had decided to resign. However, he said he was stressed over his inability to get the required medical verification and that his action was "bad judgment." He said when he was unable to reach his doctor he thought that it was probably better to resign than to get fired, so he called Hines. Grievant said he called back later, probably on Wednesday August 28th, and left a voice mail message for Hines telling her that the resignation was a mistake. Although he did not testify about this directly, presumably he told her that he wanted to retract the resignation. On cross examination, Grievant agreed that he did not work the rest of the week after his resignation. He said after he called Hines on the 28th, he received no reply, so he did not know what to do. Someone in Human Resources told him to contact the Union, which is what he did. Grievant said he regretted his decision to resign almost immediately.

The Company says that grievances can be filed only by or on behalf of employees and that Grievant was not an employee after he resigned. Thus, the Company argues that neither he nor the Union had standing to bring this case. Even if the case is considered on its merits, the Company argues, Grievant still is not entitled to relief. No one forced him to resign or tricked him. This was not a constructive discharge, the Company argues. Grievant called Hines and resigned and then he acted like an employee who had quit – he did not report for work for the rest of that week. The Company points out that Hines also tried to talk to Grievant about his decision, but he told her not to worry. The Company also says that the Union's just cause

argument has no place in this case. The Company did not discharge Grievant and it does not need just cause to refuse to hire an employee who has resigned.

The Union argues that this is essentially a discharge case to which just cause principles apply. Grievant was under enormous stress and he acted foolishly. But, the Union says, I have said in other cases that employees with good work records should not lose their job for one improvident act. The Union says Grievant has worked for the Company for 24 years and that he deserves one last chance. It says mitigation is warranted in this case because of stress caused by "stress, strain, anxiety, migraines, marital problems, death and despair." These factors impaired Grievant's judgment so that his resignation should not have been given effect.

Findings and Discussion

Although the Company argues that the case is not arbitrable, the Union's claim on the merits is that the Company constructively discharged Grievant. Under that theory, Grievant would still have been an employee at the time of his termination and, therefore, eligible to use or benefit from the grievance procedure. That claim may be incorrect and, if it is, there might be merit to the Company's arbitrability argument. But in either event, I have to decide whether Grievant did, in fact, resign.

Arbitrators have sometimes treated resignations as constructive discharges and applied just cause principles to the separation from employment. But those typically have been cases in which the Company pressured an employee to quit or when the employee did something ambiguous – like leaving the plant or failing to report – which management construed as a resignation. In contrast, here Grievant called the Company and unambiguously stated his intent to

resign. It may be, as Grievant now claims, that he was under considerable stress from "migraines, marital problems, death and despair." But there was no evidence at all that the Company was aware of any of these problems. There is, in fact, nothing in the record about marital problems or death, so it is not clear whether those were aggravating factors for Grievant. What the record reflects is that the Company knew Grievant had only worked 19 turns in the previous year and that the Company had suspended and then discharged him for failure to justify his absences. This would suggest that the Company did not know about the migraines and was not aware that Grievant was being treated for stress and anxiety, evidence that Grievant did not offer until three months after he had quit.

The Company also knew that even though it had discharged Grievant, he was eligible to continue working for months, or maybe as much as a year. Employees continue working through the third step grievance meeting, the timing of which is controlled by the Union. Presumably, then, the absent medical verification would not have become crucial until the third step meeting. Grievant may not have known this and it could be that he worried unnecessarily that he had to take action immediately. But there is no evidence that the Company put pressure on him to do anything quickly. I am unable to find, then, that the Company acted inappropriately when it took Grievant's resignation at face value. Grievant told the Company that he wanted to quit and the Company believed him. The Company did not need just cause to accept a resignation in these circumstances and just cause standards do not apply to its refusal to rehire Grievant.

The Union argues, however, that the strain on Grievant was so great that he did not understand the import of his actions and it was improper – and effectively a discharge – for the Company to refuse to employ him. It is not hard to imagine that Grievant was feeling stress. He

had, after all, been told he was discharged and, even though he was able to continue working for at least a while, the discharge itself could have caused stress. But this is not sufficient to prove that Grievant did not know what he was doing, even if I were to assume that such proof would matter in this case. The belated letter from Grievant's doctor claims he was unable to work, but it does not say that he was irrational and unable to make decisions that affected his life. Moreover, Hines testified credibly that she spoke with Grievant for about fifteen minutes and that he seemed normal to her. She even quizzed him about his decision, but he was certain that he wanted to quit. In these circumstances, there is no reason even to confront the harder question about whether the Company would have to have knowledge that Grievant was not able to make rational decisions. There is, in fact, no evidence of such impairment.

What the record reflects here is that an employee with a poor attendance record was facing discharge and decided things would be better for him if he quit. For some reason, he changed his mind after having done so. Perhaps matters might be different if his change of heart had happened immediately, or nearly so. Thus, if he had recanted in his conversation with Hines or if he had called back within a few minutes, then one might question whether he had a real intent to quit his job. But here, Grievant resigned, did not report to work, and did not contact the Company for two days. The question is not, as the Union claims, whether the Company would have been hurt by re-employing Grievant. Rather, the issue is whether he had the intent to resign. I find that he did and that it was appropriate for the Company to rely on his expression that he was doing so.

AWARD

The grievance is denied.

Perry A. Bethel
March 3, 2003