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In the Matter of Arbitration Between:

ISPAT INLAND

and

UNITED STEELWORKERS OF AMERICA, Local 1010

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Award No. 1010

INTRODUCTION

The Undersigned Arbitrator was appointed according to the rules of the applicable collective bargaining agreement. This hearing was held on June 13, 2003 at the Company's offices in East Chicago, Indiana.

APPEARANCES

UNION

Advocate for the Union:

D. Shattuck, Chairman of the Grievance Committee

Witnesses:

E. Chagolla, Grievant
L. Aguilar, Vice Chairman of the Grievance Committee
D. Reed, Secretary of the Grievance Committee

COMPANY

Advocate for the Company:

P. Parker, Section Manager, Arbitration

Witness:

C. Lamm, Staff Representative, Union Relations

Background

The Grievant began working for the Company in May, 1999. He last worked on December 18, 2002. On the following day he reported off from work due to "family illness." The Company asserts that on December 31st the reason for the Grievant's absence changed to "sickness self" and on January 3rd the reason was changed to "personal business." On January 9, 2003 the Company sent the Grievant a letter telling him to report to work on January 13, 2003. The letter was sent to the Grievant's address of record and signed for by Maribel Chagolla.

The Grievant did not appear for work on January 13 and was suspended pending discharge via a letter dated the same day. The letter stated that the Grievant was being discharged for his failure to report for work as directed, and for his overall unsatisfactory work record. The letter was sent to his address of record, and signed for by Alma Chagolla. The letter also stated that the Grievant could request and be granted a hearing during the 5-day suspension period.

The Company presented testimony regarding the Grievant's record. In July of 2000 the Grievant took a week of personal days immediately following his scheduled vacation. On other occasions he took personal days immediately before or after vacations. The Company also pointed out that the Grievant had reported off sick on several days when he had to appear in court.

The representative from Labor Relations testified that the Grievant did not request a hearing within the five day period. The Union did request a hearing and it was scheduled for Wednesday, January 15, 2003. The Union requested that it be postponed

to Friday, January 17, 2003, because the Grievant was due to arrive from out of town on the afternoon of the 17th. The Union called late on Friday the 17th and reported that the Grievant would not be able to attend the hearing that day. The Union requested that the hearing be rescheduled for the following Tuesday, the 21st, and, according to the Union, the Company's Representative agreed to the postponement. The Grievant failed to appear on the following Tuesday, and the Company converted his suspension to a discharge.

The Union filed two grievances. One grievance, dated January 23, 2003, was filed under Art. 13, Sec. 11 and Art. 3, Sec. 1 of the Agreement, contending that the Grievant was unjustly terminated from the active rolls of employment. The second, dated January 24, was filed under Art. 8, Sec. 1 of the Agreement, and other sections, arguing that the Company failed to allow the Grievant an extension hearing. Both grievances are signed by the Chairman of the Grievance Committee, but not the Grievant.

The Grievant testified that he was out of town in December and January, caring for an elderly great-aunt who was terminally ill with dysentery in Mexico. He stated that she lives in a remote area in Mexico and that he was needed to carry her from her bed to an auto and drive her for medical treatment and tests in the nearest city, 45 minutes away. According to the Grievant he had to retrieve her medication once or twice a day and he was the only one there who knew how to drive. In addition, he took money to her from the United States because the hospital in Mexico required payment up front for her treatment.

The Grievant testified that he received a telephone call from his mother around the 9th of January telling him of the "report-to-work" letter. He knew that he was

supposed to call his Union representative, according to the Grievant, but access to telephones was very limited in the Mexican town in which he was staying, requiring him to wait in line for long periods of time. He did not contact the Union or the Company at this time.

When a copy of the suspension letter was faxed to the Union several days later, the Vice President of the Grievance Committee contacted the Grievant's mother. According to the Grievant, his mother called him on the 13th to tell him that the Union was making arrangements with Labor Relations for a suspension hearing for him on Friday the 17th . On Wednesday the 15th the Grievant called the Union Representative who called him back and confirmed that a suspension hearing was scheduled for Friday, the 17th. The Grievant testified that the next morning he arranged for the first flight he could get, which would take him into Chicago at 12:45 p.m. on Friday, January 17th, the date of the hearing.

The Grievant arrived in Chicago on that date and was apprehended and held at U.S. Customs on a bench warrant from Indiana. The Grievant explained how the bench warrant arose. He said that he had been attending college at Purdue University in March, 1997, was short of rent money, and used his roommate's ATM card without permission, thinking he could replace the money soon after. His roommate went to get money the same day, noticed that he was $200 short, and reported it to his bank. The bank retrieved a photograph of the Grievant using the ATM card. The Grievant said that he paid back his roommate, who did not want to press charges.

The prosecutor for Tippecanoe County did press charges against the Grievant, although the Grievant said that he did not know about it for several years because he

moved and received no mail notice. Once he found out about the arrest, he decided to accept a plea agreement, in return for a reduction in the charge to misdemeanor theft. The court order recommended house arrest for the Grievant, to be transferred to Lake County, where he lived. He was required to appear 6 months later to show written proof of completion of the terms of his probation. Several weeks later, on December 20, 2001 the court order was modified to change the house arrest to a work release. The Grievant had been employed by the Company for several years at that point. The Grievant testified that he did appear, on several occasions, to arrange his work release with Lake County. Lake County first said that they needed to inspect the Grievant's house. Then, according to the Grievant, Lake County told him they no longer did "misdemeanor swaps" with Tippecanoe County. They told him to go to the Sheriff's Department, which needed a court order from Tippecanoe County in order to proceed. At this point his deadline to report to the court that he had completed his work release came up, and was extended for two weeks to give him an opportunity to arrange the work release. He was told to report to the jail and did so, but was told that they were having problems splitting the money for his work release program between the two counties. The Grievant said that at that point he just "gave up on the system," because "the system had failed him." He stopped trying to complete the terms of his probation, and stated that he knew that this would result in a bench warrant being issued. After he was apprehended at the airport, he was jailed for 45 days on this bench warrant. He testified that he went to talk to the Union on the day he was released, February 28, 2003.

On cross-examination the Grievant acknowledged that he never received permission from Management to go to Mexico. He also acknowledged that he had no

plane ticket home until he received news about the suspension hearing. He said that he would have stayed in Mexico as long as necessary to help his aunt. When asked if he could have called the Union representative from jail, he said that the telephones in jail often were not working.

The Vice Chairman of the Grievance Committee testified that the Grievance Committee takes letters of suspension pending discharge very seriously. He stated that the Union actively goes out looking for employees who are missing, contacting their homes, other relatives at the mill, and even going to bars to talk to employees. He testified that he had never gone to a jail, however, to talk to an employee.

The Union pursued similar measures in this case, calling the Grievant's house throughout the week after the suspension letter was sent out, talking to the Grievant in Mexico, and requesting and arranging the suspension meetings for January 15th, 17th and 21st. The Vice Chairman agreed that generally employees must attend the hearing within the within the 5-day suspension period. He testified that he believed that the Secretary of the Grievance Committee (and the former Chairman of the Union's Employee Assistance Committee) had obtained extensions for employees to attend their suspension hearings, for example, when they are in substance abuse treatment programs. On January 22nd, the Union requested an extension for the Grievant's suspension hearing again, but was told that incarceration is not a good reason for an extension. On January 28, 2003, the Vice Chairman spoke with the Grievant's mother again. She told him that the Grievant would not be released until February 28th, and that she would try to arrange for him to call the Union.

The Vice Chairman of the Grievance Committee also testified and brought records showing that grievances involving terminated individuals have been filed as plant-wide grievances and not signed by the individual grievants. He said that the full time Union officers at the Union hall handle these grievances, rather than grievers in individual departments. They are filed at the third step, which is the point at which the local officers usually become involved in a grievance. A griever cannot settle such a grievance, according to the Vice President. He also gave examples of other situations in which grievances are filed as plant-wide, such as medical layoffs or when a laid off employee challenges the filling of a bid.

On cross-examination the Vice Chairman acknowledged that all the records he had provided involved cases in which employees were terminated under Article 13, Sec. 11, usually involving an employee who has been absent without notifying the Company, and does not comply with a letter to return to work, or an employee who has been on leave for more than two years. The Company suggested that there is a special agreement to treat these disputes as plant-wide grievances, but the Vice Chairman stated that he was not aware of such an agreement. He said that he did not have evidence with him that employees, like the Grievant, discharged under Article 8, Sec. 1 were permitted to file a grievance without signing it themselves.

In redirect testimony, the Vice Chairman stated that the Union had a standard form already prepared with certain contract sections typed on it (including Art. 8, Sec. 1, but not Art. 13, Sec. 11) so that they could move quickly in the event of a suspension pending discharge. The Vice Chairman testified that employees come down to the Union hall to sign the grievance forms. He said that the Grievant here did not sign the

grievance form, once he was released from jail, because the grievance already had been filed. The Vice Chairman testified that in the rare event that an employee fails to cooperate with the Union and request a five day hearing after receiving a suspension pending discharge letter, the Union drops the grievance.

On cross-examination, the Company questioned whether there was a difference between a "termination," as referred to in Art. 13, Sec. 11 of the contract, and a "discharge" referred to in Art. 8, Sec. 1. The Vice Chairman testified that he did not think there was any distinction between discharge and termination. He stated that the Company document referred to as "the Bible," showing the status of all employees, refers to both groups of employees as "terminated."

The Secretary of the Grievance Committee reiterated the testimony about the Union's concerted attempts to contact employees once a letter of suspension has been issued. He also testified that the Union does not file a grievance for an employee if the employee is not willing to participate in the process. He said that the situation here was unique, in that the Grievant was attempting to come to the hearing, but was detained. He says that if an employee is accessible he makes them sign the grievance form, but in this one case the employee was not accessible. He acknowledged that he had filed no such grievances, during his four and a half year tenure, as plant-wide grievances, but said that this was because other employees always were accessible.

The Company's Position

The Company contends that the Grievant was discharged for cause. According to the Company the Grievant made a decision that caring for his aunt was more important than his job. Furthermore, he had a history of extending his vacations, the Company asserts.

According to the Company, the discharge became final at the end of the five day period. The Company contends that there is no evidence in the record of a past practice of granting extensions to employees because they are in jail. The language in Award No. 968 suggesting that this might be an acceptable excuse is not binding, the Company argues. In addition, the Company asserts that even if this might be a good excuse in some cases, it should not be accepted in this case. Here the Grievant should have been expecting to go to jail, the Company contends. He admitted that he was guilty of the crime charged against him. He was given the choice between house arrest and a work release program, and he did neither. He knew that the judge had issued a bench warrant. In addition, he is a short service employee.

The Company also argues that the grievance is procedurally deficient because it was not signed by the Grievant. According to the Company, the contract says that such a grievance "shall" be signed by the employee. Other incarcerated employees have signed grievance forms, the Company asserts. The Company further argues that this type of grievance cannot be filed as a plant-wide grievance. When an employee is discharged for cause, the Company states, the employee signs the grievance form and it is filed in the department. When an employee is AWOL or sick for more than two years, the parties have agreed that the Union may file a plant-wide grievance, according to the Company.

The Company asserts that no such agreement exists for the Grievant's situation. For all of the above reasons the Company argues that the grievance must be denied.

The Union's Position

The Union contends first that this case is not about whether the Grievant was discharged for cause, but rather about whether the Grievant met the requirements of Art. 8, Sec. 1. The Union is not requesting that the Grievant be returned to work, but rather that he be allowed to have a suspension hearing, and go through the regular process under Article 8. According to the Union it is very clear, from all the evidence, that the Union did request a suspension hearing, in order to discuss the Company's decision to discharge the Grievant. Once that discussion is held, and if the Company decides to go forward with discharge, only then is the employee required to sign a grievance over that action, the Union argues. This is the only instance in which an employee is required to sign his own grievance, according to the Union. The Union argues further that it is clear that the parties have adopted a convention of treating certain grievances as plant-wide, even though they are not truly plant-wide in nature. According to the Union, this is a convenience for grievances which are filed in Step 3, and are processed by officers of the Local, rather than by a Griever in an individual department. The Union argues that there is no magical difference between a discharge and a termination. Therefore the fact that the Grievant did not sign a grievance form does not mean that the grievance should be dismissed in this case, the Union contends.

The Union argues further that the Grievant's discharge here is not based upon the original rule violation, but rather upon his failure to meet the procedural requirements to attend a suspension hearing. According to the Union, because no suspension hearing ever was held, the parties never had a chance to explore the underlying reasons for discharge. The Grievant was making a sincere effort to attend his suspension hearing and there were mitigating circumstances for his failure to do so. Although the Union acknowledges that the Grievant had some responsibility for his detainment, the Union argues that the situation is like that of an employee getting a speeding ticket on the way to a suspension hearing and missing that hearing. The Union acknowledges that mitigation for an employee who has failed to meet the time limits should not be argued lightly. However, under the Company's interpretation, even an employee who missed the deadline because he or she was in a coma should be discharged, the Union argues. This is going too far, the Union asserts, and could set a bad precedent for not granting mitigation in the future when it is warranted. The Union also relies upon past arbitration awards to support its case for mitigation.

Findings and Decision

The Union agrees in this case that generally there must be a request made for a suspension hearing and the employee must attend the hearing within five days of the suspension letter. The Union contends, however, that exceptions have been made for employees who fail to request or are unable to attend within that period. The Inland arbitration awards submitted by the Parties indicate that arbitrators have considered

mitigating circumstances when an employee has failed to meet the time requirements of mp 8.1 (Inland Award Nos. 776, 936 and 968). These awards indicate that arbitrators have not excused the time limits easily, and generally "not in the absence of significant and compelling equitable circumstances." (Inland Aw. No. 968).

The question in this case then is whether the record provides sufficiently significant and compelling equitable circumstances to excuse compliance. The Union argues that the Grievant made a sincere effort to attend his suspension hearing. The Union argues that the Grievant's apprehension at the border on a warrant for his arrest should be regarded as a mitigating circumstance, a completely unrelated event that thwarted his genuine efforts to return for the hearing.

However, the Grievant placed himself in a position where he should have known that his arrest was an imminent possibility at any time. The Union argues that the Grievant's situation is like an employee missing a hearing because he has been detained by a speeding ticket on the way to the hearing. The Grievant's predicament at the border was more foreseeable than that, however. The Grievant testified that he knew that a warrant would be issued for his arrest when he willfully failed to complete the terms of his probation in June. The evidence indicates that he understood the consequences of "giving up on the system," that he knew that from that point forward there was a bench warrant out on him, and that he could be arrested and jailed at any time. He was simply waiting for the axe to fall. His situation, therefore, was more like that of an employee who sets out for a hearing knowing that there is a warrant for his arrest and that he has to pass through a police traffic check or other legal checkpoint on his way to the hearing.

Furthermore, even after the Grievant was jailed he did not call the Union or the Company, until he was out of jail.

In addition, the Arbitrator has considered that the Grievant initially went to Mexico without requesting time off, and without telling Management that he was out of the country or how he could be reached in Mexico. By his own account he was going to a remote area in Mexico, where both travel and telephone communication were difficult. The Grievant should have known that he was placing himself in danger of not being able to communicate with the Company or to return quickly. At the arbitration hearing he testified that he was willing to stay in Mexico as long as necessary to take care of his great-aunt.

Despite his remote location the Grievant was able to receive telephone calls from his family in the United States while he was in Mexico. His mother called him to tell him that the Company had ordered him to return to work. However, he took no action at that time. He did not call the Company or the Union, contending that the lines for the public telephones in Mexico were too long. He did not make any efforts to secure a flight home and return to work.

He received another telephone call from his family telling him about the letter stating that he was suspended pending discharge, and that he would have to return for the suspension hearing within five days. The Union argues that from this point the Grievant did everything he could to return on time to attend the meeting. It was not until receiving this notice, however, that he took any action to return from Mexico to his job. And, according to his own testimony he did not call the Union representative until two days after receiving notice of the five day suspension period.

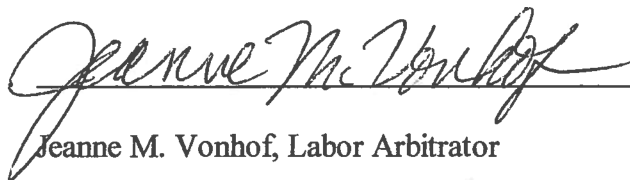
The Union requested a hearing for the Grievant. The Union points to the request as evidence that the Grievant was making every effort to comply, because the Union does not make such requests unless the employee is willing to attend a hearing. The Union contends that the Grievant did not fail to request a hearing, as did the employees in Inland Award Nos. 936 and 968. Nevertheless, even taking into account the Union's request for a hearing, if the Grievant had taken any action before January 15th to keep his job, he would not have been placed in the position of having to travel from a foreign country to the mill on the day of the hearing. Perhaps the Company would have been more amenable to postponing the hearing, and there would be a stronger argument for mitigation, had the Grievant shown more care for his job before the day of the suspension hearing.

Therefore, even if incarceration is considered as reasonable mitigation in some cases for an employee failing to attend a suspension hearing, the Arbitrator cannot conclude that there were sufficient mitigating circumstances here to overturn Management's decision not to grant an extension. The Grievant stopped attending work and left the country without approved leave or notice to the Company of his whereabouts. It may be that he did so to care for a beloved elderly relative. However, his failure to return when ordered to do so, and his failure even to communicate with the Union until several days after receiving notice that he was suspended pending discharge shows a serious lack of concern for his job. His lack of concern in January 2003 is not balanced by a record of long and faithful service to the Company. At the time of his discharge the Grievant was a short term employee. Furthermore, the Grievant's arrest at the border was foreseeable. The Arbitrator concludes that although he did make an effort to attend

the hearing, the Grievant had already taken actions that significantly contributed to his failure to reach the meeting on time. His actions and his testimony indicate that he did not give sufficient consideration to his responsibility to his job, especially for a short-term employee, in order for the Arbitrator to overturn Management's decision not to extend the time for the Grievant to attend the hearing. The grievance arguing for an extension of the hearing time is therefore denied. Given this conclusion, there is no reason to reach the additional issue of whether the grievance should be dismissed because the Grievant failed to sign it.

AWARD

The grievances are denied.



Jeanne M. Vonhof, Labor Arbitrator

Decided this 30th Day of September, 2003.

Under Terry A. Bethel, Umpire.

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OCT 6 2003
GRIEVANCE COMM. OFFICE