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In the Matter of Arbitration Between:)
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ISPAT INLAND)
) Grievance No. 01-W-86
) Award No. 1013
and)
)
)
UNITED STEELWORKERS 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 January 23, 2004 at the Company's offices in East Chicago, Indiana.

APPEARANCES

UNION

Advocate for the Union:

B. Carey, Staff Representative

Witness:

F. Guerrero, Grievant

COMPANY

Advocate for the Company:

P. Parker, Section Manager of Arbitration and Advocacy

Witnesses:

P. Clinnin, Section Manager - Internal Logistics
T. Kinach, Section Manager - Union Relations

Background

The Grievant has worked for the Company since October, 1999. The Company notified him via letter dated February 18, 2003 that he was suspended for five days pending discharge, as a result of continued and excessive absenteeism. The record shows that he was disciplined in the past for absenteeism and for Failures to Report Off (FRO's) as follows:

Date	Infraction	Disciplinary Action
3/22/2000	FRO	1 Turn off
2/15/2001	FRO	2 Turns off
3/20/2001	Absenteeism	Reprimand
5/31/2001	FRO	3 Turns off
6/6/2001	Absenteeism	1 Turn off
6/15/2001	Record Review	
9/14/2001	Absenteeism	2 Turns off
5/07/2002	Absenteeism	3 Turns off
5/30/2002	Record Review	

According to the Company, the Grievant failed to work as scheduled another nine times between the Record Review of May 30, 2002 and the letter suspending him pending discharge. That letter was based on the 90 day period ending January 25, 2003, for which he had a 5.07% absenteeism rate. Three of those absences were tardies. The Company presented evidence that throughout the disciplinary process, supervisors, including the Grievant's Section Manager, met with him, explained the attendance requirements and warned him that continued absenteeism could lead to further discipline including discharge.

At the time of his discharge the Grievant was established as a Utility Man in the pugh ladle repair sequence. The Section Manager for Internal Logistics explained that

the Grievant's position is staffed with 2 employees per turn, 21 turns per week. The Utility Man is the only position in the sequence that is staffed around the clock for the purpose of repairing pugh ladles in the field. If there are not enough pugh ladles available, the operation of the blast furnace may be reduced. If the Grievant were absent on the off-turns the Company had to replace him with someone on overtime. If he were absent on the day turn, the Company had to call someone off the brickstand to replace him, thereby delaying repairs there.

The Section Manager testified that FRO's cause special problems because the supervisor does not know whether the employee will simply show up late or whether an entire turn must be staffed. This is especially true if the employee is known to be an absentee problem, according to the Section Manager. In addition, the supervisor must make a judgment as to whether to fill the position at the beginning of the shift, during a hectic time period.

The Section Manager testified that he made the decision to discharge the Grievant because he had a very, very poor attendance record. The Union asked him whether he considered that the Grievant had improved his attendance record. The Section Manager acknowledged that the Grievant had improved his FRO problem, but that he continued to violate the absenteeism program. He said that when an employee is identified by the computerized system for absenteeism problems, Management does consider whether discipline is appropriate. At that time Management considers extenuating circumstances affecting absences during the prior period. (Absences generally are tracked on a rolling 90-day basis). He said that if an employee has an overall good attendance record, and then experiences a period where he has some specific problems, his overall record is

considered. He stated, however, that the Grievant in this case never established a good record during his 40 months with the Company. Thus, the Section Manager said that discharge was warranted, even though the Grievant may have violated the attendance policy at a somewhat lower rate than when he was first disciplined. He also noted that under the Attendance Improvement Plan, the Grievant could have reverted to lower steps of the disciplinary process and eventually been removed from the disciplinary track entirely if he had maintained good attendance after discipline. The Grievant never did so.

The Union presented evidence that one employee can miss more days under the Plan and incur worse disciplinary consequences than another employee with fewer absences. The Company acknowledged that this is so, although disputed the range of discipline contained in the Union exhibit. In addition, on cross-examination the Union asked the Section Manager whether employees missed a great deal more work in the 1970's before being discharged. He said that he could not draw that conclusion, without more evidence.

The Union also questioned the Section Manager on why the Grievant was never forced to take the days off associated with his various disciplines, until March, 2002. The Section Manager testified that more often than not, employees do not take off a disciplinary day, especially when absenteeism is involved. He said that the Union did not object to the Company's failure to make the Grievant take off the time, during the two record reviews over his attendance or during the grievance procedure.

The Section Manager of Union Relations, who has worked in Union Relations since 1968, also testified that it is not unusual for the Company not to force employees to

take off the days associated with discipline. He said that in some departments this policy extends back far before the Attendance Improvement Program was put into place. He also testified that this was the practice especially in disciplines for absenteeism, since the purpose of the discipline is inconsistent with taking off additional days. He also testified that the Grievant told him, during the grievance procedure, that he missed day turns because he was out late at night.

The Grievant testified about two absences that he believed should have been excused. He said that in April, 2002 he missed work because he had a problem with an old outside injury. He sprained his ankle, which had previously been broken. He said that he was off two days for this problem, and was scheduled off the next two days, but could not have attended work the third day if he had been scheduled. The Company noted on cross-examination that he provided no medical documentation for this absence.

The Grievant also testified that he had a court date that caused him to miss work in January, 2003. He stated that if he did not attend this court date he would have had his wages garnished, for payment of outstanding medical bills. On cross-examination the Grievant acknowledged that he knew about the court date months in advance.

The Grievant acknowledged that he had made mistakes in not coming to work on time and more regularly. He said that once the Company made him take a disciplinary day off, his eyes were opened and he became worried that he would lose his job. On cross-examination he admitted that the attendance program had been explained to him during his initial orientation with the Company, and when discipline was administered to him. He acknowledged that he knew that it was a "big deal" when he met with the

Section Manager twice to discuss his attendance in Record Reviews. He said he was told that additional absences could lead to discharge.

The Union's Position

The Union argues that the Company has improperly substituted a violation of the Attendance Improvement Program for just cause. While the AIP may be used to identify absenteeism problems, a violation of the plan may not be used as the sole basis for establishing just cause for discharge, as the Company has done in this case, according to the Union. The Union notes that its evidence shows that under the AIP one employee can miss fewer days and receive more discipline than another employee who is absent for more days and receives less discipline. Strict reliance upon the AIP for discipline is asking the program to do something that it was not designed to do, the Union argues.

The Union also notes that it could not locate arbitration cases in its files involving short-term employees who were discharged for absenteeism, except for cases involving drugs and alcohol. The Union suggests that this is because during the 1980's and 1990's there were almost no short-term employees working for the Company. During the preceding decades, when there were short-term employees, the Attendance Improvement Plan was not in operation. The Union contends that during this period even short-term employees were permitted many more absences before discharge than the Grievant here was allowed.

The Union argues that the Company did not take into account that the Grievant significantly lowered his absenteeism rate in the last two years. The Union relies upon a document it produced for the arbitration, showing the Grievant's absentee rate by six-

month periods. The document shows that the Grievant had more than an 8% absentee rate in the second half of 2000 and the first half of 2001, but then reduced it to 5.6% in the second half of 2001, around 4% in 2002, and down to 2.2% by the first half of 2003, which included several months of his post-discharge time. In addition, the Union argues that the Grievant had not had an FRO since May, 2001. According to the Union, the Attendance Improvement Program worked for the Grievant, particularly after he was given a disciplinary day off. The Union notes that the Company argues that it does not give disciplinary days off, but it did eventually force the Grievant to take a day off, and it helped his attendance.

The Union also relies upon the Grievant's post-discharge absenteeism record, which shows significant improvement in his attendance. The Union relies upon past arbitration awards between the Parties to argue that the Arbitrator may consider post-discharge conduct, and to support its other arguments in this case. The Union requests that the grievance be granted, the Grievant reinstated, and that he be made whole.

The Company's Position

The Company contends that the discharge should be upheld. According to the Company, the Grievant is a short-term employee who, in a few short years, worked himself up to the point of discharge for both FRO's and absenteeism, which are tracked separately. The evidence shows that the attendance policies were explained to the Grievant when he was hired and throughout the disciplinary process. Progressive discipline was applied to the Grievant, the Company contends, but the Grievant continued to miss work at an excessive rate. Through good attendance the Grievant

could have worked his way back to a state where he was not in the disciplinary system, but he did not do that.

The Company also argues that the Arbitrator should not consider the four-month post-discharge conduct of the Grievant. According to the Company there is no allegation here that the Grievant suffered from alcohol or drug abuse, or other problems that might have contributed to his absenteeism, and therefore there is no basis for considering post-discharge conduct. In addition, the Company contends that the Grievant has gone through other four-month periods where he maintained good attendance, but then he fell back into bad habits of absenteeism. The Company pointed out that many of his later absences were "tardies," not absences caused by sickness, injury or a court date.

The Company disputes the Union's suggestion that the Grievant is entitled to a Last Chance Agreement. According to the Company, Last Chance Agreements have been offered to long-term employees, partly because arbitrators often give considerable weight to long service in reviewing discharges. Here the Grievant was a short-term employee, and no such considerations are present. The Company also argues that the arbitration cases presented by the Union do not involve facts sufficiently close to those in this case so as to provide relevant comparisons. For all of the above reasons, the Company contends that the grievance should be denied.

Findings and Decision

This is a grievance protesting the discharge of a short-term employee for absenteeism. The Union argues that the Company has relied upon the Attendance Improvement Program as a substitute for just cause in this case, and in doing so, violates the collective bargaining agreement. According to the Union, the plan is intended to be used as a method of identifying employees with attendance problems, and as a tool for correcting those problems. The AIP served those functions in this case, the Union argues, because the Grievant did improve, and he should not be discharged simply because the computer identified him again as exceeding a specific standard set by the Company.

As Arbitrator Bethel noted in Inland Award No. 827, "[T]he AIP is not truly a no-fault plan. It allows at least some discretion and for consideration of the particular circumstances of individual cases." The Section Manager in this case reaffirmed that analysis. A computer program is used to identify employees who exceed a certain attendance standard over a certain period. A supervisor then considers any extenuating circumstances regarding the absences during that period and determines whether moving to the next step of discipline is appropriate for the employee at that time. If there are no extenuating circumstances adequately explaining or excusing the employee's absences, then the employee moves to the next step of discipline, according to the Section Manager.

The Union argues that Management did not consider, however, an overall pattern of improvement in the Grievant's absenteeism. The Grievant showed significant improvement in FRO's between his first discipline for attendance and his discharge. It

was not an FRO that triggered his discharge and he had not had an FRO since May, 2001. The Section Manager acknowledged the Grievant's improvement in this area, but said that because he had violated the AIP absenteeism standards again, and had a very poor record, discharge for absenteeism was appropriate.

In Inland Award No. 827, Umpire Bethel held that there was significant improvement in the grievant's record, even though the Section Manager in that case had testified that discharge was appropriate because the grievant had failed to show improvement. On the basis of Umpire Bethel's finding, and the grievant's admission of a substance abuse problem and her taking steps to deal with it, the Umpire overturned the discharge.

However, the grievant in that case had more years with the Company than the Grievant here. She had established a record of sufficient dependability with the Company before the problems giving rise to her discharge in that case. When considering "ups and downs" in an employee's attendance record, it is reasonable for Management to treat employees with years of satisfactory attendance differently than the Grievant. Here the Grievant began having problems with FRO's within six months of being hired by the Company. About 14 months after being hired he began a string of absences that gave him an 11.11% absenteeism rate over the next 90-day period. Although it is true that he reduced this rate later, before his discharge, he never established any substantial period of time with the Company when he maintained good attendance. In addition, he continued to have a problem with tardiness up until his discharge, and even afterwards. This is an attendance problem which is most under the control of the employee, unlike perhaps sickness or other problems.

The Union argues that the Arbitrator should consider the Grievant's post-discharge conduct in this case, noting that in the first half of 2003 he maintained a 2.2% absenteeism rate. Arbitrators do sometimes consider post-discharge conduct, both positive and negative, in discharge cases. In absenteeism cases post-discharge conduct is most often considered when an employee asserts that a specific problem caused the absences and that the employee has remedied that problem. Arbitrators are more likely to give weight to such evidence, however, when the employee has a substantial record of satisfactory attendance preceding the problem period. The Grievant has no such record. In addition, the Grievant has made no assertion in this case that any particular problem caused his absences.[1] Therefore the Arbitrator has given the Grievant's post-discharge conduct little weight.

The Union also argues that Management erred when it failed to make the Grievant take off disciplinary days assessed to him until March, 2002. The Union suggests that the Grievant might have stemmed the tide of his absenteeism earlier if Management had forced him to actually lose work and pay. However, the Union did not argue, during the Record Reviews or the grievance procedure, that the Grievant should have been given days off in association with earlier disciplinary measures taken as a result of his attendance problems. Nor does the evidence show that the Grievant was treated differently than other employees with regard to this policy. Furthermore, this is not a case, like the one cited by the Union, where the employee was told that he would be discharged with his next absence, and then was permitted to have many more absences

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[1] The presence of such a problem, and the employee's attempts to address it, were a factor in Arbitrator Bethel's decision in Inland Award 827 as well.

without any discipline before finally, and unexpectedly, being discharged. Here the evidence shows that more severe penalties were assessed to the Grievant progressively over time. He met with supervisors and was told that he was moving closer to discharge. He met with his Section Manager twice in Record Reviews where he was told that he was in danger of discharge. He testified at arbitration that he was aware that it was a "big deal" for him to meet with his Section Manager over his work record. He was given a day off without pay. On the basis of this record, the Arbitrator cannot conclude that the discharge should be overturned because the Grievant was not given more disciplinary time off before his discharge.

The Union also argues that years ago the Company permitted short-term employees substantially more absenteeism before discharge. The Union did not present enough evidence in the record to prove this argument. The Company may have stricter standards under the Attendance Improvement Program than existed in some departments prior to its institution. However, employees have been notified of the standards under the program, the Company considers extenuating circumstances before issuing discipline, and employees may grieve those disciplinary decisions if they consider them to be unfair. Under these circumstances the Arbitrator cannot conclude that the Grievant was treated unfairly with regard to other employees when he was terminated.

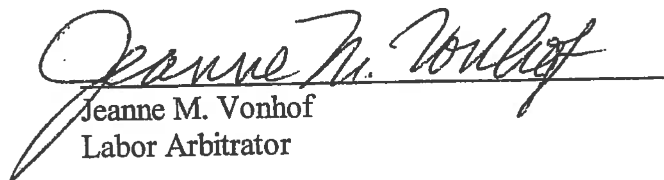
The Union argues that an employee may not be discharged until it is clear that progressive discipline will not be effective in changing the employee. The Grievant's position is very different from a long-term employee who has established a satisfactory attendance record and then has problems for a period of time. He is a short-term employee who never established a substantial record of satisfactory attendance with the

Company. In the 40 months of his employment, he did not prove that he could meet the basic employment requirement of coming to work as scheduled and on time over a sustained period of time. He was provided with progressive discipline telling him that he was risking discharge. While he did make some improvement in his attendance, he never established a good attendance record, and he continued to violate the standards set by the Attendance Improvement Program. Under these circumstances, the Company was justified in concluding that whatever improvement the Grievant demonstrated in the first half of 2003, most of which occurred after his discharge, was "too little, too late" to change the decision to discharge him.

Therefore, on the basis of all the evidence the Arbitrator concludes that the grievance must be denied.

AWARD:

The grievance is denied.



Jeanne M. Vonhof
Labor Arbitrator

Decided this 30th day of April, 2004.

Under the authority of Umpire Terry Bethel.

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