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In the Matter of Arbitration Between:

ISPAT INLAND STEEL COMPANY

and

UNITED STEELWORKERS OF AMERICA, Local 1010.

Grievance No. 26-W-071
Award No. 1016

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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 April 23, 2004 at the Company's offices in East Chicago, Indiana.

APPEARANCES

UNION

Advocate for the Union:

B. Carey, Staff Representative

Witnesses:

N. Hernandez, Grievant, Train Operator
R. Campos, Griever, Area 26, Train Operator

COMPANY

Advocate for the Company:

P. Parker, Section Manager of Arbitration and Advocacy

Witnesses:

E. Steinbeck, Command Center Supervisor
Lt. R. Mazalan, Lieutenant, Security
W. Calhoun, Section Manager, Rail Operations
T. Kinach, Section Manager, Union Relations
Dr. D. DeMichael, Medical Director
J. Bean, Coordinator, Employee Assistance Program
R. Hughes, Union Relations Representative

Background:

This case involves the discharge of a long term employee for violation of a Last Chance Agreement. The Grievant had worked for the Company for more than 29 years at the time of his discharge. He had worked as an RCO (Radio Control Operator or Train Operator) for 18-20 of these years and was employed in that position at the time of his discharge.

The Last Chance Agreement (LCA) in issue was signed by the Grievant, by a Representative of the local Union and by a Company Representative on September 18, 2000. The LCA states in relevant part:

On May 8, 2000, Norberto Hernandez, check No. 12370, was properly suspended and discharged for his violation of the General Rules for Safety and Personal Conduct, Rule No. 135 r, Rule No.135 o and Rule 136.

Although the Union and the Company recognize that cause existed for his suspension and discharge, the Company has decided, that based on Mr. Hernandez's long service with the Company, to reinstate him to work on a last chance basis. This last chance reinstatement will provide him with one final chance to prove that he can become a responsible employee of the Company. This return to work is conditioned upon strict observances of the following terms:

1. Upon signing this agreement, Mr. Hernandez will make an appointment with the Coordinator of the Employee Assistance Program for the purpose of assisting him with his anger management/emotional difficulties. Mr. Hernandez must fully comply with all recommendations set forth by the Coordinator of the Program. Mr. Hernandez will not return to work until released by the Coordinator of the Program. Failure to comply fully with any course of treatment prescribed in

connection with the above will constitute cause for the Grievant's immediate suspension preliminary to discharge.

2. Prior to returning to work, Mr. Hernandez will develop a personal action plan to improve his overall conduct. The plan will be presented in writing to the Coordinator of the Program for approval. The terms of that action plan will be incorporated into this Last Chance Agreement. Failure to develop a satisfactory action plan will place Mr. Hernandez in violation of this agreement.

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4. For one(1) year following Mr. Hernandez's return to work, he will maintain contact with the Local 1010 Members Assistance Committee. Contact with the Local 1010 Members Assistance Committee shall be on a weekly basis on Thursday or as directed by the Committee. Contact shall be in person unless otherwise stipulated by the committee.

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8. Mr. Hernandez will waive any right to the special Justice and Dignity Procedure outlined in the Collective Bargaining Agreement in the event of any subsequent suspension-discharge action taken against him within a period of five (5) years from the date of this agreement.
9. Mr. Hernandez fully acknowledges an understanding of his basic employment responsibility as an employee of the Ispat Inland Inc. Company to not violate the Company rules for any reason.
10. This arrangement represents a final chance at employment for Mr. Hernandez. Failure to meet any of the conditions set forth above or any repetition of the conduct which led to this suspension action or violation of any other Company rules or regulations will be cause for Mr. Hernandez's immediate suspension preliminary to discharge.

The parties also introduced a copy of the Grievant's handwritten "action plan," attached to the Last Chance Agreement. It states in part,

"In the last few months that I've been out of work, I've come to terms with myself on how to handle my temper and anger. I've made the decision to handle myself in a better manner that will benefit myself and whoever I may be upset with or whatever that has upset me. When an upsetting situation occurs, I'll handle my anger and temper... by ignoring the person or persons' accusations, criticism or snide remarks by walking away but not off the job. I will remind myself to keep my cool and stay in control and not let a situation get out of hand if at all possible. I will count 10-20-30 if I can and try tolerate the situation and notify a supervisor or whoever is in charge to maybe help with the problem and hope it can be solved in a orderly fashion. There is also a lot of little things to keep me focused on not to lose my temper and vent my anger on anyone or anything. My job, pension home, bills, kids credit cards- etc.etc.etc.

Also I will keep in mind the probation and the Last Chance Letter and keep in touch with Mr. John Bean, my therapist, and keep in touch with the Member's Assistance Committee..."

The "action plan" continued with specific plans about how the Grievant would deal with co-workers and with supervisors when he got angry.

Mr. John Bean, Coordinator of the Company's Employee's Assistance Program, testified that the Grievant received counseling, but no medication when he was being treated under the terms of the Last Chance Agreement. He said that the Grievant's program was designed to give him the tools to deal with stress and anger and that the Grievant did very well in the Program.

The incident giving rise to the Grievant's discharge arose on November 29, 2003. The Grievant was assigned to a crew picking up scrap loads, and returning with empty cars. The work was being performed very close to Lake Michigan. Mr. E. Steinbeck was assigned to work as Command Center Supervisor that day, overseeing the safety and completion of rail switches, supervising about 16 employees on a turn. He had worked for Ispat-Inland for about two years and had worked for a railroad prior to his service with the Company. He testified that he came upon the Grievant's crew and observed them shoving empty rail cars (gondolas) too fast for conditions. According to the Supervisor, the cars were on a downhill slope and were going so fast that they were leaning towards the boat slip. He said that he was afraid they were going to go into the lake, which has happened on other occasions.

Mr. Steinbeck said that he approached the Conductor, who oversees the movements of the train. The Conductor said that he did not tell the Grievant to run the engine that fast, but "he's just upset about something."

The Supervisor testified that he then approached the Grievant and asked him "Why are you going so fast? John (the Conductor) is a little scared." The Supervisor said that the Grievant responded with something like "You never did my job. How can you tell me how fast I should go? It's not your job to tell me what to do. If you can do it better, do it yourself." The Supervisor testified that he responded to the Grievant that it was his job to question him on how he was running the engine, if necessary. He said that the Grievant then told him to "Get f-----. Get the f— out of here. I don't need you to tell me how to do my job."

The Supervisor said that he told the Grievant that it was his job to talk to the Grievant if he saw him doing something unsafe, and that the Conductor had been scared by his conduct. According to the Supervisor, the Grievant told him to "Get f-----." five or six times during the course of their conversation. The Supervisor testified that he then told the Grievant that he could not let the Grievant treat him like that and that they were going to talk about this matter before the Grievant could go back to working. He said that the Grievant responded that he was too upset to work and that he needed to go to the clinic.

The Supervisor called Command Center and said he needed a security escort to the clinic. He then called the clinic. The Grievant became upset again, asking the Supervisor "Why the f--- did you call Plant Protection? I asked for the clinic." The Supervisor said he explained to the Grievant that he had call Plant Protection because of the state the Grievant was in. The Grievant said "F— you." The Supervisor then said that he would escort the Grievant to the car to go to the clinic and the Grievant said, " Get the f—away from me," according to Mr. Steinbeck. According to the Supervisor throughout this exchange with the Grievant, the Grievant was "irrational" and "hostile, talking very loudly and pacing back and forth." By this time the Plant Protection officer

had arrived and asked the Supervisor to step aside so that the Grievant could calm down. He did step aside, the Grievant eventually calmed down, got into the car and went to the clinic, the Supervisor testified.

According to the Supervisor the Conductor was in a very dangerous position when the Supervisor came upon the scene. The Conductor was riding on the side of one of the cars at the rear of the train. The Supervisor said that there have been numerous derailments in that area of the plant, and that there was a real risk of derailment at the speed these cars were traveling when he saw them.

On cross examination, the Supervisor said that the train was traveling about 10 mph and that the cars stopped right where they should have, at the scrap hill. The Union also questioned the Supervisor about why he call Plant Protection, as the Supervisor acknowledged that the Grievant said only that he was too upset to work and he wanted to go to the clinic. It was the Supervisor who concluded that a "fitness to work" evaluation was appropriate – the Grievant did not ask for a "fitness to work" evaluation. On redirect examination, the Supervisor testified that the Grievant never said that he was ill, or appeared to be ill during this exchange. He said he called Plant Protection because the Grievant appeared to be emotionally upset.

The Plant Protection Officer who was called to the area that night said he initially received a call about an "irate employee." He said when he first arrived at the scene and saw the Grievant, he appeared calm. He met with Mr. Steinbeck separately, who told the Plant Protection Officer that he wanted the Grievant to go to the clinic for a "fitness to work" evaluation, but that he intended to send the Grievant home anyway. The Plant Protection Officer said that as soon as Mr. Steinbeck came into the same area with the Grievant, there was an instantaneous effect on

the Grievant - that he got loud and began yelling at Mr. Steinbeck " You don't tell me how to do my job! Get f—." The Plant Protection Officer testified that as soon as the Supervisor left, the Grievant calmed down, and that this pattern repeated several times, as Mr. Steinbeck came and left the immediate area where the Grievant was located. The Grievant at first balked at going to the clinic in the Plant Protection vehicle, but then agreed to do so.

The Grievant does not deny that he spoke to the Supervisor in the way the Supervisor reported at arbitration. The Grievant testified, however, about several factors that he believes help explain his actions. The Grievant testified that he had been working with the Conductor for probably 5-6 weeks prior to this incident, and that the two had "had confrontations" because the Conductor was "doing things wrong" and that the Grievant "couldn't wait" to stop working with him. The Conductor had worked for the Company even longer than the Grievant, but had bumped into the Conductor position only about 2-3 years earlier. The Grievant testified that he thought the Conductor never had worked in this area (6 Dock) before the day in question, and that he didn't know what he was doing. The Grievant said that shortly before the Supervisor arrived, the Conductor had failed to correctly block rail cars on a slope, which caused them to head downhill on their own, when they failed to couple correctly with the engine. The Grievant was forced to chase the cars with the locomotive. The Grievant said that he had told the Conductor that rail cars should not be left in this area, and that he had responded "I'm the Conductor." Then, according to the Grievant, the Conductor yelled at the Grievant when the cars began traveling downhill on their own, even though the Grievant believed that the Conductor was responsible.

With regard to the Supervisor's observation of the later incident, the Grievant testified that he did not believe the cars were traveling too fast. He said that there was no smoke coming out of the engine, as the Supervisor reported, because he was not accelerating. He remembered pulling on the brakes, because the engine would go down the hill without any acceleration. He said that the cars were leaning because loaded cars always lean on a curve, especially these cars, which are not well-maintained. He noted that he stopped the cars where they were supposed to stop.

According to the Grievant, his first contact with the Supervisor that day occurred when he was upside down struggling with a switch. He said that the Supervisor hit the horn to get his attention. This irritated the Grievant and he walked away so that he would not lose his temper. The Supervisor come up to him a second time and he continued to perform his job, while he spoke to Mr. Steinbeck. The Grievant acknowledges that he did yell at the Supervisor and that the Supervisor did not yell at him. The Grievant said that he became especially upset when the Supervisor said that his actions had scared the Conductor, because the Grievant was already so upset with the Conductor's earlier actions that day. He said that the Conductor "had him shaking" by this point and that after 3 or 4 more arguments with the Supervisor he asked to go to the clinic. He also got upset when the Supervisor suggested that he go to the clinic in the Company truck or the Plant Protection Vehicle, because employees are supposed to be taken to the clinic in the clinic van. He also said that he is "paranoid" about Plant Protection because his first discharge occurred because of Plant Protection.

The Grievant also presented evidence about his physical state. He said that in May, 2003 a foreman called him at work and told him that he had to work a double shift. He said that he

does not do double shifts, that he became very angry, and hung up on the foreman rather than argue with him. He said that he was so angry he fell off a bench he was sitting on and that he felt very odd. He did not want to go to the clinic because he was afraid they would think he was just trying to get out of the double shift. Co-workers told him that he looked bad, however, so he went to the clinic. His blood pressure was so high, he said, that the technician thought the machine was broken. He said that he went to the hospital and was in Intensive Care for over a week and was off work until July. He came back to work with medication, but said he had some very bad reactions to the drugs. He had severe water retention and bloating as a result of one drug. The Union introduced evidence showing that depression is a side effect of several of the medications the Grievant was taking. The Grievant testified that he snapped at his wife, realized that he was depressed, and began taking antidepressants. At the time of the incident leading to this discharge, he had stopped taking two medications several days earlier, including the antidepressant, so that he could enjoy the Thanksgiving holiday weekend, without the side effects caused by the medications.

The Company doctor testified about the medications the Grievant was taking at the time of his discharge. These included medications to lower cholesterol, lower the risk of heart attack, ease muscle and joint pain, reduce depression, prevent seizures and address allergies. He testified that these medications alone or in combination would not directly cause explosive angry behavior. In addition, he said that the Grievant's failure to take his anti-depressant or his anti-seizure medicine for several days before the incident giving rise to his discharge would not cause an explosive angry reaction. The effects of the antidepressants are cumulative and would take a longer time to wear off. He also said that the Grievant's blood pressure on that night was not so

high as to suggest that he would have confusion or disorientation or other emotional reactions that can accompany prolonged very high blood pressure.

On cross-examination the Grievant acknowledged that he did not seek help from the Company's Employee Assistance Program or the Union's Member's Assistance Committee when he became angry at the Supervisor who ordered him to work a double shift in May or when he snapped at his wife or when he became upset with the Conductor for weeks. The Grievant said his condition in May was medical, close to a stroke, and that he never thought of calling the Employee Assistance Program about that. The Griever testified that the Grievant had been designated by his Department as "Employee of the Month" in March, 2003.

The Company's Position

The Company contends that because the Grievant was a long service employee he already was brought back from discharge once for using profane and abusive language. The Company expended time, energy and money at that time, providing the Grievant with therapy and counseling and the attention of the Employee Assistance Program. The Company wanted the Grievant to succeed, and made sure that he knew what resources were available to help him, if he had anger management problems in the future.

The Company argues that the Grievant did not keep up his part of the bargain, however. The Grievant had many signs that he was having problems with anger, when he became very angry in May, 2003 at the Supervisor who assigned him a double, and when he had problems with his Conductor and with his wife. Problems were building up that he did not address. He could have sought help from the Company or the Union, but he failed to do so.

The Company disputes the Union's suggestion that the medications taken by the Grievant at the time of his discharge may have affected his conduct. No medical professional testified that there was any nexus between these medications and the Grievant's inappropriate behavior. The Company argues further that there was no evidence in the record that if the Grievant stopped taking certain medications several days before this incident, that he would react as he did.

The Company argues that the Grievant knew that under the terms of his Last Chance Agreement he would be fired if he used profane or abusive language towards another employee, but he did so anyway. There was no provocation by the Supervisor, the Company contends. He did not yell, scream or swear at the Grievant. In order for the Supervisor to perform his job he must be able to question and criticize an employee if he sees a problem with the employee's work without the employee blowing up at him. If the grievance is sustained the Supervisor will lose his effectiveness, the Company argues.

The Company argues that in the Last Chance Agreement the Union and the Company clearly agreed upon the grounds for discharge. The Company took into account the Grievant's long tenure at that time and the parties agreed that he would have one final chance at employment. The Grievant did not keep his part of the bargain, the Company argues, and discharge is appropriate.

The Union's Position

The Union notes that the Grievant complied with the terms of the Last Chance Agreement for over three years until November 29, 2003. He was "Employee of the Month" in March 2003. The Union does not dispute that the Grievant lashed out at and cursed his Supervisor on

November 29. Nor does the Union argue that he had the right to do so. However, the Union argues that the Grievant was provoked by his Supervisor and that his medical condition affected his conduct.

The Supervisor irritated the Grievant by first getting his attention by honking at him, which would irritate anyone, the Union contends. At that time the Grievant already was upset at the Conductor, for the earlier episode. The Conductor hadn't called the Grievant to say that he was running the cars too fast, but the Supervisor criticized the Grievant for doing so. Furthermore the Grievant was legitimately provoked, the Union contends, when the Supervisor called Plant Protection instead of the clinic van to take the Grievant to the clinic.

The Union also argues that the Grievant was under a new drug regimen at the time of his discharge. The Grievant had been taking several new medications since the summer, and the Union argues that his medications affected him so that he was not in full control of his emotions on the day of the incident. The Union notes that the medications had been adjusted several times, due to serious side effects. The Union argues that several of the medications taken by the Grievant cause depression as a side effect. He did start taking medications for depression, the Union noted, but stopped taking them for a few days so that he could enjoy Thanksgiving without their side effects. The Union argues that this caused the Grievant's mental state to be out of balance at the time of the incident leading to his discharge. However, this is not the case of an employee who had been using mood controlling drugs for a substantial amount of time, who knew what to expect if he stopped taking them, and who did so anyway. This is an employee, the Union argues, who made a miscalculation in dealing with the dosage of medications that were new to him. The calming effects of the drugs had worn off and the Grievant overreacted to the

provocation of a relatively new and inexperienced Supervisor. Although the Grievant made a mistake, he should not lose his job over this miscalculation, according to the Union.

Findings and Decision

The Grievant has been discharged for violating a Last Chance Agreement. There was little information presented at arbitration about the conduct that led to the Grievant's first discharge. However, the Last Chance Agreement makes clear that in his first discharge the Grievant violated Rule 135 r, which prohibits "the use of profane, abusive, or threatening language towards supervisors or other employees." In addition, the Grievant's "action plan," developed under the Last Chance Agreement, indicates that he acknowledged that the source of his problems with other co-workers was his temper.

There is no dispute between the parties that the Grievant used profane and abusive language towards a Supervisor in this case. The Grievant acknowledges that he did so. Thus, there is no real dispute that his conduct violated Paragraph 10 of the Last Chance Agreement, which states that "any repetition of the conduct which led to this suspension will be cause for immediate discharge." The Company usually enters into Last Chance Agreements in order to salvage the careers of long-term employees who have engaged in serious misconduct or who develop very bad attendance records. In order to save his job, the Grievant and the Union here agreed that he must comply with the strict terms of the Agreement as his final chance at employment. The Arbitrator is bound to enforce the terms of the Last Chance Agreement.

The Union argues, however, that there are several factors, in addition to the Grievant's long service, that the Arbitrator should consider. First the Union argues that the Supervisor

provoked the Grievant. The Supervisor did not deny that he blew a horn to get the Grievant's attention initially, and that this startled and annoyed the Grievant. There was little evidence about why the Supervisor used this method of getting the Grievant's attention, although many areas of the mill are noisy. Nevertheless, the Grievant testified that when this happened he walked away so that he wouldn't yell at the Supervisor. The Grievant was able to maintain his composure after this initial event.

It was only after he began the discussion in which the Supervisor questioned the Grievant about the cars going too fast that the Grievant lashed out at the Supervisor. The Grievant testified that the cars were not moving too fast. The cars were running in one of the few downhill parts of the property, which probably caused them to move faster than cars at other locations in the mill. The Union points out that they were not going so fast that they overshot the place where they were supposed to stop. It is not possible, on the facts in the record, for the Arbitrator to conclude whether the cars were being moved too fast for the conditions. However, the real issue is whether the Supervisor believed that they were being moved too fast, or was simply harassing the Grievant for no reason. Although the Supervisor is relatively new at Ispat-Inland, he had prior experience supervising train movement in his last job for a railroad. There is not sufficient evidence in the record for the Arbitrator to conclude that the Supervisor was intent on simply harassing the Grievant, rather than legitimately questioning him about what he considered to be a dangerous situation.

The Grievant also seemed provoked by the fact that the Supervisor said that the Conductor was scared, because the Grievant already was upset with the Conductor. He may have been legitimately concerned over the Conductor's earlier conduct. However, even if the Grievant

believed that the Supervisor were wrong, and even if he were legitimately upset over the Conductor's earlier conduct, this does not provide an excuse for the Grievant to yell and curse at the Supervisor. The evidence does not establish that the Supervisor raised his voice to the Grievant, or that his conduct should have provoked the kind of response the Grievant gave. In order to effectively manage the plant, a supervisor must be able to question an employee about how that employee is performing his duties, when the supervisor sees a problem, without the employee yelling profanities at the supervisor or otherwise challenging the supervisor's authority to question him. Here the Grievant repeatedly used profane and abusive language towards the Supervisor. Even after he had had an opportunity to calm down, he came back and yelled and cursed at the Supervisor again.

The Union also argues, however, that the Grievant overreacted to the Supervisor because of medications he was taking, or because he had discontinued taking certain medications several days prior to the incident which triggered the discharge. The Union put into evidence some information showing that some of the medications taken by the Grievant have mood-altering side effects, primarily depression. The Union also presented evidence that the Grievant had had some significant reactions to some of the medications. However, the Grievant recognized his depression and was being medically treated for it. The Union suggested that the Grievant's search for the proper doses and his failure to take his antidepressant for several days caused him to lash out at his Supervisor. However, there was no medical evidence that supported this analysis. The Company doctor testified that neither side effects from the medication, the Grievant's blood pressure that night, nor his failure to take certain medications for several days would likely have resulted in his emotional outburst. The doctor testified credibly that

antidepressants build up in the bloodstream over time and also decrease only gradually when someone stops taking them, so there would not likely be any emotional reaction over the few days since the Grievant had stopped taking them. Even if the Arbitrator does not fully credit the testimony of the Company doctor, on the grounds that it may be biased, there is no other medical evidence in the record from which the Arbitrator could draw the conclusion that the Grievant's behavior was caused by or even affected by the prescribed medications he was (or was not) taking.

The Union has raised the Grievant's very long service with the Company as a factor in his favor. A long-term employee is entitled to consideration for his long years of service to the Company, when facing discharge. The Last Change Agreement, signed by the Union and the Grievant, recognized that there were grounds to discharge the Grievant at the time of his first discharge. The Last Chance Agreement specifically states, however, that the Company considered the Grievant's long service when it decided to reinstate him, as long as he complied with the strict terms of the Agreement. It is very unfortunate when any employee with this many years of service faces discharge. However, the Grievant is in a different position than a long-term employee who is facing discharge for the first time.

On the basis of the record produced at arbitration, there is not sufficient evidence for the Arbitrator to conclude that the Grievant's conduct was provoked by the Supervisor or affected by medications he was taking or had recently stopped taking. There is no question that his conduct violated the Last Chance Agreement. Therefore the Arbitrator has no choice but to uphold the terms of the Last Chance Agreement that the Grievant signed and to deny the grievance.

AWARD

The grievance is denied.

Jeanne M. Vonhof
Labor Arbitrator

Decided this 31st day of August, 2004.