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In the Matter of Arbitration Between:)
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ISPAT INLAND)
) **Grievance No. 32-W-060**
) **Award No. 1017**
and)
)
)
UNITED STEELWORKERS OF AMERICA, Local 1010)
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)

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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 Friday, December 10, 2004 at the Company's offices in East Chicago, Indiana.

APPEARANCES

UNION

Advocate for the Union:

B. Carey	Secretary Grievance Committee

Witnesses:

D. Luce	Crane Repair, MMD, Griever
J. Gelon	Maintenance Man, Griever
J. Manes	Grievant
L. Aguilar	Vice-Chair Grievance Committee

COMPANY

Advocate for the Company:

P. Parker	Section Manager of Arbitration and Advocacy

Witnesses:

G. DeArmond	Contract Administrator Resource
J. Stahl	Former Manager, Mobile Maintenance Department
J. Bean	Employee Assistance Program Director

Background

The Grievant was employed as a Crane Repairman at the time of his termination, and had worked for the Company for 27 years. Many of the facts in this case are not in dispute. The Grievant was working the 3:00 to 11:00 p.m. shift on May 25, 2004. There were 6 Crane Repairmen assigned to the afternoon shift. A bargaining unit member, Mr. P. Lenzo, was acting as Working Foreman directing the crew. At around 4:00 p.m. he assigned the Grievant and another Crane Repairman, Mr. M. Delnicki, to a warehouse in which the Company stores finished steel coils. The coils are offloaded from Company trucks by the use of overhead cranes, and the Grievant and Mr. Delnicki were assigned to repair a set of coil tongs which hang from the crane and are used to grab coils.

After receiving their assignment to go to the warehouse, the Grievant and Mr. Delnicki drove to Mr. Delnicki's car, retrieved a quart bottle of vodka, and began drinking it. According to the investigation, the two had consumed the entire quart by the time they arrived at the warehouse, which is about a 5-15 minute drive from the MMD. In the investigation the Grievant admitted that by the time he arrived at the warehouse he was too intoxicated to perform the needed repairs. The two employees left the warehouse and drove into Gary, in a direction away from the plant. The van they were driving broke down, and they called back to co-workers at the plant to have someone come retrieve them. At this point the two began physically fighting with each other in public in a parking lot.

Mr. Stahl, former Manager, MMD, conducted an investigation, stating that he went to the location the following day. He testified that the manager of the business across the street from the parking lot told him that he and his employees witnessed the Grievant punching Mr. Delnicki

with his fists, knocking him to the cement floor of a used car lot, and continuing to beat him. According to Mr. Stahl, this witness said that they were about to call an ambulance for Mr. Delnicki when two other Ispat Inland co-workers, Mr. F. Pfeiffer and H. Velez, arrived to pick them up. These two employees separated the Grievant and Mr. Delnicki, with the Grievant being put in the back seat, and Mr. Delnicki in the front. The Grievant attempted to climb over the seats to get at Mr. Delnicki, but then vomited, and was put back in the rear seat by a co-worker. Mr. Stahl said that four of the six assigned Crane Repairmen on the crew were not working at this point in time.

When the four employees returned to the plant, the Grievant and Mr. Delnicki went to the lunch room, where Working Foreman P. Lenzo and other employee were located. Mr. Stahl testified that when Mr. Lenzo began asking him what had happened, the Grievant went over to Mr. Delnicki, tapped him on the shoulder, called him "Bro," picked him up, and threw him on a table. According to Mr. Stahl, Mr. Delnicki fell off the table onto the floor and the Grievant was on top of him, was pulled off and then kicked Mr. Delnicki in the head several time. The third step minutes describe the fight this way,

> At this point the grievant attacked M. Delnicki. The grievant body slammed M. Delnicki, punched him with his fists and kicked him with his metatarsal shoes, both in the face and to the body. The working supervisor, Pete Lenzo, called Plant Protection to report that "J. Manes had "snapped," he had thrown his lunch pail out of the lunchroom breaking a window, it took four guys to hold him down, he then broke free, took off his shirt and ran out of the building."

Plant Protection arrived and found the Grievant hiding under a rail car several hundred yards from the lunchroom. The Grievant was taken to the clinic and given a "fitness to work" evaluation. He failed both the patient assessment and the breathalyzer test. He was provided alternative transportation home, as he was considered unfit to drive. The Union did not challenge

the results of the alcohol testing. Ms. G. DeArmond, Union Relations, testified that she saw Mr. Delnicki several days after his confrontation with the Grievant and that he had a dislocated shoulder and significant bruises on his face. The third step minutes state that both employees were injured.

Both employees were discharged. The Grievant was discharged for violating the following Company rules:

A. Fighting with, or attempting bodily injury to another employee or non-employee on company property.
D. Reporting for work under the influence of intoxicating beverages; being in possession of, while on Company property, or bringing onto Company property, intoxicating beverages and/or including non-alcoholic beer and or wine.
L. ...destroying, damaging company property...
N. Leaving employee's working place or visiting around the Plant away from usual or assigned place of duty at any time, either during or outside of regular work hours without permission of a supervisor.
P. Neglect or carelessness in the performance of duties assigned or in the care or use of Company property.
R. Use of profane, abusive, or threatening language towards supervisors or other employees or officials of the Company, or any non-Ispat Inland personnel.

Ms. DeArmond stated that the final rule violation related to the fact that after the Grievant returned from the clinic to the locker room, he made a gesture to Mr. Pfeiffer of cutting his throat, and this had so upset Mr. Pfeiffer that he took an emergency week of vacation.

The Grievant did not deny the evidence about his conduct on the day of the investigation. He acknowledged that he did not try to stop Mr. Delnicki from drinking and driving and decided to get in the van with him. He did not call a supervisor to report Mr. Delnicki's intoxication. He admitted that he drank 2/3 of a quart of vodka at work that day and that he was too drunk to work when he arrived at the warehouse. He admitted that he did fight with Mr. Delnicki, but

stated that he does not remember much of the details of the fighting in the parking lot. He acknowledged, however that when the van broke down he recognized at that point that he could get caught and he was mad at Delnicki. When asked on cross-examination if he "beat the hell out of Delnicki," both in the parking lot and in the lunch room, he said "that's what I'm told." He said that he remembered that he tried to get at Mr. Delnicki in the van on the way back to work.

The Grievant also said he remembered three of his co-workers holding him in the lunchroom in a "bear hug," and that no one was holding Mr. Delnicki. He disputed the report however, that Mr. Delnicki was on the ground at that time, with the Grievant kicking him. He said that Mr. Delnicki was kneeling and the Grievant "put his foot in [Delnicki's] face" to push him back. He also remembered vaguely throwing his lunch bucket through a window, as well as running out of the room and wanting to hide. He said that he did not recall making a gesture to Mr. Pfeiffer of cutting his throat, and said that Mr. Pfeiffer is much bigger than him.

The Grievant disputed that he was the aggressor, saying he was pushed by Mr. Delnicki's harassment. The Grievant had written and performed in a video about harassment for the Company. He testified that Mr. Delnicki began teasing him about his work on this video during line-up on the day in question, when assignments were given out. According to the Grievant, Mr. Delnicki made an extremely offensive remark of a sexual nature about the Grievant during the line-up. The Grievant contended further that Mr. Delnicki had harassed him verbally, sexually and physically for some time. According to the Grievant he had talked to Ms. Denise Hynes, Generalist (Administrative Assistant) that day about this problem, trying to determine whether he could get a voluntary leave of absence, but she said "no." She was trying to get him a day shift bid, however, which would have taken him off the shift with Mr. Delnicki.

Mr. Luce, the Griever, also testified that the Grievant had reported to him that Mr. Delnicki was hassling him, and asked him to talk to Mr. Delnicki about it, which he did. He also testified that it is common to place employees on day shift when they return from alcohol or drug rehabilitation. Mr. Gelon, who was the outgoing Union Griever at the time, testified that the Grievant had called him about Mr. Delnicki, Mr. Gelon spoke to Mr. Luce, and that Mr. Luce had spoken to Ms. Hynes regarding the Grievant's complaint that Mr. Delnicki was "making life miserable for him."

The Grievant also testified that on the day in question, when he was getting his assignment, the Working Foreman said to him that Mr. Delnicki was "drunk again" and requested that the Grievant should drive for that reason. The Grievant testified that he was trying to protect Mr. Delnicki by not reporting this to Management.1 According to Ms. DeArmond, this claim never was raised before the arbitration hearing. She testified, however, that during the investigation the Foreman was asked and denied knowing that Mr. Delnicki was under the influence at the time. Mr. Gelon testified that the Grievant did raise during the investigation his claim that the Working Foreman knew that Mr. Delnicki was under the influence when he assigned the work The Working Foreman is a bargaining unit member and did not testify at arbitration.

Mr. Stahl testified that he was not aware that Mr. Delnicki had a drinking problem before this time. He said he was not aware of whether other supervisors knew that he had a problem. He acknowledged that he did know that Mr. Delnicki's record regarding absenteeism was below

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1 The Grievant also testified that on a prior occasion another Working Foreman, Mr. M. Ivetec asked the Grievant to perform a job because Mr. Delnicki was too drunk. He agreed to do the job, and said that Mr. Delnicki called him a "pussy" and "suck ass" for doing so. He said that Mr. Delnicki and Mr. Ivetec then almost started fighting, but other employees broke it up. Mr. Ivetec was not called to testify and the Grievant acknowledged that he never reported these

average, and that such a record may be a sign of alcohol problems. When employees are counseled about absenteeism, they are asked whether alcohol or drugs are a problem, and if they say yes, they are referred for counseling. Supervisors do not know when an employee places himself in rehabilitation voluntarily. If an employee shows up for work under the influence the supervisor is expected to call for a fitness to work evaluation and this had not occurred with Mr. Delnicki in the weeks or months leading up to his discharge. Mr. Stahl testified that at 4:00 p.m. Management supervisors are still present, and no one reported to them that Mr. Delnicki was under the influence on the day in question.

The Grievant testified about his past experience with alcoholism and rehabilitation. He testified that in 1992 he was involved in fighting an explosion and fire in the coke plant that claimed the lives of two co-workers, followed several days later by the suicide of their supervisor. He testified that he fought the fire for 4 hours, after other employees left, and that for the whole four hours he thought that he could die at any time. According to the Grievant, Management told him and others afterwards that many more people might have died if they had not done what they did. The Grievant said that he began drinking heavily after this event, and resigned early from his position in the Union. In 1993 he went into inpatient rehabilitation for alcoholism, paid for by the Company, went to Alcoholics Anonymous, and stayed sober for eight and a half years. This was confirmed by his AA sponsor, Mr. D. Luce, who is also a bargaining unit member.2 According to Mr. Luce the Grievant has attended AA meetings since 2001.

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two incidents of Mr. Delnicki drinking to any supervisor.

2 Mr. Luce also testified about another incident he witnessed in which a supervisor was lining up the employees for the day. He said that Mr. Delnicki got very loud with the supervisor, who eventually left and had the Working Foreman complete the lineup. Mr. Luce said he did no know whether Mr. Delnicki was under the influence on that occasion.

In January 2001 the Grievant was injured at work. In March 2001the Grievant witnessed a fatal accident in the plant that claimed the life of one of his oldest friends. The Grievant began drinking again several months later. In November 2002 he entered the Company's EAP voluntarily. He dropped out of the program about six months later, drinking again. In March 2004 he went back to the Company's EAP program again voluntarily. He did a four week outpatient program, paid for by the Company that lasted at least 8 hours every day. The Grievant testified that from the day he entered that program he went for 60 days without drinking, for the first time in a long time. He was released from the program around April 7, 2004. He said that Mr. Bean told him that he had to see only a certain psychiatrist for treatment, not the doctor he preferred. Mr. Bean testified that when the Grievant came to see him in March 2004 Mr. Bean concluded that the Grievant needed extensive treatment immediately, and so his appointment with his preferred doctor was canceled. After he completed treatment the Grievant went into the Ispat Inland EAP, which uses a doctor whose specialty is substance abuse problems.

After his termination the Grievant said he was told that he could no longer use the Company's EAP. However, he provided information that he has been going to the Union Committee meetings and attending AA meetings nearly every day since his discharge. He said that if he were put back to work he would not relapse because he cannot take any more pain. He also said that both times he relapsed were after deaths at work, and that it would be unlikely that he would witness another death at the plant in his remaining time until retirement.

The Grievant testified that since his discharge he has been doing construction, delivering papers in the morning and working as a writer and reporter for the Lowell Tribune. He is also an

award-winning coach for a high school track team. He stated that he continues to attend AA meetings nearly every day.

Mr. W. Carey, Union Representative, and Mr. L. Aguilar, Vice President of the Local, testified about incidents they knew of where employees had been involved in fights and had not been discharged. Mr. Carey testified about an employee with a black belt in martial arts who put a 55-year old employee on the ground and got a 10-day suspension. No grievance was filed over this and there are no written records of it. Mr. Aguilar testified about one very large employee who delivered a punch to another employee, and tried to uncoil him when he went into a curled position on the floor. He said that each of these employees received 3-5 days off, one a few days more than the other because he had made a remark about the other employee's recently deceased parents. The Union introduced a petition signed by 300 employees, including some Management employees, asking that the Grievant be reinstated. The Union also introduced 18 arbitration awards between the parties.

The Company's Position

The Company argues that an employee who batters another employee forfeits his job. According to the Company, the cases cited by the Union where lesser discipline was imposed for fighting involve instances where there was a brief encounter between employees. Here the Arbitrator must reject the argument that the Grievant has not been treated like other employees, the Company argues, because the Grievant's situation is different from that of other employees. The Grievant beat another employee on three separate occasions on the same day, the Company argues, and for this conduct discharge is appropriate.

In this case, the Company states, two veteran employees began the day by sharing a bottle of vodka at work. There is no evidence that they did any work on the day in question. There are inherent risks in their job, the job of Crane Repairman. In addition, the employees were driving drunk on public roads at rush hour, endangering the safety of both themselves and others, the Company argues. The Company contends that the Union could have subpoenaed Mr. Delnicki and the Working Foremen mentioned in the arbitration hearing to support its positions, but did not do so.

According to the Company, the charge of drinking on the job merits discharge by itself. The Grievant's addictions cannot hold him harmless, the Company asserts. He administered a brutal beating to Mr. Delnicki, who deserved to be discharged for his own misconduct, but not beaten. The Grievant could have decided not to get in the van with Mr. Delnicki when he saw his condition, and not to join him in drinking. The Grievant, however, chose to do those things, and is therefore responsible for his own termination, according to the Company.

According to the Company, normally alcoholism coupled with post-discharge rehabilitation may be considered as mitigation in absenteeism cases. However, here the Union is suggesting that these factors should serve as an excuse for drinking on the job and beating another employee. The Company acknowledges that the Grievant has experienced tragedies at the plant. However, his drinking and fighting put himself and other employees at risk, the Company argues. The Company asserts that rarely has it had an employee break so many serious rules in such a short period of time and the conduct merits discharge.

The Union's Position

The Union presents a number of arbitration awards to establish the view that employees with good service records are not discharged for engaging in one fight. Where discharges have been upheld for fighting, the Union urges, the employees have not had a lot of seniority and had bad records. Here, the Union argues, the Grievant has 27 years of service, no record of absenteeism and numerous commendations.

The Union offers as mitigation the fact that the Grievant was intoxicated when he engaged in the fight. The Union cites Inland Award No. 721 for the view that the combination of inebriation plus a good record may be mitigating factors. While alcohol cannot excuse the Grievant's behavior, the Union asserts that it can help explain it. The Union argues further that employees who are found to be under the influence at work are not typically discharged on the first offense. The Union points out that the Grievant did not bring the bottle into work – it was placed in front of him. In addition, the Grievant was never driving on the day in question. The Union also notes that the Grievant has endured two really traumatic deaths at work, and that he tends to overreact and act emotionally.

Findings and Decision

The Grievant did not deny most of the conduct that gave rise to his discharge. He admits that he drank 2/3 quart of vodka at work on the day in question and became very drunk. He admits that he fought with Mr. Delnicki twice and tried to fight with him a third time, although he cannot remember some of the details of the fighting because he was so intoxicated.

The Company suggested that the Grievant was the aggressor in these two fights. Mr. Delnicki did not testify at this hearing. The Grievant testified that Mr. Delnicki had been harassing him for some time, "verbally, sexually and physically." Neither he nor the Grievers provided any further detail about the nature of this alleged harassment. There is no evidence that this conduct ever was reported to supervisory Management. Although the Arbitrator can understand the Union's and even the Grievant's reluctance to report a fellow bargaining unit member to Management, the failure to report the alleged misconduct when it occurred makes it difficult for the Grievant to argue now that Mr. Delnicki's past harassment should serve as mitigation for the Grievant's actions. The Grievant says that he was protecting Mr. Delnicki's job, but if so, he was doing so at risk to his own job. The same reasoning applies to the Grievant's failure to report that he saw Mr. Delnicki under the influence of alcohol at work in the past.

The Grievant also claimed that Mr. Delnicki provoked him on the day in question. This is not a typical case of provocation. For example, in Inland Award No. 787 Arbitrator Fishgold overturned the discharge of a grievant in part because the other employee had provoked and challenged the grievant, asking "What are you going to do about it?" just before the grievant hit him. While provocation might serve as partial mitigation for an employee fighting, here the Grievant is claiming that the conduct provoked him to get drunk at work with his alleged harasser, not at all the usual response to provocative comment. Furthermore, if the Grievant is claiming that the remark allegedly made that day prompted the fights, there was a significant lapse of time between the line-up, when the Grievant says Mr. Delnicki made the offensive remark, and the first fight. This period of more than an hour gave the Grievant time to cool down. In

addition, at the time the first fight broke out, the Grievant and Mr. Delnicki had left the worksite together, and were traveling away from the mill. Although there was no explanation offered at arbitration for where they were going, again this is not the typical conduct of an employee who claims he has been provoked.

The Grievant had even more time to cool down between the line-up and the fight in the lunch room. There was no specific evidence from the Grievant or any other witness that Mr. Delnicki made any comments in the lunch room that provoked the Grievant. The evidence from the investigation indicates that the Grievant initiated this physical fight, and that he was much more aggressive than Mr. Delnicki at this point. It took three men to hold him back, and there is no evidence that anyone was holding Mr. Delnicki.

The Union argues that other employees have received less discipline for engaging in fights. The Arbitrator has read the cases introduced by the Union. Here the Grievant fought Mr. Delnicki very aggressively, and caused substantial injury, dislocating his shoulder and causing facial bruising and swelling. He admitted to "beating" Mr. Delnicki and kicking him in the face with his work boots. He started up the fight again in a separate location after the two employees had been separated by other co-workers. The other fight cases submitted by the Union where employees received less discipline mostly involve one punch, or a brief fight. They did not involve such extended, intense or recurring fighting as occurred in this case.

The Union argues, however, that the Grievant's extreme intoxication at the time should be viewed as a mitigating factor. The Arbitrator recognizes that being drunk made it more likely for the Grievant and Mr. Delnicki to get into a fight in the first place. In addition, the Grievant's intoxication probably made the fight more serious, because it is unlikely that he would have

fought so ferociously if he were not drunk at the time. It also made it more likely for him to take up the fight again, after his co-workers first separated him from Mr. Delnicki.

Other Inland Awards have interpreted language in the contract stating that alcoholism is a treatable condition and have held that the language does not necessarily immunize employees with drug or alcohol problems from disciplinary actions based upon their conduct. Inland Award 791. Other factors here suggest that the Grievant's intoxication should not be viewed as a mitigating factor. Aggravating the offense here is that the Grievant got drunk while at work. The Company has a strong interest in preventing an employee from using alcohol while at work, which may subject the Company to substantial liability. An employee who gets drunk at work endangers himself and other employees around him on the Company's property. In this case the two intoxicated employees also endangered the general public with Company equipment, by driving a Company vehicle on public roads while intoxicated. The Union argues that the Grievant here was not driving. However, he admitted that he so lacked good judgment at the time, as a result of drinking at work, that he did not stop the other drunken employee from driving, or report him. In addition, drinking at work makes it more likely that another employee will join in too, as this case demonstrates, thereby doubling the danger.

The situation here is very different from Inland Award No. 721, where the Company took into account the grievant's intoxicated state and suggested that he would not have made the threat to the supervisor if he had not been drunk. There the parties were in a restaurant, not at work, when the statement was made. The grievant in that case was not endangering fellow employees by operating or being around the dangerous equipment and situations that exist in a steel mill. He

was not in a Company van riding with another drunken employee on the public roads. He did not take any physical action against the other employee in that case.

Whether the Grievant's intoxication should be considered as mitigation must be viewed in light of the serious violent misconduct in which he engaged, and the fact that he was drinking at work, and also in light of his past attempts to address his alcoholism. The Union offers the Grievant's rehabilitation efforts, especially his voluntary admissions to rehabilitation in the past, as mitigation. The Grievant has entered rehabilitation in the past on his own volition, unlike many employees who are disciplined or discharged for work conduct related to alcoholism. However, the Grievant has been in rehabilitation at least three times, paid for by the Company. His relapse on the day in question occurred just a few weeks after being released and returning to work from his most recent month-long leave for rehabilitation. The Grievant testified that the deaths in the mill that he has witnessed or been close to caused his initial drinking problem and his past relapses, and that he would be unlikely to encounter another such incident in the future in the mill. The Grievant has seen more than his share of horrific tragedy in the mill. However, the evidence does not show that every relapse of the Grievant has been triggered by such an incident. It was not that type of incident that caused the relapse leading to his discharge. The Grievant's own testimony suggests that he has not been able to maintain a substantial period of extended sobriety from 2001 until the time of his discharge. The Grievant's honesty and his personal commitment to overcoming his alcoholism, as demonstrated by his voluntary admissions into rehabilitation, are important, and hopefully will help him maintain his sobriety.

However, the Grievant cannot claim, as do some employees who are discharged for conduct related to alcoholism, that he did not know that he was an alcoholic. He knew how

dangerous it was for him to take a drink. He also cannot claim that the Company has not tried to work with him to overcome his alcoholism. Although his drinking at some point may have been triggered by tragedies at the mill, if the Grievant's drinking had not been detected or reported on the day in question, he might have caused another tragedy, by operating dangerous equipment or having an accident or altercation in the high narrow places that Crane Repairmen work.

The Arbitrator has considered the Grievant's long good service to the Company. The evidence shows that he is a talented individual, who has "gone the extra mile" on at least several occasions for the Employer. However, his conduct on the day in question was very dangerous behavior in a steel mill. It may be that the Grievant's intoxication alone or the fighting alone might have resulted in some lesser penalty, given his long tenure and good record. But the combination of factors here – the serious attack on another employee, extreme intoxication, and getting drunk at work, coupled with the Company's extensive cooperation in the past with the Grievant's repeated rehabilitation efforts – establish that there was just cause for the discharge. The Company has a right to expect more assurance than the Grievant can offer, based upon his past record of rehabilitation and his extreme intoxication on the day in question, that he will not relapse again and endanger other employees.

It is very unfortunate when an employee with the Grievant's tenure and record is discharged. But the Company has a responsibility to all the employees to make sure, as much as possible, that they work in a safe environment. The decision to discharge the Grievant is not without just cause, under the circumstances present here.

AWARD

The grievance is denied.

Jeanne M. Vonhof
Labor Arbitrator

Decided this 28th day of March 2005.