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United States Steel Corporation Sheet and Tin Operations Edgar Thomson-Irvin Works and United Steelworkers of America Local Union 1219

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BOARD OF ARBITRATION

Case No. USS-7928-S

January 22, 1971

ARBITRATION AWARD

UNITED STATES STEEL CORPORATION
SHEET AND TIN OPERATIONS
Edgar Thomson-Irvin Works

and

Grievance No. SET-70-24

UNITED STEELWORKERS OF AMERICA
Local Union No. 1219

Subject: Suspension

Statement of the Grievance: "Grievant F. Covato, #25038, is contending that Management, of the above, department, treated him unjustly when they sent him home on Feb. 18, 1970, for 3 days.

"Facts: On Feb. 18, 1970, Grievant Covato reported for work on the 4P.M. to 12 midnight turn. When grievant went up to drop his ticket off at the office, Foreman Phillips told grievant to see Ass't. Supt. DeCoursey to get his work assignment. After proceeding to DeCoursey's office, Ass't DeCourey sent grievant home, and told him he was in an unfit condition to work. The Union points out that if grievant was unfit, why did the plant guard permit him to enter the plant, when on other occasions, plant guards have stopped employees from entering plant when they were in an unfit condition. The Union contends Grievant Covato was in a fit condition to perform his regular duties as he reported out for.

"Remedy Requested: Pay Grievant
for wages lost and remove slip from employee's record."

Contract Provision Involved:
Agreement.

Section 3 of the August 1, 1968

Grievance Data:

Date

Grievance filed:	February 19, 1970
Step 2 Meeting:	Not applicable
Appealed to Step 3:	February 27, 1970
Step 3 Meeting:	March 3, 1970
Appealed to Step 4:	March 17, 1970
Step 4 Meeting:	May 15, 1970
Appealed to Arbitration:	July 14, 1970
Case Heard:	January 14, 1971
Transcript Received:	None

Statement of the Award:

The grievance is denied.

This grievance from the Transportation and General Services Department of Homestead Works claims that grievant's three-day suspension for reporting for work in an unfit condition was in violation of Section 1 of the August 1, 1968 Agreement.

1

In February of 1970 grievant was a Gradall Operator. On February 18, Assistant Superintendent of Transportation and General Services DeCourcy had told Foreman Phillips to have grievant report to his office at the beginning of the turn so that he could discuss grievant's work assignment with him. Grievant reported that day at about 3:55 for the 4-12 turn, entering the plant through Gate 4. Grievant changed his clothes, met Foreman Phillips on the steps, and was told to go to DeCourcy's office. Grievant went there, gave his time card to a clerk, and went into DeCourcy's office.

2

DeCourcy says that grievant leaned on and across his desk to brace himself, and that he noticed a strong smell of alcohol on grievant's breath. This caused him to observe grievant more closely, and he says that his eyes were bloodshot and his speech somewhat slurred. DeCourcy thus asked grievant if he had been drinking, and grievant said he had had a few or a couple or some words to that effect, but that he still could do his work that turn.

3

DeCourcy said he did not think that grievant was fit to operate the Gradall machine safely and that he was going to suspend him for three days. DeCourcy told grievant to change his clothes and apparently called Plant Protection to have them escort grievant out of the plant. Grievant went to the locker room to change clothes, and DeCourcy made out a "pink slip" and took it to the locker room and gave it to grievant. Plant Protection Sergeant VanDask and Plant Guard Philipanic came to the locker room and escorted grievant to the waiting car and took him to Gate 4.

4

Sergeant VanDask testified that when he entered the locker room, DeCourcy was there and grievant was changing his

5

clothes and was having trouble doing so. VanDask approached grievant and asked what was the matter, and grievant said that DeCourcy was sending him home. VanDask says that grievant's eyes were glassy, his words slurred, and that he had a strong smell of alcohol. VanDask asked grievant if he had been drinking, and grievant said he had had a few before work. VanDask went over to DeCourcy and said that he agreed that grievant was not in a fit condition to work. As they escorted grievant outside to the car, VanDask says that he noticed that grievant's gait was a little unsteady. VanDask testified he has known grievant for years, and he said that grievant on this occasion was not his normal self.

Grievant denies that. He says that he had been painting a house that afternoon until about 2:30 and that the house was approximately a fifteen-minute walk from the plant. He walked to a bar near the plant and had two straight shots of whisky, remaining in the bar only a few minutes. Grievant went to the Recreation Room of the Union Hall a few steps away from the bar at about 3:10 or 3:15 and saw Grievance Committee Chairman Maniccia. He said he watched television until about 3:50 and then walked to Gate 4, arriving at approximately 3:55.

Grievant went through the gate, showing Guard Bandalo his ID card. After changing his clothes, grievant saw Foreman Phillips who told him to go to DeCourcy's office. Grievant did so, handed his time card to a clerk, and went into DeCourcy's office. DeCourcy was talking on the telephone, and grievant walked over and leaned on his desk, but not because he needed support. Grievant asked DeCourcy where he was to work that day, and DeCourcy turned to grievant and asked if he had been drinking. Grievant said, "Yes, I had two drinks, if you call that drinking." At this, DeCourcy said that grievant would be sent home.

Grievant went to the locker room and changed his clothes. He denied he had trouble doing so, and in fact says that he had finished changing clothes before VanDask and the Guard arrived. He says he had one foot on the bench tying his shoe when VanDask entered the locker room.

Grievant left the plant and went immediately to the Union Hall and related his version of this event to Grievance Committee Chairman Maniccia, who had him sign a grievance. Maniccia testified that he had seen grievant outside the Union Hall between 2:45 and 3:00 p.m. and later noticed him walking down the street on his way to work, and that his gait was not abnormal. When grievant returned to the Hall after leaving the plant, Maniccia said he looked normal, his speech was not slurred, and he related the above version intelligently and had no trouble signing the grievance.

9

The Company stresses that the Union's claim that Maniccia saw grievant before he went to work was made for the first time at the hearing.

10

The Union notes that it requested in Step 2 that Foreman Phillips, who had seen grievant and told him to go to DeCourcy's office, be present at the Step 2 Meeting. The Company replied that Phillips was off that day, and Phillips did not attend that meeting. The Union argued at the hearing that, since the Company had not had Foreman Phillips present to testify at the hearing, a presumption arose that if he had testified, he would have contradicted the Company's version of grievant's condition. The Union stresses also that the Company did not have VanDask testify prior to the hearing and that it never did produce Guard Bandalo.

11

The Union notes that grievant is sixty-one years old and has operated heavy equipment at Edgar Thomson for years. He has a total of forty years of Company service, with thirty-eight years' continuous service. Grievant says he normally can handle two drinks and did so on the day in question. The Union stresses that grievant was not stopped by Guard Bandalo at the gate, arguing that that means that he was not unfit. Grievant says he had no conversation with that Guard but that he was close enough to him to show him his ID card and that he was near enough to Foreman Phillips and the clerk to whom he gave his time card for them to observe him, and yet none of them said that grievant was not fit to work.

12

Grievant denies that his speech was slurred or that he was unsteady on his feet, and he feels that he was fit to work, with no more than the normal danger of the Gradall operation.

FINDINGS

The Company suspended grievant for reporting for work in an unfit condition to operate the Gradall machine. Thus, it was not necessary that it be shown that he was so incapacitated as to be completely unable to function at all. Hence, the question is whether the preponderance of the evidence supports the Company's charge, and there is nothing in the Agreement to require that that managerial determination, which was made here by Assistant Superintendent DeCourcy, should have been made by a physician. Similar supervisory determinations have been made for years by men who were not medical experts.

DeCourcy first noticed a strong smell of alcohol and then saw that grievant appeared to need the support gained by leaning on his desk. He saw that grievant's eyes were bloodshot and heard his slurred speech. That was sufficient to justify his suspicion and, when he asked grievant, the latter turned suspicion to certainty by confirming that he had been drinking within a relatively short time before reporting for work. Whether or not the two drinks which grievant admits he had were enough to make him unfit for work in his own opinion, the Company was entitled to conclude from his entire appearance and behavior (unsteady gait, bloodshot eyes, slurred speech, strong smell of alcohol, and admitted consumption of two shots shortly before work) that he was in such condition as to be unable safely to operate the Gradall. This is especially true in light of grievant's own testimony that there are several other employees working around that piece of equipment which, if not operated with skill and care, could injure another employee.

Sergeant VanDask formed the same opinion of grievant's condition as had DeCourcy. The latter, of course, had the best opportunity to observe grievant and to assess his condition of all the men named on this record. Whether Foreman Phillips or Guard Bandalo had any such opportunity is not clear. Grievant says he stood near Phillips on the steps long enough for him to tell grievant to go to DeCourcy's office. But, the Company was not bound to produce all persons who might have observed grievant that afternoon. The testimony of the two Supervisors who did see and assess his condition is sufficient, especially since it is confirmed in large measure by grievant's own testimony that he had two shots of whisky shortly before reporting for work. There was no suggestion that imposition of this discipline was inconsistent with the offense charged.

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Accordingly, since the evidence shows that grievant reported in an unfit condition to perform his work, he was suspended for proper cause, and the grievance will be denied.

17

AWARD

The grievance is denied.

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Findings and Award recommended pursuant to Section 7-J of the Agreement, by



Clare B. McDermott
Assistant Chairman

Approved by the Board of Arbitration



Sylvester Garrett, Chairman