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# United States Steel Corporation Eastern Steel Operations Fairless Works and United Steelworkers of America Local Union 4889

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BOARD OF ARBITRATION

Case No. USS-7933-S

March 23, 1971

ARBITRATION AWARD

UNITED STATES STEEL CORPORATION  
EASTERN STEEL OPERATIONS  
Fairless Works

and

UNITED STEELWORKERS OF AMERICA  
Local Union No. 4889

Grievance Nos. SFL-69-560;  
-561

Subject: Request for 14-C Relief and Reporting  
Allowance — Discipline-Suspension

Statement of the Grievance: SFL-69-560  
"Grievant reported for work on the above date at 8:30. His crane was shut down for repairs by American Bridge. He was told to clean and scrape grease from the crane. He protested that with the solvent spray and American Bridge working this was not a safe assignment and if they had no work for him, he was requesting reporting allowance. This was refused - he was asked if he wanted to go to the dispensary. He said no, but he wanted a union representative. This was refused. He was then sent home for insubordination.

"Cease and desist the harrasment and discrimination of this employee and pay reporting allowance for the above date."

SFL-69-561

"Discipline Slip WQ-1231 was issued unjustly and without proper cause.

"Grievant was not insubordinate. There was no work available on his job and he requested reporting allowance. The work assigned was unsafe.

"Remove the slip and pay earnings lost."

Contract Provisions Involved: Sections 8, 10 and 14 of the Basic Labor Agreement dated August 1, 1968.

Grievance Data:

	<u>Dates</u>	
	<u>SFL-69-560</u>	<u>SFL-69-561</u>
Grievances Filed:	10-9-69	10-28-69
Step 2 Meeting:	Not Applicable	Not Applicable
Appealed to Step 3:	12-8-69	12-8-69
Step 3 Meeting:	12-16-69	12-16-69
Appealed to Step 4:	1-20-70	1-20-70
Step 4 Meeting:	4-8-70	4-8-70
Appealed to Arbitration:	7-20-70	7-20-70
Case Heard:	2-23-71	2-23-71
Transcript Received:	3-16-71	3-16-71

Statement of the Award: The grievances are denied.

BACKGROUND

USS-7933-S

These grievances from Fairless Works' Rolling Mills Division present claims (1) that grievant improperly was refused a request for "relief" from work under 14-C - Safety & Health, and denied appropriate pay under Section 10-E - Reporting Allowance; and, (2) that grievant improperly was issued a one-day disciplinary suspension for alleged "insubordination," on or about October 9, 1969. 1

Relevant "Background Information and Facts," reported in joint minutes of the Step Three Grievance Procedure Meetings reflect the following: 2

"The grievant reported for work before 8:00 a.m. (not 8:30 a.m., as stated in the grievance) on the 8-4 turn of October 9, 1969. He relieved the 12-8 Craneman on #49 crane and operated the crane, stripping a heat until about 8:15 a.m.; at that time the crane was shut down so that American Bridge could steam clean the crane.

"During the previous week, the crane had been down for the entire week for a complete overhauling by American Bridge and Shops. It was then decided that, during the next week, the crane would be steam cleaned on day turn and operated on the back turns. The grievant was told to clean up the oil dri around the grease station at the crane boarding platform. He was then to check his gear reduction cases and trabon systems to see if grease was required, and then generally clean the crane away from the vicinity of American Bridge. Arrangements had been made with American Bridge to be off the crane in no more than a half hour in the event the crane was needed. American Bridge people were

"using a solvent for the steam cleaning, wearing goggles and gloves, but no respirators indicating that the solvent was harmless. When the grievant was given the assignment, he protested saying that it was not safe to be on the crane while it was being cleaned. His Foreman told him that there was nothing unsafe in the assignment. The grievant then asked for reporting allowance and the right to go home because there was no crane for him to operate. The Foreman told the grievant that there was work for him to do in greasing and cleaning the crane, and that he might have to operate the crane at any time if it became necessary.

"The grievant refused to perform the job and was sent home for insubordination by the Foreman. The grievant was not asked if he wanted to go to the Dispensary, having been sent there the previous day when he was ordered to grease and clean the crane under the same circumstances and he claimed he had a sore arm as the result of a recent illness. The Dispensary had examined him and given him a #1 rating.

"After his act of insubordination, he requested a Union Representative which was refused by his Foreman, who told the grievant that he could contact a Union Representative after he left the plant."

Respective Union and Company positions are reported therein as follows:

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"STATEMENT OF UNION POSITION

"The Union claims that because of the solvent being used by American Bridge the grievant had the right to refuse the work assignment for safety reasons. The Union further takes the position that since his crane was down and there was no work for him, he had the right to request and receive reporting allowance. The Union also complains that the grievant was not permitted to have Union representation. The Union requests reporting allowance for the 8-4 turn of October 9, 1969, and reimbursement and removal of discipline slip WQ-1231.

"STATEMENT OF COMPANY POSITION

"The Company takes the position that there was nothing unsafe in the work assignment. The grievant was told to stay away from the vicinity in which American Bridge was working, and since American Bridge employees were not even wearing respirators, it is felt that the solution they were using was not harmful.

"As to the claim for reporting allowance, the Company feels that there was work available for the grievant to perform and he is not entitled to reporting allowance.

"The Company sees both of these claims being made in order to cover up an act of insubordination for refusing an

"assignment which he felt may have been more unpleasant than operating the crane. It seems inconsistent on the part of the grievant that during the previous week when the crane was down all week and he was scheduled and worked, at no time did he request to go home and be paid reporting allowance. The Company feels that this was due to the fact that a major overhaul was being performed and there was very little opportunity for him to be assigned to the idle crane. Under the circumstances, the grievant was willing to remain on standby and receive the full rate of pay with incentive on the craneman job."

And, under "Summary of Discussion" therein it is noted finally:

"The parties covered the full range of facts concerning this case. The Union argued that the grievant had a right to take reporting allowance and go home; that the job was unsafe because the solvent made the crane slippery; and finally that the grievant had been denied union representation.

"The Company's rebuttal was that the grievant's job was working because he was given an assignment to grease and clean the crane and additionally was needed on a standby basis to operate the crane. Secondly, the Foreman found no hazard greater than that which normally exists on a crane notwithstanding the alleged slippery condition.

"Finally, the grievant did not ask for a union representative until after he had refused the job and was suspended. Then he was told that he could see a union representative after he left the plant."

At the hearing, notably, grievant personally reported, in effect, that he actually had not objected to working on the crane, as such, while it was being cleaned; but rather, that he objected to a specific direction from his Foreman "to scrape grease from the crane with an ice scrapper," because at the time he did not want to aggravate an existing injury-related condition. Thus, upon cross-examination, grievant testified:

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"John, you say that there was an accumulation of seventeen years of grease on this particular crane?"

"A Right.

"Q So there was some work for you to do?"

"A In the scraping department which I could not do, I was willing, more than willing to do anything else but that.

"Q You were more than willing to do anything else?"

"A Right.

"Q In other words, you restricted your activity to the scraping of grease with an ice pick or ice scraper?"

"A I would be willing to do anything else.

"Q You see I don't work on a crane, I am not a laborer, name some activities which you were willing to do on this day for Mr. Reahak, Bob.

"A Sweep up, I was willing to get oil dry and throw it on these areas that needed attention.

"Q Well, how about--I see a word here, trabon.

"A That has nothing to do with it, there was nowhere was trabon even mentioned to me.

"Q But you were willing to clean up the oil dry around the oil station?

"A Right, and sweep the catwalks surrounding the grease area.

"Q And you were willing to sweep the catwalks around the grease area?

"A Yes

"Q Were you willing to check the gear reduction cases?

"A That wasn't asked of me.

"Q But if it had been, assume with me, John, that it had been, would you have done that, check gear reduction cases?

"A Yes, I guess I would.

"Q If it had been asked and I am not saying it had been asked, would you have been willing to check the trabon system?

"A Certainly, sure.

"Q And where would this work take you, John?

"A Well, over the crane.

"Q All over the crane. Above or on the ground?

"A Above and below.

"Q So it is above and below and you checked the gear reduction, you checked the trabon and you sweep around.

But really what you objected to on this particular day from Bob, your foreman, was scraping this grease?

"A Correct.

"Q All right, the truth, John, is, isn't it, that is really why you wanted to go home?

"A What?

"Q Because you didn't want to scrape grease?

"A I told you, I admit that I didn't want to scrape grease for the sole purpose of my neck, or didn't that point hit you?

"Q Oh, it hit me, John.

"A Well, that's the point. If you don't know nothing about the disc trouble I had, then you don't know what this case is all about.

"Q I hear when you say you had disc trouble and that is what this case is all about, isn't it?

"A Certainly. Inconsideration, number one.

"Q Inconsideration?

"A Harrassment, number two.

"Q But really, John, this case is all about as you put it your feeling because of a disc operation that you should not be required to scrape grease, is that correct?

"A Correct.

"Q And when this was assigned to you by your foreman, that's really why you wanted to go home, isn't it, John?

"A I was willing to do other work that wasn't as hard on my neck as--well, wasn't as jerky.

"Q But that's really why you wanted to go home ... because your foreman assigned you to scraping grease?

"A Certainly, it was going to hurt my body. I would have did it normally, I would have been glad to do it normally but at this time that I just came back from this operation, I wasn't about to do it and hurt myself because I went through hell with that disc and I had complications after I went home."

The questions and answers continued:

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"Q Now, on the previous day you went to the dispensary, is that right?"

"A That's correct.

"Q And you were there for four or five hours?"

"A I was there all day.

"Q What were you doing all day, John?"

"A Waiting.

"Q And what time did the doctor finally see you?"

"A He seen me right before lunch and he told me to go back to my place and eat lunch, he was going to lunch and be back at one o'clock.

"Q Then what happened at one o'clock?"

"A I went back.

"Q Then what happened?"

"A I waited there again.

"Q In the waiting room?

"A Yes.

"Q What time did the doctor finally see you?

"A Approximately I guess it was around approximately two o'clock, something like that, it could be later.

"Q Did he examine you?

"A No.

"Q He didn't?

"A No, he had all the records, he was looking at my records, he seen that in there that I had a disc removed from my neck.

"Q And he gave you an A rating?

"A He says I have got to give you an A-1 rating, Mr. Shingler says if I don't, he can't use you.

In his words he also said to the receptionist, write these slips out, you better give Kane an A-1 rating because his general foreman can't use him, he says Kane is trying to goof off.

"Q When did you come back to work after the suspension?

"A When did I come back to work?

"Q You were suspended I guess for the rest of the day and the 9th and then the 10th, then you came back to work as a craneman at your next scheduled turn?

"A Yes.

"Q Then you worked okay as a craneman after that?

"A Yes.

"Q No problems?

"A No.

"Q Did you protest in any way the company doctor giving you an A-1 rating on the 8th?

"A What can you do, it was all cut and dry, you have an A-1 rating and you go back to work, what can I say, what squawk do I have?

"Q Well, apparently you do have a squawk, John, because you're squawking today but you went back to work on the 9th without protesting the A-1 rating, didn't you?

"A I went back and did my job."

#### FINDINGS

Firstly, it is claimed herein that grievant improperly was denied relief under Section 14-C, which provides:

"C. Disputes

An employee or group of employees who believe that they are being required to work under conditions which are unsafe or unhealthy beyond the normal hazard inherent in the operation in question shall have the right to:

(1) file a grievance in the third step of grievance procedure for preferred handling in such procedure and arbitration; or (2) relief from job or jobs, without loss to their right to return to such job or jobs, and, at Management's discretion, assignment to such other employment as may be available in the plant; provided, however, that no employee, other than communicating the facts relating to the safety of the job, shall take any steps to prevent another employee from working on the job.

The Board shall have authority to establish rules or procedure for the special handling of grievances arising under this Subsection C and to appoint local qualified arbitrators when necessary. The decision of such local arbitrators shall be subject to review by the Board in accordance with Subsection J of Section 7—Arbitration of this Agreement."

It further is claimed that grievant improperly was denied a reporting allowance under Section 10-E, which provides:

"E. Reporting Allowance

1. An employee who is scheduled or notified to report and who does report for work shall be provided with and assigned to a minimum of 4 hours of work on the job for which he was scheduled or notified to report or, in the event such work is not available, shall be assigned or reassigned to another job of at least equal job class for which he is qualified. In the event, when he reports for work, no work is available, he shall be released from duty and credited with a reporting allowance of 4 times the standard hourly wage rate of the job (including any applicable additive in Appendix A-1) for which he was scheduled or notified to report. When an employee who starts to work is released from duty before he works a minimum of 4 hours, he shall be paid for the hours worked in accordance with Section 9—Rates of Pay and credited with a reporting allowance equal to the standard hourly wage rate of the job (including any applicable additive in Appendix A-1) for which he was scheduled or notified to report multiplied by the unutilized portion of the 4-hour minimum. Any additions provided in Section 9-K-7 and Section 9-L shall apply.
- "2. The provision of this Subsection E shall not apply in the event that:

- "a. Strikes, work stoppages in connection with labor disputes, failure of utilities beyond the control of Management, or acts of God interfere with work being provided; or
- b. An employee is not put to work or is laid off after having been put to work, either at his own request or due to his own fault; or
- c. An employee refuses to accept an assignment or reassignment within the first 4 hours as provided in Paragraph 1 above; or
- d. Management gives reasonable notice of a change in scheduled reporting time or that an employee need not report. Local Management and the grievance committee shall promptly determine what constitutes reasonable notice."

And finally, it is claimed that grievant improperly, and without just cause, was disciplined in violation of Sections 3 and 8 of the Basic Labor Agreement which, in relevant parts, provide:

#### "SECTION 3—MANAGEMENT

"The rights to manage the business and plants and to direct the working forces include the right to hire, suspend or discharge for proper cause, or transfer, and the right to relieve employees from duty because of lack of work or for other legitimate reasons."

"SECTION 8—SUSPENSION AND  
DISCHARGE CASES

"An employee who is summoned to meet in an office with a supervisor other than his own immediate supervisor for the purpose of discussing possible disciplinary action shall be entitled to be accompanied by his grievance committeeman or assistant grievance committeeman if he requests such representation, provided such representative is then available, and provided further that, if such representative is not then available, the employee's required attendance at such meeting shall be deferred only for such time during that shift as is necessary to provide opportunity for him to secure the attendance of such representative."

The total evidence herein firstly does not demonstrate that grievant reasonably believed that he was being required to work under conditions which were unsafe or unhealthy "beyond the normal hazard inherent in the operation in question," within the meaning of above cited 14-C language. Grievant admits that his objection, i.e., to scraping grease, was based upon limitations related to a physical condition peculiar to him, and, thus, was purely subjective. 10

It should be clear that Section 14-C relief may not be invoked on strict disability grounds. Here, it is not the subjective condition of a given employee, but rather, the objective nature of a given work assignment which controls. In this instance, the assignment itself is not claimed, nor otherwise shown, actually to have been unsafe or unhealthy. Grievant, thus, was not improperly denied relief under 14-C language. This is not to say, however, that a disabled employee who reasonably fails or refuses to perform a given work assignment on grounds that such performance would aggravate an existing disabling condition or otherwise would result in disabling injury, properly may be disciplined. But there even, Section 14-C would not apply. 11

On the question of whether grievant properly was entitled to a reporting allowance, the present evidence, crucially, does not show that "no work was available," within the meaning of above cited Section 10-E language. Here, again, it is a given job and not a given employee which controls. That "work on the job for which [grievant] was scheduled or notified to report" was available, may not be questioned. That grievant may, in fact, have been physically unable to perform such work here would not entitle him to the claimed reporting allowance. A disabled employee never will be entitled, solely as such, to a reporting allowance under the Agreement. Section 10-E, in any event, does not so provide. Grievant's claim, therefore, of improper denial of a 10-E reporting allowance, also must fall.

Whether grievant otherwise improperly and without just cause was disciplined remains to be determined.

First, the claim that grievant improperly was denied Union representation upon Management's imposition and notification of discipline, we believe, is without merit. Except under the particular circumstances described in Section 8-B (i.e., when an employee summoned to meet in an office with a supervisor other than his own immediate supervisor for the purpose of discussing possible disciplinary action), nowhere in the Agreement is an employee so entitled to have a Union representative present under these conditions. In the instant situation, grievant was not summoned to any office; he was directly and solely dealt with by his immediate supervisor; there was then no meeting held between grievant and any other representative of supervision "for the purpose of discussing possible disciplinary action"; and, therefore, his claim of Section 8 violation likewise must fall.

Finally, upon the entire evidence presented, grievant is not shown, improperly, to have been disciplined, "without proper cause" under the Agreement.

Though it is undisputed that grievant was recuperating from a disabling back condition, the record, critically, is lacking of evidence sufficient to establish that his refusal to perform as directed, actually was motivated by any reasonable

concern on his part to avoid an aggravation or other related injury. By his own admission, grievant simply did not want or intend to "scrape grease," a task which, in our view, seems to require no more exertion than other tasks which grievant claims he would not have refused to perform, in his condition. We are not persuaded, therefore, that grievant reasonably refused to perform the specific work task assigned to him and, thus, his discipline for insubordination here is not shown to have been improper or otherwise without proper cause under the Agreement.

Accordingly, the instant grievances may not be sus-  
tained.

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AWARD

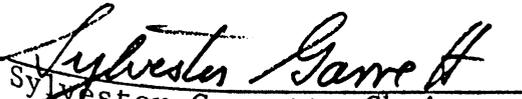
The grievances are denied.

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

  
Edward E. McDaniel  
Assistant to the Chairman

Approved by the Board of Arbitration

  
Sylvester Garrett, Chairman