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United States Steel Corporation Western Steel Operations Gary Works and United Steelworkers of America Local Union 1066

Sylvester Garrett
Chairman

Edward E. McDaniel
Assitant to the Chairman

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BOARD OF ARBITRATION

Case No. USS-7996-S

February 2, 1971

ARBITRATION AWARD

UNITED STATES STEEL CORPORATION
WESTERN STEEL OPERATIONS
Gary Works

and

Grievance No. SGA-68-19

UNITED STEELWORKERS OF AMERICA
Local Union No. 1066

Subject: Discipline-Suspension

Statement of the Grievance: "We the undersigned request that each of us be paid 8 hours for December 18, 1967 and 8 hours for December 19, 1967 and have the reprimand (426) removed from our records.

"Facts: That we had worked 16 hours, (3 - 11 on Dec. 14 and 11 - 7 Dec. 15), were off 8 hours and came back 3 - 11 December 15 and at the completion of the turn were told we had to stay overtime. We stated we were too tired and went home and receive a reprimand and 2 days off. We contend that this is a violation of health and safety.

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"Remedy Requested: That the grievants request be granted."

Contract Provision Involved: Section 3 of the Basic Labor Agreement dated September 1, 1965.

Grievance Data:

Date

Grievance Filed in Step 2:	December 26, 1967
Appealed to Step 3:	February 16, 1968
Step 3 Meeting:	March 11, 1968
Appealed to Step 4:	April 11, 1968
Step 4 Meeting:	April 1, 1970
Appealed to Arbitration:	August 19, 1970
Case Heard:	January 5, 1971
Transcript Received:	None

Statement of the Award:

The grievance is denied.

BACKGROUND

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This grievance from Gary Works' Sheet and Tin Division protests two-day suspension penalties imposed upon grievant employees, J. Gersna and W. Waugh, upon their reported failure to perform certain overtime work assigned them on December 15, 1967, as without proper cause under the Agreement. Specifically, violations of Sections 8 and 14 are alleged.

It appears that grievant Gersna, a regular Millwright, and grievant Waugh, a regular Equipment Repairman, on December 15, 1967, were assigned to work the third turn, i.e., 3:00 p.m. to 11:00 p.m., in the Fabrication and Field Shop of Central Maintenance. Both grievants, additionally, had been assigned and had worked a double turn the previous day beginning from 3:00 p.m. on December 14 to 7:00 a.m. on December 15, 1967. They were not assigned and did not work the intervening, i.e., second turn on that day.

The record shows that on the 3:00 p.m. to 11:00 p.m. turn on December 15, 1967, grievants were assigned to repair the R-5 conveyor on the 80" Hot Strip Mill. Specifically, their work included the repair and/or replacement of a section of chain on the conveyor. Upon completion of this particular task, at about 10:30 p.m., grievants left the R-5 conveyor to put away their tools and equipment in preparation for leaving work at the end of the turn. At approximately 10:50 p.m., however, grievants' turn Foreman, in an apparent effort to test it, started up the conveyor and the conveyor chain became disengaged from its sprocket. Thereupon, the turn (relief) Foreman located the grievants and he instructed each of them to remain over (into the following turn) and to put the conveyor in proper working order. Grievants were advised that the conveyor would be needed for use by a midnight crew. They each informed the relief Foreman that they did not wish to remain, and subsequently, both grievants left the plant.

According to grievants and the Union, upon being "asked" by the relief Foreman to remain and repair the conveyor, grievants refused, each saying he "was too tired" to work any longer that day. At the hearing, however, both grievants testified that following their discussions with the turn Foreman, they met with General Foreman Vidal in the latter's office. According to grievants, Vidal then informed them that they would be required to remain and repair the conveyor. Grievants reportedly informed Vidal that they were "too tired" to work any more. Thereupon, grievants were informed by Vidal that they each would be reprimanded if they did not remain as directed.

At the hearing, as during the lower steps of the Grievance Procedure, grievants and General Foreman Vidal gave conflicting testimony concerning their discussions on that day. According to the General Foreman, grievants first asked, "How much are we going to be paid for staying?" And, upon advising grievants that they would be paid, "for as long as it took" to put the conveyor in working order, and upon giving them his own estimate of one-half to one hour, Vidal reports that grievants both, in effect, responded, "We'll either stay eight hours or nothing." Grievants then left the plant. Subsequently, they both were suspended for two days, i.e., December 18 and December 19, 1967, and the instant grievance arose.

DISCUSSION

Grievants and the Union deny that grievants told the General Foreman, "We'll either stay eight hours or nothing," or words to that effect. The Union claims that the grievants only

reasonably and properly informed the General Foreman that they simply were too tired to remain over, having the previous day worked a double shift with only eight hours relief. It is asserted, therefore, that grievants, thus, exercised their "rights" under Section 14--Safety and Health--of the Basic Labor Agreement.

Presumably, grievants and the Union here rely upon the language of Section 14-C, which in relevant part provides:

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"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 the 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 Company, however, asserts that grievants did, in fact, inform the General Foreman that they would not work less than an additional eight hours. In any event, the Company urges:

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(1) that grievants were ordered to stay over and work; (2) that they were told approximately how long they would be required; and, (3) that grievants improperly refused a direct order to perform the assigned work. Management, moreover, denies applicability of Section 14 to this situation.

The issue herein remains whether grievants improperly were suspended by Management, as alleged.

FINDINGS

Invocation of Safety and Health rights under Section 14, in our view, requires something more, in the form of reasonable notice to Management, than the mere assertion by an employee that he is "too tired" to perform a given work assignment. This is not to say, as this Board consistently has held, that any special words or assertions otherwise are necessary. Indeed, no real formal words or actions are required as long as such assertions reasonably imply and convey a "safety and/or health" basis for the refusal of a given assignment.

That grievants in this instance both were informed that the job task would take about an hour is not disputed (and, indeed, according to Management at the hearing, the job subsequently was performed by three assigned maintenance employees in about an hour). Here, despite whether grievants actually said, in effect, "We'll either stay eight hours or nothing," they reasonably did not believe that the involved additional work would require more than an additional hour or so to perform.

Furthermore, whether grievants, in fact, were or were not "tired" is not the central question. That real question, we think, is whether, within the meaning of Section 14-C, grievants reasonably "believ/ed/ that they /were/ being required to work under conditions which /were/ unsafe or unhealthy beyond the normal hazard inherent in the operation in question." Upon the entire record of evidence presented, we believe this question properly must be answered in the negative.

At no time during their discussions with the General Foreman, did grievants reasonably assert a safety and/or health basis and their refusals to perform the work in question. Even upon being informed by the General Foreman that they would be reprimanded, grievants admittedly did not pursue the matter. That they, indeed, were tired after having worked some 24 hours in a single 32 hour period readily may be concluded. But, that each was so tired as to present a safety and/or health hazard to himself or to others, if he undertook the assignment, neither was asserted nor otherwise has been established on this record. Thus, we conclude that grievants reasonably did not invoke rights guaranteed under Section 14-C, nor were they otherwise justified in refusing to perform as directed in this situation. Accordingly, the grievance may not be sustained.

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AWARD

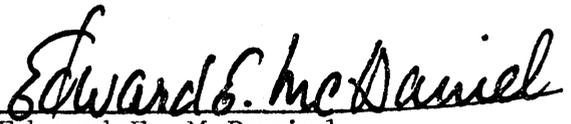
The grievance is denied.

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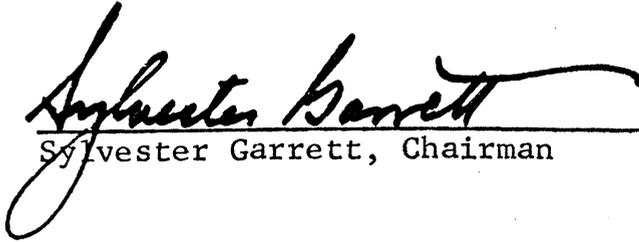
6.

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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