

3-17-1971

# United States Steel Corporation Heavy Products Operations South Works and United Steelworkers of America Local Union 65

Sylvester Garrett  
*Chairman*

Alfred C. Dybeck  
*Assistant to the Chairman*

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BOARD OF ARBITRATION

Case No. USS-8072-H

March 17, 1971

ARBITRATION AWARD

UNITED STATES STEEL CORPORATION  
HEAVY PRODUCTS OPERATIONS  
South Works

and

Grievance No. HS-70-70

UNITED STEELWORKERS OF AMERICA  
Local Union No. 65

Subject: Termination of Employment - Constructive Quit

Statement of the Grievance: "The Union on behalf of (Grievant), P.R. #82-163 request Management to comply with Basic Labor Agreement August 1, 1968, Section 2 & 8 & 13.

"Facts: (Grievant) P.R. #82-163 has been off sick and under doctors care since Dec. 31, 1969. Since then he has been terminated without cause.

"Remedy Requested: To be put back to work and be reimbursed with all monies lost."

Contract Provision Involved: Section 13 of the August 1, 1968 Agreement.

Grievance Data:

	<u>Date</u>
Grievance Filed:	April 23, 1970
Step 2 Meeting:	Not Available
Appealed to Step 3:	May 7, 1970
Step 3 Meeting:	May 29, 1970
Appealed to Step 4:	July 2, 1970
Step 4 Meeting:	July 9, 1970
Appealed to Arbitration:	October 5, 1970
Case Heard:	February 16, 1971
Transcript Received:	February 24, 1971

Statement of the Award:

The grievance is sustained.

BACKGROUND

USS-8072-H

This grievance from the Mason Department, South Works, protests the termination of grievant effective December 26, 1969 as a violation of Sections 8 and 13 of the August 1, 1968 Agreement.

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Grievant, a Bricklayer in the Mason Department, was first employed by the Company on August 25, 1966. During the ensuing years up through December 26, 1969 he was absent a total of 414 days for which he received sickness and accident benefits. Apparently these absences were caused first by peptic ulcers and later by a back problem termed lumbar strain. At one point in early 1969 he was restricted by the Plant Medical Department to 75 pound maximum lifting.

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The Company points out as further background to grievant's termination that on July 26, 1969 he reported off sick and then, having failed to make further report offs, was sent a certified letter on August 4, 1969 requesting that he return to work promptly or submit a statement of justification for his absence. This letter was returned unclaimed and on August 13, 1969 grievant was terminated as a "non-contact" quit. On November 4, 1969 grievant appeared for work with a release from his doctor and on November 6 he was reinstated with no physical restrictions. On November 5 he was interviewed by the Department Superintendent, disciplined with a one-day suspension and warned that in the future he must act as a responsible employee.

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Apparently grievant then worked as scheduled up through December 26, 1969. He reported off sick on his next scheduled workday, December 30, 1969 and also on December 31, 1969 and January 1, 1970. Thereafter his contacts with the Company, as set forth in the Third Step minutes, appear as follows:

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- "1- 6-70 (Grievant) telephoned his General Foreman, stating he was sick and had an appointment with his doctor that day. Was told to call in immediately after seeing his doctor to advise of expected date of return to work or his next appointment with doctor. Also was told that unless his doctor expected him to be off for an extended period, he should report off for each scheduled turn of work.
- "1- 8-70 Called Foreman Davis and Superintendent Wells, requesting sick leave. Not granted. Was told he should furnish medical evidence of disability.
- "1-12-70 Equitable Life Assurance Society sent (Grievant) letter requesting appearance before insurance company doctor for examination. No response.
- "1-19-70 No word from (Grievant) since 1-8-70. (Grievant) sent certified letter, again returned unclaimed. Equitable, having had no response to their January 12 letter, sent second letter. No response.
- "1-23-70 (Grievant) telephoned Mason Department clerk, stating he still was sick with back trouble, was to see his doctor January 26, and would call again.
- "2- 4-70 (Appr.) Termination as non-contact quit.

- "2-20-70 (Grievant) telephoned Superintendent Wells and was advised he had been terminated for failing to respond to Wells' January 19 letter.
- "3-12-70 Submitted S&A claim for 12-31-69 - 3-10-70, (arthritis of spine). Claim denied by Equitable Life Assurance Society.
- "4-20-70 (Grievant) and his grievanceman appeared at Personnel Services Office where his terminated status was re-affirmed."

that was The unclaimed registered letter referred to above sent to grievant's residence reads as follows:

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- "Our records indicate that you have not worked since Dec. 26, 1969.
- "On Dec. 30, 1969, you reported off for the 3-11 turn, stating that you had an upset stomach. You called your Gen. Foreman M. Pientka on Jan. 6, 1970, stating that you were 'under doctor's care' and promised to report to us after seeing your doctor on Jan. 7, 1970, indicating the nature of your illness and expected period of recovery in order that we might place you on sick leave status. Then, you called again at 9:15 P.M. on Jan. 8, 1970, informing Mason Turn Fore. T. Davis that you were still unable to return to work and that you 'would have to be off for a while'.

"As we have not heard from you since and you failed to inform us as to the nature and expected duration of your illness we have not placed you on 'sick leave' but request that you contact us not later than Jan. 27, 1970, and furnish sufficient and satisfactory evidence of your inability to work.

"Failure to comply with this request will result in a Non-Contact-Quit termination."

No other communication from the Company was sent to the grievant and the termination was made effective December 26, 1969 the last day grievant worked and apparently this was one of the reasons that his sickness and accident claim was denied.

It is the Union's position that grievant was terminated without proper cause because, during his absences up through March 10, 1970, he was ill. It is said that, having reported off for that reason early in his period of illness, grievant fulfilled his obligations to the extent that they are normally required of other employees. Finally on March 10, 1970 grievant submitted proof in the form of a doctor's certificate establishing that from December 26 through March 7, 1970 he was disabled from work because of arthritis of the spine and had been treated for that ailment throughout that period.

The Company stresses grievant's relatively short Company service and his unenviable absentee record. It is said that grievant was placed on notice in November 1969 that Management did not intend to tolerate his chronic absenteeism

and his failure to follow Company rules and procedures relative to justifying his absences. Yet, in the Company view, grievant blatantly disregarded all these attempts of Management to have him justify his absences during the period after December 26, 1969 despite two verbal requests on January 6 and January 8 that he do so. It is noted that the attempt to contact him by mail proved fruitless and it is said that therefore Management was justified in concluding that grievant no longer desired to remain in the Company's employ and had in effect quit. Thus it is said that grievant's protested termination was justified.

#### FINDINGS

The net effect of the termination protested here was to break grievant's continuous service with the Company as of December 26, 1969. Under Section 13-C an employee's continuous service can be broken in only four basic ways: (1) quit, (2) discharge, (3) termination under Section 16 - Severance Allowance and (4) absence in excess of two years with possible exceptions not relevant here.

It is apparent that in grievant's case items 3 and 4 above are not relevant. The Company has discussed at length factors that would be relevant and perhaps even controlling to a discharge such as his short length of service, his poor attendance record, and his refusal to follow rules and procedures; yet the Company chose not to follow the discharge route. Clearly the procedures required by Section 8-B in the case of a discharge were not followed.

Rather the Company chooses to justify the termination of grievant's continuous service on the grounds that he quit. It is not claimed that grievant ever voiced any intent to quit--either verbally or in writing; rather, it is said

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that by his conduct during his absence after December 26, 1969 he showed such a lack of concern for his employment that he must be viewed reasonably as having quit--thus the term "constructive quit."

The mere fact that grievant did not work after December 26 cannot be viewed as a basis for concluding that his termination as a constructive quit was proper. On his very next scheduled workday, December 30, 1969, grievant reported off as sick and made similar report offs on December 31, 1969 and January 1, 1970. On January 6 he again called in and told his General Foreman that he was sick and was seeing a doctor that day. On January 8, 1970 he talked to his Foreman and his Superintendent seeking sick leave but this request was refused. At this point grievant became less assiduous about his report offs and on January 19, 1970 the Company sent him the certified letter quoted above. Although grievant did not receive this letter, the record reveals that he did call the plant on January 23, 1970 telling a department clerk that he still had back trouble and was going to see his doctor on January 26. On February 4, 1970 the Company terminated grievant effective December 26, 1969 but made no attempt to inform him of this fact and he was not so informed until he called the plant on February 20, 1970.

Although this record indicates a laxity on the part of grievant in keeping his employer informed of the nature and extent of his illness and in providing reasonable documentation thereof, it in no way indicates any intent on the part of grievant to quit his employment. To the contrary, it indicates that grievant, in his own way, was indicating concern for his obligations as an employee as he saw them.

That grievant may have had a bad absentee record; that he may have been warned in the past about his lax attitude toward reporting off when absent; that he may or may not have been too ill to work are all factors irrelevant to the issue presented here which does not involve disciplinary action but rather whether his conduct indicated that he had quit his employment. Since the evidence fails to establish the constructive quit upon which the termination was based, the grievance will be sustained. Grievant will be made whole for all loss of wages suffered because of his improper termination. Since this grievance is sustained on the basis of an improper application of Section 13-C and in light of the admitted fact that grievant was first told of his termination on February 20, 1970 but did not file this grievance until April 23, 1970, the back pay ordered herein will be limited in retroactivity under Section 7-C-1-(b) to thirty days prior to April 23, 1970.

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AWARD

The grievance is sustained.

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

  
 Alfred C. Dybeck  
 Assistant to the Chairman

Approved by the Board of Arbitration

  
 Sylvester Garrett, Chairman