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United States Steel Corporation Western Steel Operations Torrance Works and United Steelworkers of America Local Union 1414

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BOARD OF ARBITRATION

Case No. USS-8108-S

March 17, 1971

ARBITRATION AWARD

UNITED STATES STEEL CORPORATION
WESTERN STEEL OPERATIONS
Torrance Works

and

Grievance No. ST-70-21

UNITES STEELWORKERS OF AMERICA
Local Union No. 1414

Subject: Discipline - Suspension for Alleged
(Careless Operation of Equipment)
Improper Work Performance

Statement of the Grievance: "I the undersigned, allege the Company is in violation of the Agreement. I was given a reprimand that was unjust. The Union wishes any and all money be paid for said violation and that the Reprimand be taken from said employees personal record."

Contract Provision Involved: Section 8 of the Basic Labor Agreement dated August 1, 1968.

2.

USS-8108-S

Grievance Data:

Dates

Grievance Filed:	February 7, 1970
Step 2 Meeting:	March 20, 1970
Appealed to Step 3:	March 20, 1970
Step 3 Meetings:	May 1, 1970 May 6, 1970
Appealed to Step 4:	July 7, 1970
Step 4 Meeting:	July 23, 1970
Appealed to Arbitration:	October 5, 1970
Case Heard:	January 26, 1971
Transcript Received:	None

Statement of the Award:

The grievance is sustained.

BACKGROUND

USS-8108-S

This grievance from Torrence Works' Engineering and Maintenance Department presents a claim that grievant, a Sweeper Operator, improperly was disciplined, by reprimand and suspension for three days, for alleged carelessness in the operation of his "sweeper" on January 29, 1970. Specifically it is alleged that Management thus has violated Section 8 of the Basic Labor Agreement.

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Relevant background facts notably are reported by Management as follows:

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"On the morning of January 29, 1970, the grievant was operating his power-driven sweeper between the incline to the open hearth and the railroad tracks that serve the roll shop and open hearth pit. The sweeper is a relatively slow moving piece of equipment used to clean up working areas and paved surfaces. It is rectangular in shape, about 4' high, 5' wide and 8' long. The operator rides on the sweeper.

"Grievant states that at about 8:45 A.M. he stopped his machine at a 'Stop' sign on the roadway between the incline to the open hearth and the railroad tracks. At that time, the diesel locomotive which serves the yard was parked on its tracks between 10 and 15 feet to the left rear of the sweeper. It is disputed as to whether grievant heard the bell of the engine at this time, but it is not disputed that the grievant was aware of the proximity of the locomotive. Neither is it disputed that the grievant knew, from both his experience operating the sweeper and instructions from his foreman, that the engine on

"that track meant he should be extra cautious before approaching the crossing. He had moved the sweeper in that area many times and knew the engine often crossed the roadway during the course of a turn.

"Grievant then drove his machine from the 'Stop' sign toward a point where the path crossed, or would have crossed, the railroad tracks about 65 feet distant from the 'Stop' sign. This point of intersection was about the same distance from the place where the locomotive had been stopped. Grievant proceeded about 40 or 50 feet toward the intersection when he became aware that the engine was almost on top of him. He jumped. The engine and the sweeper collided, wrecking the sweeper beyond repair.

"Following an immediate investigation, the grievant was notified the next day that he was suspended 'For not operating the Sweeper in a safe manner during B-turn, January 29, 1970 (resulting in extensive damage to the sweeper).'"

According to the Union however:

"The request of the Union is that the incident be removed from Fradiue's record and that he be paid lost earnings.

"On the morning in question, Mr. Fradiue was driving the power-driven sweeper from the

"vicinity of the Yard Office to the area near the Plant Meeting Room. Enroute, as he emerged from the tunnel under the Open Hearth Hi-Line, he observed that the diesel engine was parked on the curve of the track which enters the Roll Shop area; that the bells of the engine were not ringing; and that the Conductor was over by the Ingot Recorder's Office talking to the Ingot Recorder. Mr. Fradiue continued on about another 140 feet to a 'Stop' sign, located about 65' from the intersection of railroad track with the converging roadway on which he was driving. After stopping the sweeper, Mr. Fradiue continued on about another 45' before he happened to glance back and was startled to find that the engine was about to hit him.

"There was no time for Mr. Fradiue to stop, nor was there sufficient room between the truck and the hi-line wall to avoid being struck. Therefore, Mr. Fradiue jumped off the sweeper, which was struck an instant later by the locomotive and crushed against the hi-line wall.

"In view of the fact that the track and roadway converge in such a manner that there was insufficient clearance for Mr. Fradiue to avoid being struck; the fact that no signal was given when the engine started to move; the fact that the engine's bells were not ringing, and the nature of the surroundings,

"it is clear that Mr. Fradiue should not have been held responsible for the resultant collision. Therefore, the 3-day suspension given Mr. Fradiue should be withdrawn, and he should be reimbursed for his loss of earnings."

The Union notes further:

"Mr Fradiue's statement at Step Three is as follows:

'When I came thru the underpass, the train was setting just beyond the hi-line. It was standing still. The flagman was off by the little shack talking to another man.'

'When you're on the sweeper, you're sitting right over the engine. You can't hear the engine's bells or motors. When I came up, I stopped at the stop signal like I always do. Then I pulled-off and headed for the crossing.'

'I got just a few feet from the crossing when I looked back and saw that the train was almost on me. There wasn't time to back-up. The quickest thing I thought of was to turn right and jump-off.'

"Mr. Becerra, an Ingot Recorder, also made the following statement:

'The engine stopped by the switch, opposite the concrete slab (Z). After the Conductor made the switch, there was something I wanted to talk to him about so he walked over. I told him what I had to say and then he got on the front end of the engine and it backed out.'

'I was walking away when it happened, so I didn't see Raw Fradiue, and I don't see how the Engineer or Conductor could have seen him either because he was in a blind spot. The engine didn't blow any whistle when it started up, and I don't think he had the bell ringing. I never saw the sweeper at all, except earlier. I didn't see the sweeper come thru the underpass.'"

The evidence, thus, reveals that grievant, while operating a sweeper in the performance of his assigned duties on January 29, was involved in a collision with a railway engine. It shows that the incident occurred as grievant operated his sweeper upon a 12 foot wide plant road running parallel to (and immediately to the right of) rail tracks serving the Roll Shop and Open Hearth Pit. An area view shows that the road then narrows gradually to the left and to a point where it winds north-westerly and crosses upon the rail tracks, at an angle of approximately 45 degrees. It narrows, abruptly, to about three feet, with the tracks then running for some distance about its center. To the immediate right of the road and "curving" there-

with, is a stone "high-line" wall, some three feet high at the point where the road and tracks merge. At that point, therefore, vehicular road traffic necessarily must give way to avoid collision with any oncoming railway traffic. It was in this area that the instant collision occurred.

The involved engine was one of three locomotive diesel operated engines in service at Torrance Works. It is some thirty-five to forty feet in length; it has two sets of wheels, with controls allowing it to go backward and forward. It has a bell controlled by a toggle switch and a whistle operated by a rope or lance; and, it services the entire plant. The engine has two crew members, a Conductor (Loader) and an Engineer (Operator), who comprise its entire crew. The Conductor carries a walkie-talkie with which to communicate with the Engineer from the ground level or from the Conductor's position on a pullman step at the rear left of the locomotive. The engine generally moves upon signals from the Conductor to the Engineer.

The sweeper, in contrast, is a motorized unit, rectangular in shape, about four feet high, five feet wide, and about eight feet long. It is driven by an operator who rides it, steering it with a wheel and accelerating it by a foot pedal. The sweeper travels at a speed of "up to about five miles per hour," and it stops almost abruptly when the operator removes his foot from the accelerator pedal. It has a "revolving" brush and a "side" brush which are "very noisy" when operational. It is, thus, a slow and noisy (four wheel operated) piece. (And, according to grievant, at the time of the subject collision he was operating with the sweeper brushes down, sweeping the area over which he was traveling.) The sweeper reportedly "works all over the plant grounds and crosses rail tracks some 15 or 20 points."

The subject collision itself resulted when the engine collided into the left rear and/or side of the sweeper, shoving

it into the side of the "high-line" wall on the immediate right. The sweeper was literally destroyed, though grievant himself escaped injury.

The total evidence indicates that the grievant came to the stop sign, made his stop (prior to moving forward some sixty-five feet to where the collision here occurred) and observed the locomotive engine at a complete stop to his immediate left rear. Grievant then moved forward with his sweeper, reportedly, at a speed of about two or three miles per hour, while the locomotive engine yet was standing. The evidence shows that the stopped engine appeared "headed" in an opposite direction from that which it and grievant intended to proceed. The "front" of the engine, in any event, was pointed in such direction. Grievant, thus, claims that he did not know which direction the engine actually would go, when and/or if it did move. The engine, then, apparently, was about two "engine lengths" from the point of impact and to the immediate left rear of the grievant's sweeper.

Evidence adduced at the hearing reveals that the locomotive engine at the time was manned by an Engineer and a Conductor. The Engineer was sitting on the locomotive and the Conductor was on the ground talking with another employee. The engine was running, but whether its bell at the time was ringing is a point in conflict. The Company asserts that the engine bell was ringing, while grievant denies that he heard any bell. And, though the Company argues that grievant should have stopped, upon hearing the engine bell ringing (even though the engine stopped), the evidence does not clearly indicate any particular safety rule or other general requirement to be followed in such circumstances by road traffic.

DISCUSSION

The gist of the Company position in this case appears to be that grievant was negligent in not keeping an eye on the engine as he moved forward from the stop sign. The Company urges that grievant, thus, was careless and so caused the collision. The Company makes no claim, and indeed denies, that either the Locomotive Engineer or its Conductor was responsible for the subject collision. 11

At the hearing a principal Company witness reported, in effect, "I talked with the Engineer and the Conductor who both said they did not see the sweeper, but they said the bell was ringing." The witness added, "The Conductor said that the engine was parked near the slab; that he made a switch; and that he then went to talk with another employee, an Ingot Recorder. He did not say how long he talked, but he did say that at no point in time did he see the sweeper." 12

The Ingot Recorder testified, in effect, "I was the Ingot Recorder to whom the Conductor was talking at the time. I can't say whether the bell was ringing on the engine or not, but the locomotive was stopped when I was talking to the Conductor. I was to the front of the engine with the Conductor near the rail switch. I did not notice the sweeper at any time. Our entire conversation, I'd say, lasted about thirty seconds or so. I did not see the engine start up. I next heard a crunching sound, about thirty seconds or so later." 13

Company witnesses surmised that the collision would not have occurred but for carelessness on the part of grievant in the operation of his sweeper. One such witness testified, "We concluded that grievant was in fault based upon our talks with the 14

Conductor and the Engineer, and based upon the position of the sweeper following the collision." The witness continued, "Grievant violated safety instructions by not observing the entire area," and thus, by failing to avoid the collision between the engine and his sweeper.

A Company supervisor at the hearing reported:

"I had instructed grievant with respect to operating near railroad tracks. I cautioned him to watch out for moving rail traffic and against getting his sweeper (brushes) caught in the tracks, and to cross all tracks at an angle so as not to get his brushes caught. Grievant had been stuck on tracks in the past."

This Company witness added:

"The Engineer is first given a signal to move. Then it is his responsibility to observe the area into which he is moving.

"It was part of grievant's duty to sweep the area where the accident occurred. I can't say where the sweeper was when the engine started its forward motion. I estimate the sweeper and the locomotive were about parallel to each other. I don't know what speed either was traveling.

"I would think that grievant must have heard the bell ringing, though I can't say he actually heard it. The sweeper was struck in the rear. The Conductor and the Engineer had visibility to the road in front

"of the engine. My investigation revealed that the locomotive accelerated from a complete stop and moved about sixty-five feet to the point of contact. There were skid marks showing where the engine pushed the sweeper into the wall.

"The Engineer is responsible for front end protection when the engine is traveling by itself, without cars."

The grievant testified, in effect, as he had during lower step Grievance Procedure Meetings. He emphatically denied being careless or negligent in the operation of his sweeper. Grievant, thus, urged that he in no way was at fault for the collision. According to the grievant, he looked back immediately before impact, saw the oncoming engine upon him, and leaped to the ground just to the rear right of the sweeper, some split seconds prior to actual impact. When asked, upon cross examination by Company Counsel why he, at that particular time had looked back, grievant replied, "I don't know, I guess it just wasn't my time."

The issue remains whether grievant improperly was disciplined for alleged negligence and/or carelessness in the operation of his sweeper on January 29, 1970.

FINDINGS

Essentially, the Company believes that the collision (and resultant damage to the grievant's sweeper) on January 29,

proximately, was caused by the grievant. It so concluded, upon "investigation" of the incident, following its occurrence. Its "findings" from such investigation, it appears, were based entirely upon an evaluation post-hoc of purely circumstantial evidence and limited physical facts.

The evidence goes undisputed that grievant, in fact, did stop, at a stop sign which placed him and his sweeper forward and to the right of the stopped engine, before proceeding to the point of ultimate impact, some sixty-odd feet away. At all times relevant then, it appears that the engine actually was to the rear of grievant and his sweeper. Thus, as the grievant moved forward (at a speed of less than five miles per hour), it was only a matter of seconds before the engine ran upon the sweeper and crushed it against the wall.

Management's determination that grievant here was negligent appears to be based solely upon its belief that grievant could have avoided the collision had he looked back and sooner observed the forward movement of the locomotive engine. Management emphasizes the fact, if indeed it is a fact, that the locomotive engine, though stopped, continuously had its bell ringing. This, according to Management, reasonably put grievant on notice to be on alert and to anticipate some movement in some direction by the locomotive engine. This position, under the entire circumstances, we feel, is not entirely tenable.

It seems to us that, even assuming the stopped locomotive engine had its bell ringing, grievant could expect the Engineer not to move upon him, as he and his equipment then were in full view. Furthermore, if indeed, as Management indicates, neither the Engineer nor the Conductor incurred any responsibility to look out for users of the road ahead, surely it would be unreasonable to make grievant responsible for users of the railroad

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tracks to his rear. Undoubtedly, both the grievant Sweeper Operator and the locomotive engine crew had a general responsibility to avoid collision accidents.

The record shows, significantly, (1) that, except for the involved engine crew and grievant, there were no actual eye witnesses to the collision incident and, (2) that, in any event, it was the locomotive engine which collided into the rear of the sweeper. The sweeper, admittedly, could only travel at a maximum speed of about five miles per hour. The locomotive engine obviously had a greater speed capacity. And though relative speed capacities of the two pieces of equipment may here be irrelevant, the locomotive engine obviously overtook the sweeper and collided into it. The locomotive engine then was traveling at a greater speed than was the sweeper. It is significant further, that the sweeper, at all times relevant, was in the line of sight of (though not actually observed by) both the Locomotive Engineer and Conductor. And while, reportedly, the Engineer was responsible "for front end protection when the engine is traveling by itself," the sweeper driver could only have had a general responsibility to look out for moving engines. This he adequately did.

If it is true that neither the Conductor nor the Engineer saw grievant and/or recognized his peril, their own negligence would seem obvious, and plainly the proximate cause for the collision. Moreover, upon becoming aware of his own peril, it seems that grievant actually could do nothing to avoid the collision; he was then trapped in a narrow passage way and was completely unable to turn off the tracks or otherwise to "escape" for lack of requisite speed.

We are not persuaded, upon the entire record of evidence presented, that the responsible cause for the collision here was grievant's "not operating his sweeper in a safe manner," the specific offense for which he was reprimanded. Management's conclusion that the collision (and resulting damage to the sweeper) would not have been caused but for carelessness and/or negligence on the part of the grievant sweeper operator, simply is not substantiated. That grievant, thus, properly was disciplined and suspended for three days for not operating his sweeper in a safe manner during B turn, January 29, 1970, clearly is not established. The instant grievance, therefore, must be sustained. 25

AWARD

The grievance is sustained. 26

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

Edward E. McDaniel

Edward E. McDaniel
Assistant to the Chairman

Approved by the Board of Arbitration

Sylvester Garrett
Sylvester Garrett, Chairman