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United States Steel Corporation Gary-Ellwood Works and United Steelworkers of America Local Union 2697

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BOARD OF ARBITRATION

Case No. USS-8192-S

February 22, 1971

ARBITRATION AWARD

UNITED STATES STEEL CORPORATION
Gary-Ellwood Works

and

Grievance No. TG-70-30

UNITED STEELWORKERS OF AMERICA
Local Union No. 2697

Subject: Discharge; alleged falsification of incentive reports.

Statement of the Grievance: "I was unjustly terminated from my job, as Straddle Truck Operator, at Gary Tube Works.

"Facts: I was falsely accused of cheating on my Incentive Report, for the first turn, on August 20 and 21, 1970.

"Remedy Requested: That I be compensated for all loss of earnings and be reinstated on my job."

<u>Grievance Data</u>	<u>Date</u>
Grievance filed in Step 3:	September 8, 1970
Step 3 Meeting:	September 9, 1970
Appealed to Step 4:	September 21, 1970
Step 4 Meeting:	October 7, 1970
Appealed to Arbitration:	November 13, 1970
Case Heard:	December 18, 1970 and January 21, 1971
Transcript received:	January 28, 1971

Contract Provision Involved: Section 8-D of the August 1,
1968 Agreement.

Statement of the Award: The grievance is sustained.

Grievant was discharged for allegedly falsifying his Straddle Truck Transportation incentive reports made on the 11-7 turns on August 20 and August 21, 1970. Grievant asserts he was accused wrongly.

1

Notwithstanding the voluminous record in this case,^{1/} the essential facts may be stated in brief compass. Grievant was one of ten straddle truck (or "Ross Carrier") drivers in the Transportation Department at Gary Tube Works. Straddle trucks are high-wheeled vehicles which carry bolsters below their under carriage used to transport steel product in and about the plant. The operators are on an incentive plan and their pay is calculated in part by the number and distance of the moves made. Both empty and loaded bolster moves are paid movements.

2

The key to this case lies in a map of the plant area showing the locations used in applying the incentive plan. This map is Exhibit 1 to the Step 3 minutes. During the arbitration hearing the Union presented a greatly enlarged but slightly different version of this map (Un. Ex. 5). The "slight difference" is what this case is all about. A modified composite of these maps with explanatory notes is attached to and made a part of this award.

3

In early August a spot check of Straddle Truck incentive reports led the Company to believe that the reports were being falsified. This opinion was based on what the Company believed was an abnormally high number of empty bolster movements during a period when the supply of bolsters was very short due to the particular type of product being

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^{1/} The first "day" of hearing in this case lasted until 11:15 p.m. The case was reopened on motion of the Company in order to present rebuttal evidence to certain new evidence presented by the Union which it had discovered only shortly before the first hearing date. Altogether eighteen witnesses were called or recalled. The transcript is 786 pages. In addition, there are numerous maps, charts, photographs and other exhibits. The Arbitrator has given due consideration to the entire record even though only the tip of it is discussed in the opinion.

run and the productivity of the mills. Accordingly, the Company arranged a detailed system of surveillance for the first (midnight) turns on August 20 and August 21, 1970.

In brief, the surveillance system was as follows: two Company observers were "secretly"^{1/} stationed between the railroad tracks in the broken mold scrap area shown by the "X's" at the north end of the attached map. From this vantage point they could observe straddle trucks as they passed through Door 16. The observers were instructed to record straddle truck movements with empty bolsters to or from areas designated 16 (west on the map) and 23 (east on the map). These are open areas outside of the plant and are customarily used for storage of empty bolsters. The observers were given binoculars. Outdoor lights (which malfunctioned) were hastily set up on an overtime basis. Also, the flashing light was inoperative on one of the two straddle trucks being operated these nights within the plant. It is not clear whether this was inadvertent but it facilitated the recording of particular straddle truck movements. Also, on one night, August 21, a plant guard was instructed to observe and did observe the straddle truck operators generally and periodically. He was not concerned, however, with particular movements, and also carried out his regular duties.

On August 20 and 21 Grievant and another employee were assigned as the straddle truck operators within the plant. On these nights bolsters were in short supply. Grievant was assigned the processing area which encompasses areas designated 18, 19, 20, 41, 42 and 43 on the map. On August 20 Grievant reported 22 empty bolster moves to or from areas 16 and 23. The Company observers stated that they observed only eleven such moves. On August 21, Grievant reported sixteen moves to or from areas 16 and 23, but the Company observers validated only two such moves. Based on these reports, conclusions and observations Grievant was discharged.^{2/} Tr. 128-31.

^{1/} Grievant claimed that he and his co-worker observed the observers.

^{2/} Grievant's co-worker was also suspended subject to discharge but because of a serious illness no further action has been taken against him.

Throughout the grievance procedure, Grievant strongly protested that he was innocent and that his incentive reports were completely accurate.

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At the first arbitration hearing, Grievant, another straddle truck operator and other Union witnesses testified in substance that the Company's map was not correct and that the west half of the "Electric Weld Warehouse" area designated as part of Area 24 was in fact in Area 23. They further stated that during periods of bolster shortages it was the practice of the straddle truck operators who worked inside the plant, particularly on the midnight turn, not to put all their empty bolsters outside of the plant in areas 16 and 23 because straddle truck drivers from outside the plant area (mainly, the steel yard) would take them away. Instead, they would hide some bolsters at various locations inside of the plant. One of the areas where bolsters were "squirreled away" was in the vestibule of the shipping office at the southwest corner of the Electric Weld Warehouse. The operators, including Grievant on the nights in question, used and re-used their private, hidden stock of bolsters and recorded each empty move to or from the vestibule as an area 23 move. Apparently, sometime early in 1970 the Company had redesignated the east half of the warehouse as area 24. See, generally, Tr. 237, 241-3, 247-52, 256-7, 272-3, 292, 295-6, 315-16, 330, 373-5, 384-86, 388, 390-92, 433-5, 441.

8

The Union did not learn of the discrepancy in the map or of the existence and relevance of this practice until after the 4th Step meeting and shortly before the arbitration hearing.

9

Naturally, the Company observers located outside the plant in the scrap pile could not see or record any bolster movements made to or from the vestibule area.

10

At the conclusion of the first day of hearing the Company stated that it was not then in a position to rebut the Union's claimed new evidence and indicated it might ask leave to reopen the hearing. The Company did so and the Board granted the request for the limited purpose of meeting the new evidence which had been presented by the Union. At the reconvened hearing the Company stipulated that area 23 was correctly designated by the Union's map, not the Company's.¹ Nevertheless it persisted that the discharge was

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¹/ Tr. 476

proper because it claimed that the vestibule was never utilized in the manner asserted by Grievant. In this respect it presented several rebuttal witnesses -- foremen and guards -- who testified that in their experience in the plant they had never observed bolsters stored in the vestibule area.

Findings

The Company's candid admission is commendable but with it its case collapses. As Company counsel stated, the Union's newly discovered evidence regarding the question of area 23 was a "bombshell" (Tr. 758). The Company's entire case was structured on the assumption that its observers could see and record all of Grievant's moves to or from area 23. In fact, however, Grievant could make empty bolster moves to and from area 23 in the vestibule at the southwest corner of the Electric Weld Warehouse without being observed from the outside. Grievant testified that he did make numerous such moves on the nights in question in accordance with his practice during a period of bolster shortage. His testimony with respect to such practice was supported by other truck operators. This testimony was not directly contradicted by any Company witness. True, several Company witnesses in rebuttal -- foremen and guards -- testified that on occasions when they passed by the vestibule area, in performance of their own duties or while going to work, they did not observe any bolsters in the area. However, there is no compelling evidence by these witnesses that they observed the vestibule when Grievant said he stored bolsters there, during the first turn and a period of bolster shortage.

Based on the entire record the Board is convinced that the Company has failed to prove its case by a preponderance of the evidence and the grievance must be, and should be, sustained.

In reaching this conclusion the Board also finds no real conflict in the evidence. The principal witnesses on both sides apparently were all telling the truth -- as they saw it.

Award

The grievance is sustained.

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Findings and Award recommended
by



Aaron S. Wolff, Arbitrator

This is a decision of the
Board of Arbitration,
recommended in accordance
with Section 7-J of the
Agreement.



Sylvester Garrett, Chairman