

1-13-1971

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

Sylvester Garrett  
*Chairman*

Edward E. McDaniel  
*Assistant to the Chairman*

Follow this and additional works at: [http://knowledge.library.iup.edu/garrett\\_series](http://knowledge.library.iup.edu/garrett_series)

---

## Recommended Citation

Garrett, Sylvester and McDaniel, Edward E., "United States Steel Corporation Western Steel Operations Gary Works and United Steelworkers of America Local Union 1066" (1971). *Arbitration Cases*. 93.  
[http://knowledge.library.iup.edu/garrett\\_series/93](http://knowledge.library.iup.edu/garrett_series/93)

This Article is brought to you for free and open access by the Sylvester Garrett Labor Arbitration Collection at Knowledge Repository @ IUP. It has been accepted for inclusion in Arbitration Cases by an authorized administrator of Knowledge Repository @ IUP. For more information, please contact [cclouser@iup.edu](mailto:cclouser@iup.edu), [sara.parme@iup.edu](mailto:sara.parme@iup.edu).

BOARD OF ARBITRATION

Case No. USS-8193

January 13, 1971

ARBITRATION AWARD

UNITED STATES STEEL CORPORATION  
WESTERN STEEL OPERATIONS  
Gary Works

and

Grievance No. SGa-70-1054

UNITED STEELWORKERS OF AMERICA  
Local Union No. 1066

Subject: Discharge

Statement of the Grievance: "I, [grievant], claim Management is in violation of Sections 8 and 9 of the Basic Labor Agreement.

"I was unjustly discharged on 7-22-70."

Contract Provisions Involved: Sections 3 and 8 of the Basic Labor Agreement dated August 1, 1968.

2. USS-8193

Grievance Data:

Date

Grievance Filed in Step 3:	July 27, 1970
Step 3 Meeting:	August 13, 1970
Appealed to Step 4:	September 4, 1970
Step 4 Meeting:	October 14, 1970
Appealed to Arbitration:	November 25, 1970
Case Heard:	December 16, 1970
Transcript Received:	December 22, 1970

Statement of the Award:

The grievance is denied.

BACKGROUND

USS-8193

This grievance from Gary Works' Sheet and Tin Division presents a claim that Management improperly discharged grievant for allegedly threatening his Foreman on July 13, 1970, without proper cause and otherwise in violation of Section 8 of the Basic Labor Agreement. 1

Relevant "Background Information and Facts" appear in lower step Grievance Procedure Minutes as follows: 2

"Grievant...was employed December 17, 1968. At the time he was discharged, he was a seniority listed Laborer in the 80" Slab Conditioning Department.

"He claims that his discharge for allegedly threatening his Foreman was unwarranted and he asked for reinstatement to his job and payment of all monies lost.

"On first turn, Friday, July 10, 1970, Grievant was working as a Slab Cleaner. At about 2:30 a.m., Foreman Wheeler noticed the slabs on several docks had not been blown off and he could not find Grievant. The Foreman searched the area and finally found grievant asleep on a bench inside a shelter in the middle of the scarfing yard.

"Grievant's card was punched out and he was sent home. He was scheduled to work the following day, Saturday, but he reported off. His next scheduled turn of work was second turn, Monday, July 13, 1970. At about 2:30 p.m., on that turn, he was handed a discipline

"notice, copy of which is attached as Exhibit 'A,' indicating his suspension for sleeping was the balance of the turn July 10, plus three days to be served July 14, 15 and 16, 1970.

"Grievant reportedly took the suspension notice to the Slab Conditioning Office and interrupted a meeting between Messrs. R. J. Stanier, Superintendent, G. Barnes, Slab Yard General Foreman, and J. Crouch, Slab Conditioning Foreman. He complained about the discipline, stating others had slept in the department but they were not disciplined. He then crumpled the notice and threw it in the waste basket and left the office. Shortly afterward, he confronted Foreman Wheeler and reportedly said, 'The next time you monkey around with me, I will kill you.' Wheeler went immediately to his office and tried to do his paper work, but Grievant's statement upset him and he reported the incident to Foreman Crouch.

"When Grievant reported for work on July 17, 1970, following the three days suspension, he was handed notice, copy of which is attached as Exhibit 'B,' that he was suspended five days, subject to discharge.

"A Hearing was held in Grievant's behalf at the request of the Union, and Grievant testified that Wheeler is prejudiced against him as evidenced by the fact he was disciplined for sleeping when others were not and he denied threatening the Foreman.

<u>Date</u>	<u>Infraction</u>	<u>Discipline</u>
"September 1, 1969	Absenteeism	Warning
October 20, 1969	Negligence	Warning
January 13, 1970	Absent from Work Area	Suspended 1 day
March 17, 1970	Absenteeism	Suspended 2 days
July 10, 1970	Sleeping	Suspended 3 days

"Notification of his discharge was mailed to him by certified mail postmarked July 22, 1970. A copy of the Notice and return receipt are attached as Exhibit 'C.'"

And, the respective positions of the Union and Company appear therein as follows:

3

"STATEMENT  
OF UNION  
POSITION

"It is the Union's contention that Foreman Wheeler was constantly discriminating against Grievant. This is evidenced by the fact Grievant was disciplined for sleeping when others guilty of the same infraction were not disciplined. In view of the fact Grievant has been discriminated against by this Foreman and there are no witnesses to the alleged threats, which Grievant denies he made, the discharge was improper and unwarranted. Grievant should be reinstated and paid all monies lost.

"STATEMENT OF  
MANAGEMENT  
POSITION

"Management denies that Foreman Wheeler has discriminated against Grievant and the discipline issued Grievant for sleeping on the job was proper and for just cause.

"Foreman Wheeler had no reason to fabricate the story that Grievant threatened him. The statements made by Grievant were construed as a bonafide threat against Foreman Wheeler's well being, and he reported the incident to Foreman Crouch who was a witness to the effect the statement had on Foreman Wheeler.

"Management cannot and will not condone threats of violence. The discharge in this case was for proper cause therefore and contractually proper."

Notably, the lower step Grievance Procedure Minutes reflect the following "Summary of Discussion":

4

"The Parties discussed their respective positions as stated above; additional comments were as follows.

"The Union's Representative led off the discussion by calling upon Grievant...to give his version of what took place at the time and place in question.

"Grievant...admitted that he was sleeping on a bench inside a shelter in the middle of the scarfing yard on the first shift about 2:30 a.m., July 10, 1970, when he was approached by Foreman Wheeler concerning slab docks that had not been blown off. Further, he acknowledged that cleaning the docks was his job, but contended that he had completed his work for the turn and was catching forty winks, which he claims that it is customary for employees in this area to do when their work is caught up. He said at first he thought he was just being suspended for the balance of the turn July 10, 1970, but then Monday, July 13, 1970, just before the end of his turn, without any explanation Foreman Wheeler handed him written notice that the suspension included three additional days July 14, 15 and 16. Grievant said that this made him angry, and he went to the Department Superintendent's Office for an explanation of the Company's reasoning. Before entering the Superintendent's Office, he said, that he knocked on the door and a voice said come in. He claimed that he asked for an explanation of the reason for his suspension and was not given a very good story; consequently, he crumpled the notice and threw it in the waste basket then left the plant. Grievant maintains that he did not see Foreman Wheeler after leaving the Superintendent's Office. He positively denies that he threatened to kill Foreman Wheeler the next time something like this occurs.

"The Union's Representative said that according to his information Wheeler, during the pre-discharge hearing did not voluntarily come forth with the claim that /Grievant/ threatened to kill him; that this was only brought forward through leading questions and coaching by the Labor Contract Administrator.

"Union Witness Grose maintained that Wheeler is prejudiced against the Grievant; that /Grievant/ previously transferred to Foreman Tokarz's turn but later, because of his seniority, had to transfer back to Wheeler's turn. Union Witness Watson added that in the pre-discharge discussion Wheeler admitted that some employees are permitted to sleep.

"/Grievant/ said that he believes that Wheeler's attitude comes from prior experiences when he /Grievant/ was a scarfer. He admitted that he was not the best scarfer in the world because he did not put forth the effort required to do a good job simply because then he did not need the money. Wheeler, he claims got angry with him because of this and never forgave him after that.

"Union witness Grose commented that if the alleged threat was so upsetting to Foreman Wheeler, the Union cannot understand why he did not follow the customary plant procedure and contact Plant Protection immediately.

"Management's Representative noted that on July 13, 1970, when the Grievant interrupted a management meeting to complain about the discipline, Messrs. Stainer, Superintendent, G. Barnes, Slab Yard General Foreman, and J. Crouch, Slab Conditioning Foreman, observed [Grievant] in a fit of temper crumple the violation of rules notice and throw it into the waste basket, then leave the office disturbed. Their observations do not support the claim that [Grievant] conducted himself in an exemplary manner when entering or while he was in the office. Foreman Wheeler is positive that he heard correctly the threat [Grievant] made to him as [Grievant] was leaving the area. As a matter of fact, Wheeler became so unnerved as a result of the threat that he was unable to continue with his regular duties. Foreman Crouch observed Foreman Wheeler immediately following the threat by [Grievant] and confirms the fact that Wheeler was upset. There was no other reason for Wheeler to be so unnerved at the time.

"Management's Representative said that the question involves the Grievant's unsupported word vs. the word of Foreman Wheeler. He concluded that observations made of [Grievant's] behavior by several members of Management immediately prior to the alleged threat and by Foreman Crouch of Wheeler immediately after [Grievant's] alleged expression to kill him the next time, substantially confirms the Foreman's claim.

"[Grievant's] suspension and subsequent discharge therefore were for proper cause and were contractually proper."

At the arbitration hearing, grievant denied threatening his turn Foreman, as charged. He, thus, testified, upon direct examination:

5

"Q Did you at any time use threatening language against Mr. Wheeler?

"A No, I never used the word, 'monkeying.' I don't even know -- monkey, that is not in my vocabulary.

I am a young guy. If I was going to threaten anybody, I would say 'm----- f-----,' or something like that, but 'monkeying'? I would never say it.

"Q You didn't say, 'I will kill you'?

"A No, I never said I would kill him. I have no intentions of killing anybody. I don't have heart enough to kill anybody."

Additionally, grievant reported:

6

"Q [Grievant], especially on a midnight turn, are there any other employees that sleep?

"A Oh, yes, there are quite a few employees that sleep, everybody sleeps, even the scarfers catch naps.

"Q How about Wheeler, does he ever sleep?

"A He doesn't be too alert at times, I know that....

"Q But there are other employees who sleep out there?

"A Sure.

"Q What about the guy that replaced you, what happened to him?

"A The guy that replaced me, I seen him that Monday, and I told him what happened. He just -- he seen Wheeler give me the notice. He asked me what happened. I told him. He said, 'That isn't nothing. He didn't find me until 4:00 o'clock.'

"Q And did anything happen to him? Was he give a discipline notice or anything?

"A No, he worked, he didn't get nothing.

"Q Nothing happened?

"A No."

During arbitration, as throughout the Grievance Procedure, the Union and grievant asserted that the turn Foreman consistently had "discriminated" against the grievant. On this point, grievant upon cross examination responded:

"Q When you say he discriminates against you, are you saying he discriminates against you personally, or does he do it because you are a black employee, or just what are you saying?

"A Personally.

"Q Personally?

"A Yes.

"Q And you have had other foremen, have you not?

"A Yes."

Grievant, thereupon continued:

8

"Q Is Mr. Wheeler the only foreman that has ever disciplined you?

"A No.

"Q Who else has disciplined you?

"A I am not sure. I think maybe Cal Woods, I am not sure, this one guy from a different department. I don't even know his name.

"Q So, there were at least the two other foremen besides Wheeler who disciplined you?

"A Yes.

"Q Were they picking on you?

"A No, they were fair. They told me that they did it to me. They come up to me and they said, 'This is what you done wrong,' and things as that. They discussed it. They didn't just hand it to me and say, 'Get out of the mill,' or anything. They told me why I was getting it.

"Q Did you file a grievance concerning this three-day suspension?

"A Yes.

"Q You did?

"A Grievance?

"Q Yes.

"A No, I don't think so. I am not sure. I didn't do anything until after I got the five days, I don't think.

"Q So, if you were dissatisfied with this three-day grievance, this three-day suspension, you could have filed a grievance on that?

"A Sure.

"Q But you didn't?

"A No."

The turn Foreman, at the hearing, testified that grievant, indeed, had approached him and said, specifically, "If you monkey with me again, I will kill you." At one point during his testimony, however, the Foreman implied that grievant may have used the word "mess" rather than "monkey," as originally was reported. In any event, the turn Foreman evinced no doubt that he, at the time, had heard and understood, "I will kill you" uttered by the grievant. 9

The turn Foreman, moreover, denied having "discriminated" against grievant at any time. He admitted, however, having in the past, permitted employees, including grievant, to "doze a little," during their work turns, "when their work was caught up," and "when they are aware of enough to know when it's time to get up" and complete their work. 10

A claim is made by the Union that Management here violated Section 8, Marginal Paragraph 98 of the Agreement, as it, in relevant part, provides: 11

"...In all cases in which Management may conclude that an employee's conduct may justify suspension or discharge, he shall be suspended initially for not more than five calendar days...."

The Union argues, finally, that the disputed five-day (subject to discharge) suspension here immediately followed a prior three-day suspension, making for a total of eight consecutive days during which grievant actually was suspended. That 12

the three-day and five-day suspensions were issued upon separate and successive "infractions," the Union apparently believes offers no defense to Management.

The issue herein remains whether grievant improperly was discharged "without proper cause" under the Agreement.

13

#### DISCUSSION AND FINDINGS

The procedural issue herein raised by the Union of whether grievant improperly was suspended for more than five days, we believe, briefly and finally may be treated. The language of Section 8, "shall be suspended intially for not more than five calendar days," itself reflects the fallacy of the Union's reasoning. That Management may impose separate successive penalties, including suspension for separate and successive infractions, seriously may not be doubted. Significantly, the specific "infraction" complained of here and the particular disciplinary action imposed therefor, indeed, was initially "for not more than five calendar days," despite the fact that it immediately followed upon the heels of a prior infraction and disciplinary suspension. That prior infraction and disciplinary action, moreover, never was contested--and thus, warrants no consideration at this time. This claim of violation under Section 8-B, then, has no "foundation" in the instant case.

14

The sole issue remaining concerns whether grievant, in fact, threatened his turn Foreman as is charged. And, the controlling question, purely, is one of credibility.

15

Under clearly established rules of conduct, historically sanctioned by the Agreement, the use of threatening language toward a supervisor constitutes proper cause for discipline, including discharge. The real question, then, is whether the reported language, itself unquestionably "threatening," was uttered at the time by the grievant. Grievant categorically denies having used the words, "If you monkey with me again, I will kill you." He says, in fact, that he never uses the word "monkey," and that he "would not have the heart" to kill any person. The Foreman, however, is positive that grievant, in effect, so threatened him. Thus, the issue of credibility.

16

In this situation, the credibility question is a difficult and trying one to resolve. In this, as in all such cases, therefore, the final determination of fact may only reasonably be determined upon attendant relevant circumstantial considerations. Here, we believe, a proper determination reasonably must result from consideration of the following undisputed circumstantial evidence: (1) that at the time in question, grievant, in a state of apparent anger, did approach and have words with his turn Foreman; (2) that the turn Foreman promptly thereafter, in an apparent state of emotional distress, reported to his superiors that he just had been threatened by the grievant; (3) that the grievant for some time prior thereto had felt "discriminated" against by the particular turn Foreman; and, (4) that no convincing reason is alleged nor otherwise shown why the Foreman would have attributed the disputed threatening words to grievant. Also, the general demeanor and manner of both the grievant and the turn Foreman while testifying at the hearing--as viewed and judged by the Arbitrator--reasonably has provided some basis of support for our determination of credibility in this case. And, upon due consideration of the entire record, including these factors, we conclude and find that the credibility issue here involved reasonably must be resolved against the grievant. Thus, the grievance in this case may not be sustained.

17

15.

USS-8193

AWARD

The grievance is denied.

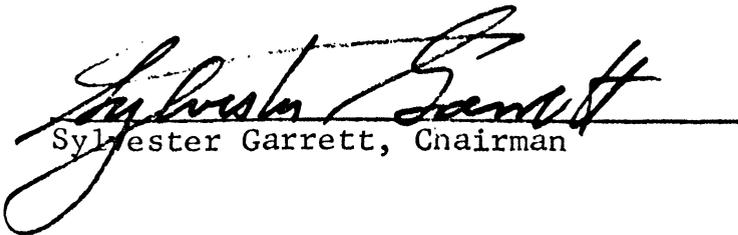
18

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, Chairman