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United States Steel Corporation Eastern Steel Operation Homestead Works and United Steelworkers of America Local Union 1397

Sylvester Garrett
Chairman

Hillard Kreimer
Arbitrator

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BOARD OF ARBITRATION

Case No. USS-8277

March 3, 1971

ARBITRATION AWARD

UNITED STATES STEEL CORPORATION
Eastern Steel Operation
Homestead Works

and

Grievance No. HH-70-215

UNITED STEELWORKERS OF AMERICA
Local Union No. 1397

SUBJECT: DISCHARGE

Statement of the Grievance:

"I, the grievant, request Management to restore me to my job as Chipper in Structural Department. I further request all lost earnings.

"To be presented at hearing.

"Honor Statement of Grievance."

Contract Provisions Involved: Sections 8-D and 14-F of the Basic Labor Agreement of August 1, 1968.

Grievance Data:

Date:

| | |
|-------------------------|------------------|
| Date filed: | July 7, 1970 |
| Third Step Meeting | July 23, 1970 |
| Appealed to Fourth Step | August 10, 1970 |
| Fourth Step Meeting | October 9, 1970 |
| Appeal to Arbitration | January 12, 1971 |
| Case Heard: | February 3, 1971 |

Statement of the Award:

The grievance is denied.

BACKGROUND

Grievant, a Chipper in the Bloom and Structural Division, Homestead Works, challenges his five day suspension and subsequent discharge for allegedly reporting to work in such a condition as to render him unfit to perform his job. 1

Grievant has been employed by the Company for almost 20 years. Approximately 10 years ago he was confined to a mental institution for almost two years. Upon his release, he returned to work and has served as a Chipper since then. In 1969, Grievant was interviewed by a consulting Company psychiatrist. The resultant report indicated that Grievant had a problem with alcohol consumption, as well as problems in the area of mental health. 2

Grievant's disciplinary record, prior to 1970, is as follows:

| | | |
|----------|---|---|
| 11/22/65 | - | Section Ia, left work area - warning |
| 12/23/65 | - | Section Ia, left work area - 1 day |
| 5/31/66 | - | Section II, rule 6, Insubordination - warning |
| 2/2/68 | - | Section II, rule 1, carelessness - warning |
| 3/18/68 | - | Section G, rule 2, used mushroomed hammer - 1 day |
| 6/11/68 | - | Section II, rule 10, unfit condition - 2 days |
| 7/9/68 | - | Section II, rule 10, unfit condition - 3 days |
| 8/1/69 | - | Failed to report for work - warning |
| 8/13/69 | - | Section II, rule 6, insubordination - warning |
| 8/16/69 | - | Section II, rule 7, absence - 2 days |

As the result of an incident on March 24, 1970, Grievant was penalized with a five day suspension for "reporting to work under the influence of liquor", in violation of Section II, rule 10 (relating to reporting for work in an unfit condition). In connection with the incident, the Plant Doctor examined Grievant, read the psychiatrist's report, and noted a strong odor of alcohol on Grievant's breath. On March 30, 1970, a meeting was held to discuss the suspension, involving Management and the Union Grievance Committeeman. As a result of this meeting, Grievant was to be given a "last opportunity" to prove himself to be a desirable employee. This "final opportunity" included the following understanding: (a) the 5 day disciplinary slip issued to Grievant was affirmed; (b) Grievant was to report for work his next scheduled turn; (c) Grievant was to make every attempt to improve his status as a desirable employee. In the event Grievant failed to meet his obligation, the Union representative was to entertain no further pleas on his behalf. After discussion of the understanding with the Grievant, a written memorandum was signed by the Grievance Committeeman and confirmed by the Superintendent. 3

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On June 16, 1970, Grievant's disciplinary record indicates he was given a one day suspension for "Section II, Rule 7, absence".

On June 30, 1970, Grievant was at work on the 3 to 11 shift. According to Company testimony, at approximately 3:20, the General Foreman received a call from his Turn Foreman reporting that Grievant was giving the Turn Foreman a "hard time" concerning a work assignment. The General Foreman went to the work area to talk with the two men. When asked about the matter, Grievant stated it was not he who had a problem, but it rather was the Turn Foreman. The Turn Foreman said he had assigned Grievant to procure a saw blade from another area. Grievant refused, asserting he was assigned that day to do chipping work. Because of the noise in the area, the General Foreman had to lean close to Grievant to hear him speak. As he did so, he observed Grievant's time card still in his pocket. Grievant, when asked to turn the card over to the General Foreman, complied. The name written on the card and the check number were both illegible. The General Foreman detected the odor of alcohol on Grievant's breath. He asked Grievant whether he had been drinking before coming to the Plant. Grievant admitted he "had a few". The General Foreman reminded Grievant of the strong Supervision feeling concerning drinking before work, but Grievant insisted he had only a few and was all right. The General Foreman nonetheless insisted that Grievant come to his office to be then sent for further examination to the Plant Hospital. Grievant walked to the office, followed by the two Supervision personnel. The General Foreman observed that Grievant walked in an unstable fashion. The General Foreman wrote out a card to the Plant Doctor directing an examination of Grievant to affirm or disaffirm the General Foreman's feeling that Grievant was unfit to continue working. Grievant was transported to the Hospital by a Plant Guard.

At the Hospital, Grievant's blood pressure and pulse were measured. Both were found to be within normal limits. No other physical tests were administered. The Doctor talked with Grievant, but could not recall, at the hearing, smelling alcohol on Grievant's breath. The Doctor directed a number of questions to Grievant, inquiring if Grievant knew why he was at the Hospital or why he had been referred to the Doctor. Grievant did not indicate he knew the answers to these questions. Grievant appeared to the Doctor, to be confused and not in full possession of his faculties. The Doctor found it difficult to determine whether Grievant's difficulties arose because of alcoholism or not. Based upon his observations, Doctor determined he should concur with the General Foreman's opinion that Grievant was unfit for work. The Doctor told Grievant he felt Grievant should not return to his job. Grievant was asked to wait outside for transportation to return him to his department. While waiting, Grievant fell asleep. The Doctor called the General Foreman to affirm his opinion. The

Plant Guard arrived, wakened Grievant, and returned him to the General Foreman's office.

The General Foreman caused the following notice to be typed and delivered to Grievant upon his return to the office:

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"Violation of Section II, Rule 10, General Plant Conduct Rules and Regulations. 'Reporting for work under the influence of liquor.....' On the 3-11 turn, June 30, 1970, you reported for work in such condition so as to be unfit to perform your regularly scheduled duties. You were sent to the plant hospital and from there sent home.

Discipline: You are hereby suspended for 5 days, July 1, 2, 3, 4 and 5, 1970, following which you may be subject to discharge in accordance with Section 8 of the August 1, 1968 Labor Agreement."

Grievant was told to contact his Grievance Committeeman. His time card was delivered to him and he left the Plant. Following the appropriate Section 8-B hearing, the five day suspension was converted to a discharge, which resulted in this grievance.

Grievant, in his version of the matter, admitted that during the discussion concerning the March 24 incident, he agreed he would not again come to work after drinking. He felt that some, but not all, of his disciplinary infractions were related to his drinking problems. On June 30, Grievant did have a discussion with his Turn Foreman. Grievant felt the men ought to take turns to secure the blade and it was not his turn. When the General Foreman appeared, Grievant also talked with him. When questioned concerning drinking before work, Grievant did tell the General Foreman he had "two or three beers" before coming in to the Plant. Grievant was sent to the Plant Hospital and talked with the Doctor. He sat down after the examination and waited for the Guard to return him to his department. Grievant then changed clothes and was escorted out the gate. At the request of the Union, Grievant, beginning in November of 1970, began out-patient counselling with a psychologist at McKeesport Hospital in an effort to deal with his drinking problem.

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While conceding it must sustain the burden of proving it had proper cause to discipline Grievant, the Company argues Grievant's accumulated total disciplinary record is such that once that burden is sustained, discharge should automatically follow. The Company

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emphasizes Supervision has the duty to properly run the Plant operation; Management has the right to expect employees physically capable of and willing to accept work assignments who report to work without having previously imbibed in alcohol to the extent they become unsafe themselves or create unsafe conditions for others. In the Company's view, it is not proper, wise, nor contractually necessary to permit unfit employees to wander around a steel mill. The Company feels such an employee's judgment is affected, his reaction time is lessened, he is more likely to be hurt, he is not contractually entitled to work and, most important here, he is subject to discipline. The Company points out that Grievant is charged with being unfit to work. To sustain its burden, the Company cites Grievant's admission that he had something to drink before coming to work, Grievant's belligerent attitude to his Turn Foreman, the illegibility of Grievant's time card, the alcoholic odor on Grievant's breath, Grievant's unsteady gait and the confirmation of the General Foreman's conclusion by the Plant Doctor. The General Foreman's decisions concerning Grievant's unfitness, says the Company, together with his decision to discipline and discharge the Grievant, are those which he has the right, responsibility and duty to make.

According to the Company, Grievant is not an alcoholic, although he may drink too much. The Company points to inconsistent Union testimony concerning Grievant's reputation for sobriety in the Plant, which, on the one hand questioned Supervision's conclusion that Grievant had been drinking while on the other, sought help for Grievant as an alcoholic. Grievant's behavior pattern, says the Company, in both March and June were not those of an alcoholic; Grievant drank and then came to work, whereas an alcoholic would never have left the bar once his drinking started. The Company makes the point that no one from the Union attempted to treat Grievant's problem as one involving drinking until after his discharge, from which the Company concludes even the Union did not feel Grievant was really an alcoholic. As Management sees the matter, Grievant was told in plain terms as late as March 24 that he could not drink and safely enter the Mill to work; his failure to observe these precautions was his own undoing. Not until the Third Step of this grievance procedure, says the Company, was there any mention by Grievant or the Union that there was an alcoholism problem involved. Any attempt at such a late date to invoke the alcoholism provisions of Section 14-F, asserts the Company, is a mere subterfuge, injected by the Union in an effort to cloud an otherwise valid Company discharge action against Grievant.

The Company argues that Section 14-F cannot serve as a valid defense against Grievant's discharge. The Company points to the precise language of that Section, which speaks of the attempted rehabilitation of alcoholics on a cooperative basis "without detracting from the

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existing rights and obligations of the parties recognized in the other provisions of this Agreement". This means, says the Company, that some employees who drink can be discharged; otherwise, the right to discharge, contractually granted to the Company under Section 8, would be wrongfully eliminated. In the Company's view, as a practical matter, any other interpretation would enable every employee charged with taking a drink of alcohol to then stand under the umbrella of Section 14-F, immune from discipline. The language of 14-F, continues the Company, requires the parties to "cooperate at the plant level in encouraging employees afflicted with alcoholism to undergo a coordinated program directed to the objective of their rehabilitation." This language, the Company asserts, even if construed to grant disciplinary immunity to alcoholics, does not grant such immunity to every person who drinks. The Company interprets this phrase to mean that the burden to undergo treatment is on the employee; the Company, as well as the Union, is merely required to "cooperate". Even assuming Grievant does qualify as an "employee afflicted with alcoholism", the Company maintains any contractual burden to Grievant under Section 14-F was met; Grievant was counselled and encouraged by Management as late as March of 1970 to cure his problem; Grievant made a commitment not to drink again, which he failed to fulfill. In the Company's view there finally comes a time when the duty to encourage an employee, even an alcoholic, to mend his ways must come to an end, at which time the Company must conclude the wayward employee simply will not make the necessary changes. The Company feels strongly that Section 14-F should not be interpreted so as to preclude the end of the employment road for recalcitrant employees.

The Union challenges the probative value of the Company's evidence. It argues that while the General Foreman stated he detected the odor of alcohol on Grievant's breath, the Company Doctor did not so state. The Union calls attention to the fact that the Turn Foreman did not testify at the hearing. It points out that those tests made by the Doctor - blood pressure and pulse - were normal; the Doctor then proceeded to find Grievant unfit based solely upon questions directed to the Grievant, to which Grievant could not supply a satisfactory answer and upon prior medical reports. The Union emphasizes that Grievant was confused during the Doctor's examination, but was equally confused at the arbitration hearing. Had Grievant been drinking to excess on June 30, according to the Union, the Doctor's tests would have reached other results. The Union further points to a sickness and accident claim, submitted by Grievant subsequent to June 30, which indicated Grievant suffered from vertigo, and which was honored by the Company, although later demanded back from the Grievant on the grounds of mistaken payment. In view of this alleged confusion, claims the Union, the actions of the Company in finding Grievant unfit for work and in disciplining him were arbitrary. Management, says the Union, made the unreasonable advance determination to discharge Grievant, regardless of other factors. The Company failed to sustain its burden

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of proving just cause, in the Union's opinion.

The Union concedes Grievant has a problem and needs help. It does not deny Grievant's disciplinary record for the past five years has been poor. It emphasizes, however, Grievant's 19 years of Company service. The Union sees Grievant's problem as alcoholism, which in its judgment would account for his incoherent responses on June 30 whether he had one drink or many. Grievant, it contends, requires rehabilitation. Discharge, under these circumstances, without attempting to solve the problem would, in the Union's view, not be proper. Grievant, it maintains, must be given a fair opportunity to retain his job.

The Union claims Section 14-F provides the correct solution in this case. It is the Union's contention that this section requires a coordinated effort by both parties to work with Grievant toward his rehabilitation, not to abandon him. According to the Union, the Company has not fulfilled that obligation as required by Section 14-F. It emphasizes that Grievant is now, under Union urging, undergoing appropriate out-patient treatment. Even if both parties have been remiss in their efforts to assist Grievant, up to this point, the Union feels he should not now suffer by being discharged.

FINDINGS

There is little doubt about the validity of the triggering event which evoked the disciplinary action in this case. The General Foreman personally observed Grievant's demeanor on June 30 and detected the odor of alcohol on Grievant's breath. Even Grievant conceded he "had a few beers" before coming to work. Based upon his observations, the General Foreman reasonably concluded that Grievant was in an unfit condition. The events in the Doctor's office served merely to affirm that decision.

USS-7730-S points out in detail the possible impact of Section 14-F upon the discharge of employees with drinking problems. The parties agree to cooperate at the plant level to encourage employees afflicted with alcoholism to undergo a coordinated program directed to the objective of their rehabilitation. However, this obligation does not detract from existing rights and obligations of the parties recognized in other provisions of the Agreement. The existing standards governing discharge of unsatisfactory employees and the test of proper cause to sustain a discharge under Section 8-D thus remain unchanged. The possible presence of chronic or addictive alcoholism must be given proper weight as part of the entire bundle of facts to be considered in determining whether there is proper cause for a given discharge. Therefore, every case of this sort turns on those facts

peculiar to it.

Grievant has some difficulty related to drinking. In 1969, a consulting psychiatrist's report indicated that some part of Grievant's problems was related to alcohol consumption. The Doctor detected alcohol on Grievant's breath during his March 24 examination. The Third Step minutes reveal that, in response to a Management inquiry to Grievant asking if he had ever attempted a "cure" or treatment before, Grievant stated that "in the last year or year and a half he was off for a time having a cure." When asked during the Third Step, if he had a problem with drinking, Grievant stated, "I have a problem - I might drink in spells - I believe I need a rest and care or rehabilitation to enable or permit me to come back to work. I perform my work when I am there and I perform it well." Again, in the Fourth Step, the following appears, "Management's Representative pointed out that during the past five years the Grievant has accumulated a deplorable disciplinary record, including a number of occasions when he was disciplined for reporting to work in an unfit condition, due to being under the influence of alcohol."

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The bundle of facts in Grievant's favor include his 19 years of Company service, his Third Step admission concerning his drinking problem, his personal attempt to solve that problem and his willingness, in cooperation with his Union, to seek psychological aid in November of 1970. Added to that bundle is the apparent fact that he was never involved in any precise Company-Union program directed to his rehabilitation. Stacked against the favorable bundle of facts are the following: Grievant's poor disciplinary record in the past five years, Grievant's 1969 consultation with a psychiatrist sought by the Company in an effort to help in solving Grievant's problems, Grievant's admission that not all of his disciplinary problems were related to his drinking, Grievant's apparent failure to call his drinking problem to the attention of either the Company or the Union until the Third Step of this proceeding, Grievant's failure to carry through his prior rehabilitation attempt, the Company's forbearance in connection with the March 24 incident, the Company's and the Union's discussions with the Grievant at that time concerning his work duties and the opportunity given him to correct himself, the Company's patience in connection with the June 16 infraction, the triggering event of June 30 itself, and the absence of any evidence indicating the Company failed to cooperate in encouraging Grievant to undergo a rehabilitation program. Bearing in mind

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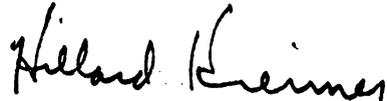
all of these facts, the Company did sustain its burden of proving in this particular case that it had proper cause to discharge Grievant.

AWARD

The grievance is denied.

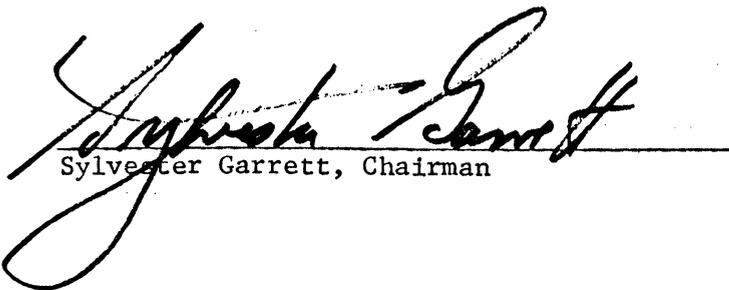
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Findings and Award recommended by



Hillard Kreimer, Arbitrator

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



Sylvester Garrett, Chairman