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United States Steel Corporation Heavy Products Operations Clairton Works and United Steelworkers of America Local Union 1557

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BOARD OF ARBITRATION

Case No. USS-5142-H

March 7, 1966

ARBITRATION AWARD

UNITED STATES STEEL CORPORATION
HEAVY PRODUCTS OPERATIONS
Clairton Works

and

Grievance No. HC-64-68

UNITED STEELWORKERS OF AMERICA
Local Union No. 1557

Subject: Suspension.

Statement of the Grievance: "Company rescind Violation of Rules Slip issued to Assistant Grievance Committeeman.

"Facts: Received Violation of Rules Slip.

"Remedy Requested: Assistant Grievance Committeeman to be made whole for all monies lost."

This grievance was filed in the First Step of the grievance procedure July 23, 1964.

Contract Provision Involved: Paragraph 28 of Section 4 of the April 6, 1962 Agreement, as amended June 29, 1963.

Statement of the Award: The grievance is denied.

BACKGROUND

Case No. USS-5142-H

This grievance from the Shops Department of Clairton Works protests grievant's one-day suspension for alleged insubordination as violating Paragraph 28 of Section 4 of the April 6, 1962 Agreement, as amended June 29, 1963.

On July 13, 1964 grievant became the Assistant Grievance Committeeman for Zone 5, which includes employees in the Rigger Shop. Those Riggers who are certified to burn are issued flame-resistant coveralls, and routine exchange of dirty coveralls for clean ones is handled on a weekly basis by a Boilermaker Helper at the Boiler Shop, about 90 feet from the Rigger Shop.

On Tuesday morning, July 21, 1964, the regular day for coverall exchanges, Rigger Martini, who is certified to burn, approached the Boilermaker Helper who exchanges coveralls and asked to exchange his coveralls. The Company says that this took place about 7:15 a.m., which is earlier than the beginning of the usual exchange time, and that the Boilermaker Helper thus told Martini to return after 8:00 a.m. and he would be issued clean coveralls then. The Union says simply that there were no clean coveralls available in the morning.

Management says Martini left in anger and did not return for clean coveralls until the next day. The Union asserts that Martini was given a clean pair at about 1:30 that afternoon by the Boilermaker Helper.

At about 12:15 p.m. on the same day, Rigger Foremen Hicks and Barnes were sitting at Hicks' desk in the Rigger Shop eating lunch, and Riggers Martini, Dulla, and Kapsha also were eating lunch nearby in the Shop.

Management's version of the event is that grievant entered the Rigger Shop, approached to about two feet from Foreman Hicks, and without any salutation or preliminary remarks, said in a loud and arrogant voice, "Get this man a pair of coveralls," pointing to Martini. Since Hicks did not know to whom grievant was referring and since Martini was sitting in

back of Hicks and behind a large post, Hicks could not see Martini. Hicks asked "What man?" Grievant replied "Martini." Hicks turned in his chair and asked Martini why he had not told Hicks of his needs, and Martini said he had not done so because he felt Hicks was too busy.

Hicks said to grievant that although the Boiler Shop handled coveralls, Martini could have told Hicks of his problem before calling grievant. At this point, Hicks began to rise from his chair in order to go around to talk further with Martini, when grievant, standing directly in front of Hicks and so close (one foot away) as to make it difficult for Hicks to stand up, said to Hicks in a loud, angry voice "Damn you, sit down and don't get your shit hot."

Hicks sat down and turned and asked Barnes if he had heard grievant curse him, and Barnes said that he had. Hicks protested grievant's belligerent manner and profane language toward him. Immediately thereafter, grievant whispered something to Martini, and then grievant left. Martini then said that he had not called for grievant. The entire event took from three to five minutes.

Hicks and Barnes related the above events to General Foreman Voytilla later that afternoon.

On July 22, grievant thus was suspended for one day (July 23) for insubordination in violation of Rule 6, Section II of the General Plant Conduct Rules and Regulations, i.e., use of profane language toward a Foreman.

Grievant's view of the encounter is different. He says that he had talked with Martini in the morning and noticed that the latter's coveralls were filthy and that he asked if Martini wanted grievant to look into the situation and Martini said that he did. Grievant then said he would see Hicks at lunch time.

Grievant got permission from his Weld Shop Foreman to go to the Rigger Shop on Union business during his unpaid lunch period. He entered the Rigger Shop where Hicks and Barnes were

seated eating lunch and said to Hicks, "I got a little problem and would like to talk. Got a few minutes?" Hicks said, "Sure." Grievant then mentioned Martini's dirty coveralls. Hicks was not very pleasant and asked, "What are you talking about?" At this point grievant pointed to Martini and mentioned his name. Hicks said to Martini in a raised voice, "Why didn't you come to me?" and grievant explained the options of an aggrieved employee under the Agreement. Hicks wheeled around to grievant and asked "Why did he come to you?" Grievant then said "How about getting this man a clean pair of coveralls? His are filthy and they smell." Hicks replied that he had nothing to do with coveralls and that the Boilermaker Helper handled them. Grievant said "You're his boss, and its up to you to get him coveralls."

Grievant says that up to this point, the conversation had been calm and mild, but at this stage, Hicks got edgy, rose out of his chair, and wheeled from his right to left and said "You're not coming over here shooting off your mouth like (a former Grievance Committeeman) used to do." When Hicks jumped up, grievant said "Goddam it, sit down, you don't have to get your shit hot." This was said in order to calm Hicks, who became enraged and looked wild. Hicks asked Barnes if he heard grievant swear at him, and Barnes nodded.

Grievant said he was not there to raise a ruckus but to solve a problem and that they should have better relations than that. Grievant then returned to the Weld Shop. He estimates the whole incident took eight to twelve minutes.

The Union says first that, since grievant was acting in his official capacity as Assistant Grievance Committeeman during the incident in question, he was clothed with a kind of diplomatic immunity under Paragraph 28 of Section 4, and thus could not be disciplined by Management for his conduct at that time. Paragraph 28 reads as follows:

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"The right of the Company to discipline an employee for a violation of this Agreement shall be limited to the failure of such employee to discharge his responsibilities as an employee and may not in any way be based upon the failure of such employee to discharge his responsibilities as a representative or officer of the Union. The Union has the exclusive right to discipline its officers and representatives. The Company has the exclusive right to discipline its officers, representatives, and employees."

The Union agrees that all of the parties' business should be conducted in a respectful manner, as Section 1 indicates. It says, however, that if either a Company or Union representative becomes profane or abusive during a grievance discussion, the only recourse of the other party is to terminate the discussion until order can be restored and to report the offensive conduct to the representative's superiors in his own organization, who are the only ones who properly may discipline him under the Agreement. It is said that this is clearly the only recourse open to the Union for offensive behavior of a Management representative, and that the Company should not be allowed to discipline a Union representative for conduct which the Union would be powerless to discipline if engaged in by a representative of Management.

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The Union next denies that grievant used the precise language charged by Management. It says that grievant said "Goddam it," not "Damn you," and thus that his profanity was not directed at Foreman Hicks' person but only at the situation in general and that his language was common shop talk, used routinely by both men and Management.

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The Company denies that grievant's status as Assistant Grievance Committeeman gives him license to use profane and abusive language to a Foreman.

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Management insists that grievant actually did curse and abuse Foreman Hicks in the presence of another Foreman and three other hourly employees and that such conduct in that setting cannot be tolerated if Supervision is to retain control of the working forces.

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Management notes that the testimony of both parties agrees that the fan was turned off at the time and the Shop was quiet. It insists therefore that all six men then in the Shop heard what grievant said (grievant agrees) and argues that the Union's failure to call the other two hourly employees to contradict Foremen Hicks' and Barnes' version further indicates that their view of grievant's conduct is the true one.

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The Company points out also that, contrary to the Union's Step 4 corrections, it is not true that Hicks and grievant "...continued their conversation until they resolved the issue."

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FINDINGS

The Union's "diplomatic immunity" argument would go so far as to bar reasonable discipline for any and all kinds of profane, abusive, and threatening behavior toward a Supervisor, even including actual assault against a Management representative. That is too broad and far-reaching to be accepted by the Board as within the reasonable intent of Paragraph 28 of the Agreement.

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Since, under Section 6-I-3 of the Agreement, an Assistant Grievance Committeeman must be an employee, his behavior during grievance discussions has some attributes both of a Union officer and of an employee, and thus improper behavior on his part, such as a physical assault, cannot be excused by Paragraph 28. It would seem that that would be equally true also of manifestly profane, abusive, or threatening language toward a Foreman, the only real difference being that improper language simply presents a question which is more difficult to resolve than does an outright physical attack.

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It should be recognized also, however, that, when discussing an employee's grievance with a Foreman, an Assistant Grievance Committeeman must have greater latitude in pressing his point with spirit, vigor, and firmness than might an employee in routine conversation on the job. Even so, it is nevertheless clear that profane and abusive language directed to a Foreman personally goes beyond those limits.

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The Union appears to recognize that its "diplomatic immunity" argument perhaps goes too far, for it then moves to the specific details of the disputed event and denies that grievant said "Damn you," but insists that he said only "Goddam it." The argument is, therefore, that grievant did not curse Foreman Hicks personally but only the situation in general and that he used only common shop talk, in any event.

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It would seem, however, that this Union defense recognizes the essential distinction, for present purposes at least, between the not uncommon use of profanity in the abstract, as it were, on the one hand, and the deliberate cursing of an individual Supervisor directed at him personally, on the other. The former may be common shop talk, but there is no evidence that the latter is. In fact, Union testimony agrees that it is not.

26

It is necessary to consider those statements which, at various times during the processing of this case, grievant admits that he did make.

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The Step 3 corrections twice say that grievant said "Goddam it, sit down you wait your turn when you talk to me mister."

28

The Step 4 corrections assert that grievant said "Goddam it sit down."

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On direct examination, grievant claimed that he said "Goddam it, sit down, you don't have to get your shit hot," and on cross-examination, that he said "Goddam it sit down you wait your turn when you talk to me mister, you don't have to get your shit hot."

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Thus, even accepting grievant's testimony on its face, it would appear that his language, and the demeanor that must have accompanied it, shows that he was profane and abusive toward the Foreman.

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In light of all evidence, moreover, it must be concluded that grievant did in fact curse the Foreman personally.

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Both Management representatives who were present, so testified. The several shifts in what grievant admits he did say introduce a substantial measure of uncertainty into his final version of his statement. Moreover, only grievant, of the four witnesses who testified, put the position in the shop of the other two hourly employees in substantially different places from where they were shown on the diagram submitted by the Company. Grievant said the encounter took from eight to twelve minutes which estimate differs substantially from the shorter, three to five minutes given by the other three witnesses. In addition, grievant's recollection of his and Hicks' position at the climax of the event must be incorrect, because, if grievant were right in saying that Hicks rose and turned from his right to left, Hicks would have had his back to grievant, and everybody agrees that that did not happen.

33

Thus, the preponderance of the evidence supports the conclusion that grievant said at least "damn you, sit down, and don't get your shit hot." That profane language, spoken in a loud and angry tone directly to a Foreman in a face-to-face situation and in the presence of other hourly employees, constitutes insubordination, going beyond any legitimate need of the situation from the viewpoint of transacting Union business.

34

Since the Union relies entirely on Paragraph 28 of the Agreement as barring this suspension, it is worth noting its exact language:

35

"The right of the Company to discipline an employee for a violation of this Agreement shall be limited to the failure of such employee to discharge his responsibilities as

"an employee and may not in any way be based upon the failure of such employee to discharge his responsibilities as a representative or officer of the Union. The Union has the exclusive right to discipline its officers and representatives. The Company has the exclusive right to discipline its officers, representatives, and employees."

That language first was negotiated in the 1947 Agreement, following a decision which sustained the discipline of a Local Union official for his failure to prevent an unauthorized work stoppage. Its manifest purpose was to insure that if a Union representative failed to discharge his responsibilities as a representative or officer of the Union, he could not be disciplined by the Company. 36

In reality, therefore, Paragraph 28 actually is not involved here, because grievant was not disciplined for failure to carry out any duties owed to the Union, but for improper conduct as an employee. 37

Grievant thus was suspended for proper cause, stemming solely from his conduct as an employee and beyond the scope of his activities as a Union representative. Accordingly, the grievance will be denied. 38

AWARD

The grievance is denied. 39

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

Clare B. McDermott
Clare B. McDermott
Assistant Chairman

Approved by the Board of Arbitration

Sylvester Garrett
Sylvester Garrett, Chairman