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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-5016-H

July 28, 1965

ARBITRATION AWARD

UNITED STATES STEEL CORPORATION
HEAVY PRODUCTS OPERATIONS
Clairton Works

and

Grievance No. HC-64-40

UNITED STEELWORKERS OF AMERICA
Local Union No. 1557

Subject: Discharge

Statement of the Grievance: "That the Company restore
A. Williams to his job.

"Facts: On 12-8 turn June 24,
1964 Mr. Williams did not refuse to do his work.
Mr. Briggs has been agitating Mr. Williams for
some time. On turn in question, Mr. Briggs said
he was going to discharge him at start of turn.
When Briggs came over to Williams he called him
a nigger, and this started violence.

"Remedy Requested: That Com-
pany reinstate Mr. Williams and pay him all loss
of wages."

This grievance was filed in the
Third Step of the grievance procedure June 29, 1964.

Contract Provision Involved: Section 8 of the April 6, 1962
Agreement, as amended June 29, 1963.

Statement of the Award: The grievance is denied.

BACKGROUND

Case USS-5016-H

An employee from the Coke and Coal Chemical Division of the Clairton Coking Department asserts that proper cause was lacking for his discharge on June 29, 1964.

The Company, as is customary in discharge cases proceeded first at the hearing and explained that grievant was a Door Cleaner on Coke Oven Batteries Nos. 16 and 17 on June 24, 1964. Shortly after 1:00 a.m. the Turn Foreman, after issuing certain instructions to Door Machine Operator Brown, proceeded to the side of the door machine and watched grievant shoveling spilled coke back into the oven; the Foreman instructed grievant to clean the door jamb and stood observing the work; grievant cleaned the jamb for a brief period and then climbed on the door machine near Foreman Briggs and "proceeded to tell Briggs over and over again to go away and leave him alone;" Briggs stated that if grievant did not perform the work, he (the Foreman) would do so and would then proceed to obtain a replacement for grievant; grievant not moving, Briggs did perform the work, replaced the shovel, and told grievant to come to the office and be relieved from duty. Briggs proceeded a few feet "when he received a blow on the back of his neck which knocked him face down onto battery bench." As both men walked to the office, Briggs inquired of grievant why he had hit him and grievant replied that he did not know. Briggs thereupon arranged for a Door Cleaner replacement and called for transportation to the plant hospital. Grievant proceeded to the Maple Avenue Gate where he was detained by the Plant Guard pending arrival of Clairton city police.

Rule 9: The Company considers that grievant violated Plant

"Fighting or attempting bodily injury to another employee."

and Plant Rule 6:

"Insubordination (refusal or failure to perform work assigned or to comply with instructions of supervisory forces) or use of profane, abusive or threatening language towards subordinates, fellow employees, or officials of the Company."

Grievant explains that his emotional reserves were at a low ebb on the night in question. He was depressed as a result of a series of deaths in his family and this was aggravated by the fact that the single turn a week which he had worked under Foreman Briggs' direction for about one year had become somewhat of a mental hazard to him due to Briggs' constant nagging and openly expressed dissatisfaction with his work. Grievant was also alarmed at Briggs' earlier statement that grievant, along with others, might be expected to move up to the Lidman job, an assignment which grievant had never performed and was afraid of. Shortly before the incident grievant had been soaked by rain; he was working in temperature of 90 - 92°; and steam from the batteries tended to obscure vision. Grievant's testimony is to the effect that he does not believe that he struck or pushed Briggs and can only speculate or surmise that Briggs stumbled or tripped and fell on his stomach or face, thereby sustaining a cut on the bridge of his nose which produced the blood that led Briggs to pursue the matter to ultimate discharge. Grievant also notes that his strained relationship with Briggs manifested itself just prior to the incident when Briggs referred to grievant with "names" (a racial epithet) and told him he performed his work like a "washwoman." Grievant denies the testimony and affidavits of Plant Guards to the effect that he (grievant), in interviews shortly after the incident, admitted striking his Foreman. In this connection Union counsel observed that several of the Company exhibits represent affidavits signed by Plant Guards but not actually written by them. Counsel concludes that said affidavits are neither persuasive nor conclusive.

The Union believes that this discharge departed from a 12-year practice at Clairton Works of rehabilitating employees guilty of assaults and fighting by imposition of suspensions of varying lengths of time and that this case represents a reversion to an outdated, harsh, and indiscriminate application of discharge, even assuming that grievant pushed the Foreman while laboring under strain and provocation.

The Company, on cross-examination of grievant, alluded to the fact that the Third and Fourth Step minutes made it transparently clear that grievant there admitted

at least pushing Foreman Briggs and yet grievant's hearing testimony, in substance, withdrew that admission and replaced it with a nebulous assertion that the Foreman must have tripped or stumbled and fallen without any assistance from grievant.

FINDINGS

The Third and Fourth Step minutes make it abundantly clear that grievant has openly admitted pushing Foreman Briggs, thereby causing him to fall down on the battery bench. This consistent posture of grievant and Union, around which the Union brief was constructed, was quite effectively and astonishingly shattered at the hearing when grievant took the stand and denied having pushed the Foreman. Grievant has, therefore, succeeded in placing in jeopardy his credibility at all times in the grievance procedure, as well as at the hearing, and raises the inference that one of two men involved in this incident does not know or cannot reliably state what happened. This shifting of versions, when juxtaposed with the mutually consistent story of six Company witnesses confirming the stance that the Company has taken throughout the grievance procedure, reflects unfavorably on grievant's testimony regarding collateral issues since his recollection of alleged provocation, climatic conditions, and steam on the night of June 24, 1964, may be equally unreliable. Even assuming that the relationship between Briggs and grievant fell short of a bond of perfect brotherhood, an assault in the form of a pushing which eventuated in an operation under local anesthesia to remove a scar from the bridge of Briggs' nose, cannot be accepted as a justifiable response to toe-the-mark supervision.

The Board balks at accepting grievant's characterization of Foreman Briggs as a kind of martinet parading his assigned batteries in the manner of a Prussian drill sergeant, abusing all comers and comporting himself in an insufferable way. The record does establish that Briggs expected grievant to perform his duties, but this would seem to fall somewhat short of unconscionable harassment.

It should be apparent that the Board is not here grappling with a fight. Only one push was administered, and that from behind. Finding that grievant pushed Briggs (his position for the first eleven months after the incident), the push must have been of substantial force to propel Briggs forward and down on his face. 9

The published Rules and Regulations against fighting are clear on their face and have not been overtly rescinded. The Union endeavors to portray a pattern, gradually accelerating over a 12-year period, of relying on suspensions to punish and thereby moderate fighting in the plant. Several examples are cited to establish the evolution of this new doctrine. In balance, however, the preponderance of the evidence in the record indicates that discipline and discharge are meted out at Clairton Works on an ad hoc basis, each fight being weighed on its particular facts. This practice was seemingly adhered to in the instant case. The instances cited by the Union of suspensions following fights involved attacks followed by retaliation, and an exchange of blows, or possessed other features distinguishing them from a push from the rear case, which unpleasantly approaches the realm of the fine old art of dry-gulching. 10

In summation, the Board concludes that grievant did in fact administer to the Foreman a push that constituted "attempting bodily injury" within the purview of the Plant Rule; that such action was not justified by provocation; and that, therefore, there exists proper cause for discharge. 11

AWARD

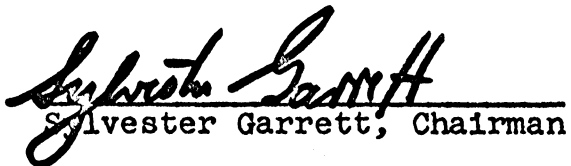
The grievance is denied. 12

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



David C. Altrock
Assistant to the Chairman

Approved by the Board of Arbitration



Sylvester Garrett, Chairman