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United States Steel Corporation Lorain-Cuyahoga Works and United Steelworkers of America Local 1298

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UNITED STATES STEEL CORPORATION
Lorain-Cuyahoga Works
and
Grievance No. WCC-69-78, - 79, - 80

UNITED STEELWORKERS OF AMERICA
Local Union No. 1298

SUBJECT: WCC 69-78 DISCIPLINARY SUSPENSION
WCC 69-79 DEMOTION
WCC 69-80 PROMOTION TO FILL TEMPORARY VACANCY

Statement of the Grievance:

WCC 69-78
"I Joe Zorc charge management with violation's of Sec-3 and Sec-8 of the August 1, 1968 Basic Agreement.

"On 9/29/69 Management unjustly Suspended me for five calendar day's. Evidence will be presented through the grievance procedure.

"To be paid all money I lost and the five day Suspension removed from my record."

WCC 69-79
"I Joe Zork charge management with a violation of Sec. 3, Sec. 8 and Sec. 13 of the August 1, 1968 Agreement.

"Management demoted me from my job as crane operator of #59 crane and placed me on labor. After an unjust 5 day suspension the Company removed me as crane operator as a form of discipline and violated my rights under Section 13 of the Agreement.

"To be put back on my job as operator of #59 crane and to be made whole for all loss of earnings due to the violation."
"I, Joe Zork charge management with a violation of Sec. 13 F of the Agreement.

The Company held a crane operator over to work 16 hr. on 10/7/69, 3rd. turn and did not allow me, a qualified operator on that job of craneman (Class 8) from labor (class 2).

"To be paid the difference in earnings that I lost because of the violation and that management stop violating my seniority rights".

Contract Provisions Involved:

Sections 3, 8, 13 and 14 of the Basic Labor Agreement of August 1, 1968.

Grievance Data: 

<table>
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<tbody>
<tr>
<td>WCC 69-78</td>
<td>October 9, 1969</td>
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<td>WCC 69-79</td>
<td>October 10, 1969</td>
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<tr>
<td>WCC 69-80</td>
<td>October 10, 1969</td>
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Statement of the Award:

WCC 69-78 - The grievance filed on account of the five day suspension to Grievant for alleged violation of safety rules on September 29, 1969 is sustained.

WCC 69-79 - The grievance filed on account of Grievant's demotion is sustained.

WCC 69-80 - The grievance filed on account of the Company's refusal to upgrade Grievant to fill a temporary vacancy as Craneman on October 7, 1969 is dismissed as moot.
BACKGROUND

Grievant, a former Billet Yard Craneman (Job Class 8), Hot Mill Division, Lorain-Cuyahoga Works grieves three separate Company actions: (1) a five day suspension for alleged violation of safety rules in the operation of an Overhead Electric Travel Crane on September 29, 1969; (2) removal of Grievant from his Craneman position on October 6, 1969, because of alleged incompetence to perform his job; and (3) refusal of the Company to upgrade Grievant (then a Laborer, Job Class 2), to fill a temporary vacancy as Billet Yard Craneman on the third turn, October 7, 1969.

Grievant had performed as a Craneman for approximately 16 years prior to the events at issue. As operator of the Overhead Electric Travel Crane in the Billet Yard, it was Grievant's primary responsibility to unload billets from railroad cars, to move the billets into storage and to transport the billets for charging the Hot Mills. The Craneman in his overhead cab is aided in performing the tasks by a Hooker (Job Class 7), who works on the ground and, by hand signals, aids him in manipulating the Crane.

The Billets, in question, while they vary in thickness, are usually about 30 feet long, with each one weighing approximately 450 pounds. They arrive at the Billet Yard from the manufacturing mill in open gondola-type railroad cars. The car is approximately 8 feet wide and 50 feet long. The billets are loaded onto the cars in bundles of 45 or 50, referred to as a "lift". The first of such lifts is placed in the car and properly blocked. Others, again blocked, are placed atop the first ones until the car is full. When the loaded car arrives at the Billet Yard, the Craneman-Hooker team unload each lift of billets. The Crane spreader bar, to which are attached two sister hooks, is lowered into the car. The Hooker, with the aid of a hand hook, wraps a chain around each end of the lift and fastens each chain to a sister hook. The lift is then hoisted out of the car. Frequently, however, when the railroad car arrives, it is found that the blocking has not held up and a lift is scattered in the car. The unloading process then becomes more complicated. It is necessary that one end of the bundle of billets be hitched to one of the sister hooks. A chain is attached to the other sister hooks and permitted to hang free. The hitched end is then raised a short distance. The result is to gather the billets back together again. The Hooker then goes to the other end of the billets. Using his hand hook and blocking when necessary he slides the free chain under that end. The Craneman then lowers the opposite end. At that point, the Hooker can hitch up the remaining chain to the remaining sister hook and the lift can be removed from the car.
On September 29, 1969, Grievant and his newly assigned Hooker were engaged in unloading a gondola car in the Billet Yard. The whole car load had shifted to one end of the car during its travels. They had successfully removed four lifts of billets and, at approximately 9 P.M., began working on the fifth. It was found, however, that the blocking on this lift had not held up. The lift was spread out. The blocking at the end of the lift further from the end gate, where the unloading process would normally begin, was completely gone. The scattered lift was "cradled" among other lifts of larger billets. The use of the more complicated procedure became necessary. The Hooker was able to place a chain around the end of the lift closer to the end gate of the railroad car and hitch the bull ring of the chain to the sister hook. According to Grievant, the Hooker then walked, in the car, alongside the lift, preparatory to sliding the chain underneath the opposite end at the appropriate time. When the Hooker reached a point alongside the empty sister hook, he allegedly gave the Grievant the hand signal to raise the one end of the lift, already hitched. As that end rose, apparently one of the billets caught on the end gate of the railroad car. The result was to create a fanning effect at the other end, where the Hooker was standing. The single moving billet struck the Hooker with sufficient force to cause his death. At the time of the accident, the Hooker was standing at a point approximately 12 feet from the end of the billets still on the ground, more than 10 feet from the sister hook hitched to the bull ring, but less than 10 feet from the spreader bar sister hook which was not attached. Aside from the Grievant and the Hooker, no one else was in the immediate vicinity.

The Company has established a "Safe Job Procedure" referred to as "SJP", for various activities in the plant. That for "Picking Up a Lift From Car - Craneman, Billet Yard" is known as 1-BY-2-4, and was issued September 28, 1966. The SJP is retained by the appropriate Foreman and reviewed periodically in whole or in part with the appropriate employee. The applicable portions of this SJP are as follows:

**OPERATIONS PROCEDURES**

1. Signal

"1.A. Craneman must not move lift or crane without Standard hand signal from a properly designated person. He shall take signal from one Individual only.

   B. Do not move crane if signal is given improperly or not clearly understood, or when he cannot see Hooker.

   C. The Craneman must take emergency stop signal from anyone.

   D. A craneman must not make a lift nor move his crane, regardless of signals if someone is in a position to be injured."
2. Clearance from Engine
   A. Craneman must not place or remove load from railroad car while engine, trackmobile, or diesel crane is attached to car.
   B. Craneman to check position of Hooker before lowering spreader bar. Hooker must be standing in clear (10 ft. from lift).

3. Swinging Chains
   3. Craneman must stop swinging motion of chains or cable before lowering spreader bar into car.

4. Position
   4. A. Hooker signal Craneman into car. Craneman lowers spreader bar with chains or sling cable against side of car.
   B. Craneman must not lower spreader bar if hooker is standing underneath spreader bar. Hooker must be in clear.
   C. Craneman shall center trolley and bridge over load to be shifted to prevent swinging of load.
   D. Hooker standing in clear will signal man for position of spreader bar hooks onto lift.
   E. Hooker will signal craneman to stop all movement of crane.

5. Making a Lift
   5. A. Hooker will attach chains or cable onto hooks of crane.
   B. When railroad car is being unloaded by crane, craneman shall not move lift unless hooker maintains a minimum clearance of 10 feet from the lift at all times while the lift is in motion, and until such time as the lift is stationary and no higher than one foot above the blocking.
   C. Poor blocking. Hooker will signal craneman to hoist lift one foot after standing in clear, also, signal to stop hooker must be 10 feet from end of lift.

6. Movement of Crane
   6. A. Craneman must not move a lift if he considers the hitch unsafe.
   B. No lift shall be carried over workmen, or Unscrambler-Trackmobile.
   C. Side pull must not be made except on instruction of foreman.
   D. Craneman shall not swing lift except on instruction of foreman.
   E. The movement of the lift shall be made
7. Capacities

8. Signal

9. Test Chains

10. Movement of Cars

11. Emergency Movement of Cars

The Company also established SJP 1-BY-3-6 for "Hooking Up Lifts in Car, Billet Yard", applicable primarily to Hookers, on February 16, 1966, which provides:

**OPERATIONS**

1. Placement of Chains

**PROCEDURES**

1. Craneman places chains into railroad car—stand in clear.
2. Hand Hooks


3. Hooking up Chain to Crane

3. Hook up chain onto sister or solenoid hook. Use both hands. Count billets. Use two chains or two cables. Do not use one cable and one chain.

4. Clearance

4. Walk to end of car - must have ten feet clearance from end of lift. If no clearance, get out of car.

5. Signal

5. Signal Craneman to hoist lifts. Use standard hand signal, GSR Hooker.

6. Poor Blocking

6. Remove one chain or cable sling from solenoid hooks.
   A. Place one chain or cable around one end of lift. Step back from lift - have 10 ft. clearance.
   B. Signal craneman to hoist the end of lift no more than one foot - signal craneman to stop.
   C. Replace blocking - step back in clear and signal craneman to lower lift.
   D. Reposition chain or cable on lift. No pulling of chain under lift, with crane. Use hand hooks.
   E. When needed on both ends of lifts, follow step 6 A,B,C,D.
   F. Hand hooks must be used to pull chains under lift.
   G. All hookers must have 10 feet clearance from lift or get out of car.

The Company further prints a booklet titled "Cranemen and Hookers, Electric Overhead Cranes, General Safety Rules." This is distributed to each Craneman and Hooker. While it generally provides the same information as the SJP's the following relevant portions are cited:

"4. Operating Procedure (Craneman)

4.2.4 A Craneman must not make a lift nor move his crane, regardless of signals, if someone is in a position to be injured.....
4.4.6. Cranemen and hookers must see to it that workmen on the floor are in the clear before the lift is moved, while it is being moved, and when it is being set in place.....

4.4.8 When railroad car is being loaded or unloaded by crane, cranemen shall not move lift unless workmen maintain a minimum clearance of 10 feet from the lift at all times while the lift is in motion and until such time as the lift is stationary and no higher than one foot above the blocking.

4.4.8.1 The movement of the lift shall be made at right angles to the side of the car being loaded or unloaded and never directly towards the workmen in the car.

4.4.8.2 If there is less than 10 feet clearance between the workmen and the lift, cranemen shall make no move of the lift until the workmen get out of the car.....

8. Signals (Hooker)

8.4 The Hooker must see that others are in the clear before he gives the craneman a signal to move...

11. Making lifts (Hooker)

11.5 If blocks are needed, place them before crane moves into position to lower load.

11.6 Keep all parts of the body away from lifts being raised or lowered by cranes.....

11.12 Never place yourself in a confined space between a load lifting device or load being lifted or placed and adjacent piles or other objects.

Grievant's accumulated disciplinary record is as follows:

1/27/69 - failure to make out Craneman Daily inspection report, in violation of SJP l-BY-2-3-6 and General Safety Rule 7.2 - written reprimand.

2/19/69 - violation of SJP l-BY-2-4, 1-D, moving a crane when someone was in a position to be injured - 1 day suspension. (Grievant swung a lift of billets against the tailgate of a car while the Hooker was standing in
that end of the car, causing a block of wood to strike the Hooker.)

8/9/69 - violation of Cranemen and Hooker - Electric Overhead Cranes, General Safety Rules, item 4.2.4. Also Billet Yard safe job procedure 2-4-1-D, 3 day suspension. (Grievant moved his crane while a Laborer was hanging onto the cable being used to pull scrap, swinging the man some 40 feet across the pile, causing injuries.)

10/9/69 - After completed review of all facts relative to the fatal injury in the Billet Yard on 9/29/69, you are hereby suspended for 5 calendar days for violations of safe job procedures for your job which contributed to this accident. This suspension is effective as of 3 P.M. 9/30/69 and is subject to discharge. (This is the first of the grievances under consideration).

The Company on October 6, 1969, further elected to remove Grievant from his Craneman position. Grievant was not to be permitted to operate a crane for at least one year because he was not operating his crane in a manner which showed concern for the safety and well-being of his fellow employees. For the same reasons Grievant was not, subsequent to his demotion, upgraded to fill a temporary Craneman vacancy on October 7, 1969.

The Company first asserts its right to discipline on account of established negligence of an employee or established violation of safety rules. The Company maintains the evidence showed Grievant to be negligent, thus justifying the five-day disciplinary suspension it inflicted. In the Company's view, Grievant violated the clear provisions of the Craneman's SJP 1-BY-2-4-1-D and GSR 4.2.4, as quoted above, by commencing the lift when the Hooker, despite his signal, was in an obvious position to be injured. With the Hooker standing beside the bundle of billets, maintains the Company, it was negligence for an experienced Craneman like Grievant to begin a lift, even in the absence of any rule. The Company insists this is not the method used or tolerated when a lift of billets is to be moved and the blocking is poor. The Company points to the cited Hooker's SJP 1-BY-3-6-(6) as substantiation for this contention. According to Management testimony, in prior practice, one end of the lift of scattered billets was raised, with the Hooker at the end of the car farther from the attached hook, or out of the car if necessary; when the Crane hook and spreader bar stopped moving, the Hooker placed a piece of wood blocking under the billets as close to the grounded end as possible; the Hooker again moved at least 10 feet away from the grounded end; the Craneman lowered the hitched end; the Hooker slid the chain beneath the billets, using his hand hook;
that chain was then hitched to the other sister hook; once the Hooker
was more than 10 feet away and gave the proper signal, the entire
lift moved out of the car by the Craneman. In the Company's view,
the possibility of fatal injury to the Hooker, which did in fact
occur, should have been so obvious to Grievant, as to make his actions
patently negligent. The Company emphasizes that despite Grievant's
many prior years of experience as a Craneman he was, within a
short period of time, guilty of three successive safety violations
which resulted in two injuries and a fatality. All of these injuries,
the Company maintains, arise out of the same kind of violation -
moving his crane without regard to the safety of others. Had Grievant
not been an employee of long standing, states the Company, it is
quite likely that the discipline would have been far harsher, perhaps
even discharge.

While conceding it has no right to use demotion as a form of
discipline, the Company claims it can, and must, remove an incumbent
from his regular job for demonstrated lack of ability to properly or
safely perform his job. The Company contends its action in demoting
Grievant was necessary to protect the safety of other employees, in
accordance with Management's rights under Section 3 and its obligations
under Section 13-F and 14. When an employee such as Grievant, endangers
the very lives of his fellow employees by his negligence, the Company
asserts a justifiable right to demote him, so long as it does not act
arbitrarily or capriciously. The Company points to Grievant's sudden
accumulated safety violations after many years of safe performance as
affirmative indication of Grievant's present lack of safety conscious-
ness. The Company asserts Grievant was no longer competent to perform
the Craneman's job and hence was properly demoted. The Company does
not contend Grievant's demotion should be permanent. Once Grievant
demonstrates to it his ability to perform his old job safely, says the
Company, he has the right to return to the job, by virtue of his senior-
ity. It is the claimed prerogative of the Company to determine when
the Grievant has reacquired his sense of safety consciousness. With
respect to temporary assignments, the Company raises substantially
the same argument, claiming the right under Section 13-F to refuse temporary
assignments to Grievant to work as a Craneman so long as it feels he has
not yet demonstrated his ability to perform the job safely.

The Union first raises a procedural matter. It points to
Section 8-B, paragraph 101.2, under which "an employee, who is summoned
to meet in an office with a supervisor other than his own immediate
supervisor for the purpose of discussing possible disciplinary action
shall be entitled to be accompanied by his grievance committeeman or
assistant grievance committeeman if he requests such representation..."
The Union points out that the investigation into the accident, on the night of September 29, 1969, took place in an office other than that of Grievant's immediate supervisor. The Union asserts Grievant was casually told, at the conclusion of the fact-finding investigation without Union Grievance Representation, that he was being suspended for five days. The Union complains that no opportunity was provided for any discussion of the matter before the Company took such action.

The Company's response to this argument is that it complied with the appropriate procedural requirements. In the Company's view, Management's inquiry conducted on the night in question was not for the purposes of discussing discipline at all. The Company points to the fact that the accident hearing under Section 14-D-4, was held with Grievant's own supervisor. According to the Company, the question of disciplinary action arose only at the conclusion of the investigation when Grievant asked what was to happen to him. Supervision then properly indicated, goes the argument, that Grievant would receive the 5 day suspension. The Company feels the opportunity for the Union Grievance Committeeman to be present at the investigation into the facts of the accident was not necessary. The Company calls attention to the fact that when the Section 8-B hearing was held, in accordance with paragraph 100, Grievant was represented by the appropriate Grievance Committeeman.

Substantively, the Union questions the safety rules and their applicability to this problem. SJP's, it points out, are not distributed to employees, but are retained by Management. To enforce these to the letter, in Union's judgment, should first require such distribution, as well as a change in practice. According to the Union, there are varying interpretations as to what constitutes safe procedure under the SJP's. For instance, says the Union, the Company on the one hand contended the Crane spreader bar itself constitutes a lift and the SJP's direct that an employee must not stand beneath a lift. At the same time, the Union points out, the same SJP's direct the Hooker to climb beneath the same spreader bar to hook up the chain around the lift to the bar's sister hooks. According to the Union, the Company's determination that a given practice is or is not safe depends upon the extent to which production is impeded by that practice. Subsequent to the accident, the Union points out, it became necessary to alter the SJP's because their strict application by Union employees resulted in production delays.

Prior to the accident, under Union interpretation, the Craneman-Hooker teams treated a bundle of billets being unloaded as a "lift" only when both chains were hitched to both sister hooks. The rules requiring the Hooker to be 10 feet from a crane, making a move, according to the Union, was understood to mean 10 feet of clearance from the point the actual cable was being raised, not 10 feet from the "grounded end" of the billets. The Union emphasizes that not until SJP revisions after the accident were the words "grounded end" inserted in the 10 foot clearance concept. Union testimony indicated the past practice in these situations to be as follows: after ascertaining the bundle of billets was
not butted against the end of the railroad car, the Hooker would wrap a chain around one end of the bundle of billets and hitch it to one of the Crane's sister hooks; he would then position himself at the other end of the billets, alongside the other sister hook, and affix a free hanging chain to that hook; on signal from the Hooker, the Craneman would raise the hitched end until there was enough clearance for the Hooker, using his hand hook, to reach underneath and pull the free hanging chain beneath the billets, using additional blocking if required; as the chain was being pulled beneath the billets, again on signal from the Hooker, the Craneman would lower the hitched end; when the free chain was "strung" beneath the billets, the Hooker would signal the Craneman to halt the Crane; the Hooker would finally hitch the free chain to the remaining sister hook, follow the 10 foot clearance rule, and signal the Craneman to remove the "lift" from the car. Supervision had allegedly observed this procedure on many occasions in the past, without complaint or instruction to the contrary. In the Union's judgment, there is no other practical way to accomplish the required task, even today, except for the Hooker to work directly alongside the scattered billets.

The Union cites several areas in which it feels the Company was negligent here. The Union claims the railroad car was not blocked properly at the point of origination, nor were bands placed around each individual lift. The latter action, states the Union, would have surely prevented the very accident which occurred. To emphasize this, the Union points out that the Company, subsequent to the accident, did send several Management personnel to Duluth, the shipping mill, to see that lifts would be banded in the future. The Union also points to the fact that the accident occurred at night and claims the area lighting was inadequate. Subsequent to the accident, more lighting was installed in the area.

The Union maintains the Grievant himself was not negligent. Grievant was following instructions at the time of the accident, it asserts, performing the required task as it had been performed time after time in the past. There is, in the Union's view, a matter of judgment concerning the SJP interpretations. In the event the Hooker is in obvious danger, the Union concedes it is the Craneman's duty under the rules to call this to the Hooker's attention before commencing a lift. However, the Union argues, there is another rule forbidding the Craneman from moving his crane in any direction, except on specific instructions from the Hooker. Should the Craneman's judgment not agree with that of the Hooker, says the Union, the Hooker prevails and he makes the final determination concerning the move. In this case, the Union contends, Grievant was in no position to determine whether the billets would clear the end of the railroad car, since he was in his crane cab, some distance away. The Hooker was, in fact, more than 10 feet from the cable being lifted at the time, the Union emphasizes. While conceding the Hooker, under the circumstances, might have been negligent in directing the lift to be moved, the Union argues that he was the only one in a position to make the proper judgment concerning the clearance. Once the Hooker gave the appropriate signal, contends the Union, the Grievant was duty bound to follow it and proceed with the lift.
The Union asserts that Grievant's demotion was, in fact, a disciplinary action and therefore improper. Grievant, in its view, was not guilty of unsafe job performance, but rather is the victim of a series of unfortunate circumstances. When Grievant injured the first man on February 19, he was allegedly following the hand signals given to him. According to Grievant's testimony, in the instance of August 9, he was watching the Mill to be charged, pursuant to his primary job responsibility, could not see beneath his spreader bar and was in no position to realize that a careless laborer was just then hooking a line onto one of the sister hooks. Grievant attempted to explain his failure to file grievances for either of these events by stating he had accumulated so much overtime on the Crane he was willing to accept the suspensions as an enforced vacation. The Union pointed to Grievant's vast experience as a Craneman as proving his ability to properly operate his Crane. It particularly pointed to Grievant's 218 hours of overtime during 1969 alone as proof of his competence to perform his Craneman's job, and as acknowledgment by the Company of that competence. The Union contends Grievant happened to be in the unfortunate position of operating the Crane on the night when the Hooker was accidentally killed. The Union takes the position that, in arbitrarily demoting Grievant, it wrongfully violated his seniority rights.

The Union finally argues that Grievant was improperly denied the temporary vacancy as Craneman about which he complained. In its judgment, Grievant was fully qualified to perform the work. He admittedly was the senior man. The same arguments applicable to the demotion are, it claims, applicable to the temporary promotion.

**FINDINGS**

The promptness with which Management undertook its investigation of the accident on the night of September 29 is commendable. However, the conduct of that investigation is open to question. Justified under the provisions of Section 14-D-4, its stated purpose was to gather the facts, determine the cause and make recommendations to prevent a recurrence. While Management participants included the Superintendent and General Foreman of the Hot Mills Division, the Superintendent and Assistant Superintendent of Lorain Works, the Superintendent of Cuyahoga Works, the Safety Engineer and the Safety Director, not a single Union Safety Committeeman was notified or invited. In at least the one preceding similar investigation the Union Safety Committeemen were active participants. Management's investigating group observed the physical conditions at the accident scene, called in several Billet Yard Hookers to determine how they performed the job in question and interrogated the Grievant, the only living eye-witness. Grievant was not advised that, pursuant to Section 8-B, paragraph 101.2, he was being summoned to discuss possible disciplinary action. Neither a Safety Committeeman nor a Grievance Committeeman accompanied him into the investigation. The investigating group reached the following reported conclusions: the Hooker was negligent in failing to walk to the end of the car further from the billets before giving the Craneman his signal; the Hooker violated the 10 foot rule described in the General Safety Rules and the Hooker's SJP; the Grievant was negligent.
in raising the hitched end of the billets when the Hooker was in a position to be struck by a fanning billet; the Grievant made a lift, or moved his crane, regardless of signals, when the Hooker was in a position to be injured, in violation of the General Safety Rules and the Craneman's SJP. At the end of the investigation, and only after a request by Grievant as to his status did the General Foreman summarily inform Grievant he was to be disciplined with a five day suspension, subject to discharge. It is difficult to conclude this was a spur-of-the-moment decision by Management. It is equally plain that, in this particular instance, the application of 14-D-4 and 8-B paragraph 101.2 are inextricably interrelated.

The key issue, to which the investigation of September 29 failed to properly address itself, was the then existing practice observed by the Craneman-Hooker teams in the Billet Yard, when unloading a poorly blocked, scattered bundle of billets located close to the end of the railroad car from which they were being removed. Grievant stated, according to the Third Step Minutes, that he was performing his job as Craneman on the night in question as it "had been performed 10,000 times before". Until Management's testimony at the hearing, there is no indication concerning Management's position on the claimed practice. Apparently, this issue was not adequately explored at the September 29 investigation.

At the hearing, the Union's version of the practice was confirmed in detail by a Craneman and a Hooker who had worked in the Billet Yard since its installation, in addition to the Grievant himself. It was their opinion that only the Hooker can tell if the billets are actually butted against the railroad car's tailgate. From his comparatively distant position, they stated the Craneman can only tell if the billets are close. If the Hooker can place a chain around the billets at the tailgate end without being first required to pass the chain beneath the billets, it is their judgment that the Craneman can safely assume the billets are not butted. They view the Craneman's duty in protecting the Hooker as limited to calling to his attention any obvious safety hazards the Craneman can observe, such as a short billet. Once this is done, and the Hooker gives the signal for the Crane to move, it is their statement that the practice is for the Hooker to have the final say, and for the Craneman to abide by the Hooker's signal.

Management's version of the practice was substantiated by the Superintendent and General Foreman of the Hot Mills Division. Their observations were that the task was performed in the past in accordance with the procedure outlined in the SJP's and the General Safety Rules. It was their view that the 10 foot clearance rule was in effect at all times and that clearance was calculated by, in effect, drawing a 10 foot imaginary ellipse around the billets involved. The Superintendent indicated he walked through the Mill two or three times each working day, saw the procedure in operation, never saw the practice described by the Union and never had to warn anyone to change. The General Foreman asserted he observed the Craneman-Hooker teams four times a day, climbed into the railroad cars to observe the procedure, saw the Hookers walk to the end of the car, or climb out of the car in following the procedure he claimed to be in effect, never observed a violation of Company procedure and never observed the Union practice.

An analysis of the conflicting testimony indicates the practice...
in this type of situation, up until the date of the accident, to be as
the Union contends. The description of the procedure by the two Crane-
men and the Hooker who worked full time in the Billet Yard, on a day-to-
day basis, since the Yard was first established over 15 years ago, is of
more weight than that of the two Management witnesses who occasionally observed
the procedure, but only as part of their other duties. In this particular
instance, it appears the procedure followed by Grievant and his Hooker was
in accordance with that practice. When the practice differs from written
rules, as is the case here, Grievant cannot properly be punished for
violating either a rule or an SJP which contravenes that practice.

The changes in the SJP's made subsequent to the accident are not
material to this problem. Whether the addition of the words "grounded
end" to the application of the 10 foot clearance concept for the Hooker
during a crane move is considered a "refinement" as the Company argues,
or as a "material change" as the Union contends, such after-the-fact
language change should have no bearing on the proper interpretation of the
language or the practice at the time of the accident. This does not
mean the Company cannot strengthen and improve existing safety rules at
any time, in light of practical operating experience and changing condit-
ions. The decision in the instant case, however, turns on the specific
practice as it prevailed when the claimed safety infraction occurred.

Since the SJP's are retained by Management, and not distributed
to each employee, but merely reviewed with him, it is more reasonable
to examine the alleged rule violation in terms of the language of the
General Safety Rules, applicable to Hookers and Cranemen and actually
distributed to each. The provisions of G.S.R. 4.4.8 requiring the 10
foot clearance by the Hooker before the Craneman moves the "lift"
depends on what constituted a "lift" on the night of the accident. In
view of the past practice, the Craneman's assumption that a "lift" began
only when both chains were hitched to both sister hooks was correct.
There was therefore no violation of this rule, G.S.R. 4.2.4, which forbids
the Craneman to make a lift or move his crane, regardless of signals, if
the Hooker is in a position to be injured, is a broad, general rule.
There is no validity to the Company's contention that the rule was viol-
ated because, upon movement of the crane, the Hooker was in fact injured,
so that he was in a position to be injured. Since the Grieving Craneman
was not in the same close proximity to the billets and the car tail-
gate as was the Hooker, it was reasonable for Grievant to assume, when
the Hooker hitched the chain around the billets, that none of the
billets were butted. This negates the violation of the rule attributed
by Management to Grievant when he followed Hooker's signal to raise
the one hook. Finally, the past practice would indicate that, since
the same procedure had been followed many times before, the Grievant
cannot be charged with violation of this rule at all, much less with
the negligence the Company seeks to impute to him.

With respect to WCC-69-78 (the five day suspension), the prior
practice for unloading poorly blocked billets was followed, so that the
Company did not have proper cause to discipline Grievant for his actions
on September 29. This grievance must be sustained.

In considering WCC 69-79 (the demotion), it must be borne in
mind that the prior practice followed by Grievant removes the triggering event upon which Management based its decision. Whether or not that decision was disciplinary becomes moot, since the demotion was improper in any event. This grievance, therefore, must also be sustained.

Since the Company's decision to demote Grievant was incorrect, further consideration of its decision to deny him the temporary vacancy for which the grievance at WCC 69-80 becomes unnecessary.

**AWARD**

WCC 69-78 - The grievance filed on account of the five day suspension to Grievant for alleged violation of safety rules on September 29, 1969 is sustained.

WCC 69-79 - The grievance filed on account of Grievant's demotion is sustained.

WCC 69-80 - The grievance filed on account of the Company's refusal to upgrade Grievant to fill a temporary vacancy as Craneman on October 7, 1969 is dismissed as moot.

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