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

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BOARD OF ARBITRATION

Case No. USS-4913-H

June 18, 1965

ARBITRATION AWARD

UNITED STATES STEEL CORPORATION
Clairton Works

and

UNITED STEELWORKERS OF AMERICA
Local Union No. 1557

Grievance No. A-64-33

Subject: Discharge.

Statement of the Grievance: "The Union protests the Com- pay discharging the grievant, Charles LeMon, Jr."

This grievance was filed in the Third Step of the grievance procedure May 8, 1964.


Statement of the Award: The grievance is sustained in that Grievant LeMon's inability to perform the Leverman (Finishing) job safely was not a proper cause for discharge. Management was entitled only to return him to his regular job of Hot Bed Operator and should have done so. In accordance with Section 8-C of the Agreement, grievant shall receive compensation for the period of his improper suspension and discharge, based on his regular Hot Bed Operator job.
This grievance from the Rolling Department of Clairton Works protests the discharge of Charles LeMon, Jr. for failure to follow safe operating rules on April 25, 1964 and earlier occasions.

The last incident which led to the discharge is described in the disciplinary slip given to grievant, as follows:

"4-29-64 - On the 4-12 turn you entered a bar through the 7th pass while the Stamper was on the Lower intermediate table chaining up the previous bar which was cobbled. This could have resulted in injury to the Stamper. Rolling Mill supervision has warned you on previous occasions about entering bars through the mill while other mill personnel are in a position to become injured."

The Safety Rules involved are as follows:

General Safety Rule 6.17:

"Do not turn on any electricity, gas, steam, air, oil, acid, or water, or set in motion any machinery or equipment unless you are authorized to do so and then only after you have made sure that no one is in a position to be injured."

(Underscoring added.)
Safe Job Procedure M-24:

"Making certain all controls are centered before engaging switches. Before checking action of tables or turners make sure all mill personnel is in the clear. Normal operation of the mill requires you to keep a close watch for product that is not turned properly. Be on the alert for men crossing mill tables when mill is operating. When turners fail to turn product, table rollers must be stopped completely and not moved until wrencher has removed wrench and stepped back off apron plate, and given you a hand signal to move the product. Product that has to be guided into 6th or 8th pass must be done by the Roller or Guide Setter and not by the wrencher. Do not move product until given a signal by the person holding the wrench. The signal is a movement of the head or a hand motion in the direction he wants you to move the product. Waving the hand back and forth is a signal to stop. Do not enter product into rolls when anyone is on the other side of the rolls."

(Underscoring added.)

Grievant LeMon has 18 or more years of continuous service at Clairton Works. His first employment was in 1939, but his continuous service extends only to 1946, or 1942; the precise date on which his continuous service commences need not be determined here.
By 1957, grievant had reached a point in promotional sequence in the 21" Mill where he began to fill temporary vacancies on the Leverman job (Finishing), Class 11, for training purposes, under Section 13-F. The primary function of the Leverman job is to operate electric and hydraulic table controls to conduct bars through the roll stands. Grievant's failure to perform competently as Leverman (Finishing) led to the following infraction slips in 1957:

"6- 6-57:
Running a bar of S-281 into leader pass and into dogs on high table because of dogs not having cleared table causing four cobbles, also running a bar of S-281 into finisher and into a bar on lower finisher table which a test was being sawed from, ruining a saw blade creating a dangerous situation and causing 5 cobbles. WARNING.

"6-13-57:
Running a bar of 6" chan. thru 6th pass and onto receiving table while another bar was on table losing both bars plus two behind on mill and causing 10 min. delay, also running two bars of 6" chan. into leader pass necessitating removal of top roll at intermediate to burn and remove cobbles causing 80 minutes delay. WARNING."

Between 1957 and March 19, 1963 grievant was not assigned to the Leverman (Finishing) job because of the low level of operations at Clairton. After having worked 8 turns as Leverman (Finishing) in March of 1963, grievant was demoted to his regular Hot Bed Operator job on the ground that he had performed the
Leverman (Finishing) job in an unsafe and unsatisfactory manner on numerous occasions, particularly in moving bars through the mill without proper signal, and when bars were not turned properly for rolling.

This removal of grievant from his temporary assignment as Leverman (Finishing) produced a grievance protesting that it was improper to refuse to assign him as Leverman, for training purposes, in accordance with Section 13-F of the Basic Agreement. The grievance was granted April 17, 1963, and Superintendent Frazier specifically instructed grievant not to move bars through the mill until proper signals had been received. After his re-assignment as Leverman (Finishing) for training under Section 13-F, grievant received a Violation of Rules slip for moving product on the runway when a fellow employee had a wrench on the product. This incident occurred on May 4, and a grievance requesting that the discipline slip be removed from LeMon's record was withdrawn after Second Step discussion with Superintendent Frazier. On May 31, 1963, grievant received another Violation of Rules slip for leaving his job as Leverman (Finishing) without notifying anybody, thereby producing two cobbles and a delay.

On October 11, 1963, LeMon again moved a bar on the 21" Mill (6th pass table rolls) before receiving a signal from the Wrencher. This action resulted in injury to another employee, and grievant was suspended for five calendar days, subject to discharge. This Violation of Rules slip read:

"On October 11, 1963, the 8 to 4 turn, you moved a bar on the 21" Mill 6th pass table rolls before receiving a signal from the Wrencher to move the bar this resulting in an injury. Rolling Mills supervision has warned you on numerous occasions in the past about moving bars before receiving a signal. Your action was in direct violation of the Recommended Safe Job Procedure. 5-day Suspension."

A grievance was filed protesting this discipline, and after the hearing on the 5-day suspension, under Section 8-B, Superintendent Frazier advised LeMon and the Grievance Committee-man that LeMon would be returned to the job once more, but that any further flagrant violation of safety rules would not be tolerated and could result in suspension and discharge.

The final incident which precipitated grievant's dis-charge, now under review, occurred around 8:30 p.m. on April 25, 1964. LeMon again was working as Leverman (Finishing) and ran a T-161 elevator bar through the 7th pass upside down, with a resultant cobble for which he was not at fault. While Stamper Poziviak was standing on the apron plate putting a chain around the cobble so that it could be removed by the crane (which was overhead), LeMon proceeded to run a second bar through the 7th pass, thereby endangering Poziviak. Guide Setter Trumpe was near the roll stand and observed the hot bar coming through. Trumpe shouted a warning to Poziviak immediately, loud enough for Poziviak to hear over the mill noise, and Poziviak jumped to safety. The second bar then passed over the first cobbled bar. The Company holds that if Poziviak had remained on the apron plate he could have been injured.

While this near accident was developing, Turn Foreman Funk was approaching the mill, and arrived just in time to see Poziviak jump to safety. After seeing that the mill got back into operation, Funk (about 10 minutes later) went to the Leverman's pulpit to talk over the incident with LeMon. Funk told LeMon that he should have held the second bar until Poziviak was in a position where he could not be injured. According to Funk, LeMon then admitted that he had made a mistake. LeMon denies this. Before the end of the turn Funk issued LeMon a Safety Observation Report indicating violation of General Safety Rule 6.17 and Safe Job Procedure M-24, as quoted above.
Upon seeing Foreman Funk's Safety Observation Report involving the incident on April 29, Assistant Superintendent Lewis conducted an investigation which included gathering information from Funk, Poziviak, Trumpe, and the Roller on duty, Joseph Gretz. The next day a Notification of Violation of Rules slip was given LeMon, suspending him for five calendar days subject to discharge. Following a hearing in accordance with Section 8-B, the discharge was made effective May 6, 1964.

The Union denies that grievant was guilty of any unsafe practice in connection with the April 25, 1964 incident. The Union initially claimed that grievant actually was directed to run the second T-161 bar through while the cobbled first bar was on the table so that observation could be made to determine what had been the cause of the first cobble. Grievant denies that Poziviak was on the apron plate when the second bar was run through. The Union also feels that, if Poziviak ever was in peril, it was not due to any failing on grievant's part, but rather to the fact that Poziviak had his back to the mill while he was hooking up the cobbled bar (in itself an unsafe practice). The Union notes that the Company does not charge LeMon with negligence in respect to cobbling of the two bars, and stresses that the mill equipment is old and erratic. Cobbles are accepted as the rule rather than as the exception, according to the Union. Moreover, it presented evidence to show that operations often continue even though bars are cobbled (not specifically as to T-161 bars, however).

Even assuming that grievant was responsible, as the Company claims, the Union denies that his offense could be regarded as serious. The Union also argues that grievant's prior infractions are in no sense material to the present case, unless it first is found that grievant in truth was at fault on April 25, 1964.
Finally, the Union stresses that the penalty of discharge is out of all proportion to the nature of the offense charged against grievant. At the time the incident occurred, grievant was filling temporary vacancies as Leverman (Finishing) pursuant to Section 13-F, which reads as follows:

"In cases of temporary vacancies involving temporary assignments within a seniority unit, the Company shall, to the greatest degree consistent with efficiency of the operation and the safety of employees, assign the employee with longest continuous service in the unit, provided such employee desires the assignment. Such temporary assignments shall be regarded as training by which the Company may assist employees older in service to become qualified for permanent promotion as promotion may be available."

(Underscoring added.)

The Union emphasizes that under Section 13-F there is specific reference to efficiency and safety, and holds that Management may remove an employee from the job where he has demonstrated by on-the-job experience that he cannot work in a safe manner. If the Company here in fact was convinced that grievant could not operate in a safe manner on the Leverman (Finishing) job, says the Union, the appropriate remedy would have been to relieve him from this Section 13-F assignment and return him to his regular job.
Finally, the grievant asserts that all of his difficulties while as Leverman (Finishing) are attributable to the fact that he is a Negro and had been singled out for discriminatory and hostile acts on the part of at least one member of supervision and another employee. Grievant also indicates that a conspiracy or hostility against him has existed for some years and that he did not have a fair opportunity to prove himself on the Leverman (Finishing) job. In Step 4 grievant testified as to 12 incidents, over about a 14-year period, which he felt showed that other employees harassed him, tried to kill him, endangered his safety, and used mental telepathy against him. These claims were not pressed in any detail at the hearing, but the Company—in rebuttal of the claim of discrimination—produced evidence that among all 21" Mill employees, grievant's disciplinary record was conspicuously bad.

The Company flatly denies any discrimination against grievant, or that he was the victim of a plot (participated in by a member of Management) to make it difficult for him to work in the 21" Mill. The Company can see no question but that grievant was discharged for good cause, and stresses that its patience and hope for improvement on grievant's part had been dissipated over the years by his long record of infractions. The Company notes serious inconsistencies in grievant's version of the April 25, 1964 events: At one time he claimed that he knew that no one actually was hooking up the cobbled bar when he sent the second bar through. On another occasion, and at the hearing, he claimed that he could not see whether Poziviak was where Poziviak says he was standing because of a dirty window in his pulpit, and because vision is obscured by some of the mill equipment. The Company notes, moreover, that its version of relevant events is corroborated not only by the physical circumstances of the situation, but also by the testimony of four persons who saw some part of the situation or participated in it. The Company stresses that grievant on many earlier occasions had received precise instructions on safe working procedures and failed to comply with such instructions.
The Company also shows that a review of the unsafe practice record of the entire 21" Mill Rolling Crew indicates that unsafe practice reports and disciplinary slips were issued to employees on a reasonable and uniform basis, without any discriminatory intent or design. It stresses particularly that three other employees who also are Negroes have filled the Leverman (Finishing) job for as long periods as grievant himself, and yet these three employees have almost perfect disciplinary records in the 14 years of their employment in the Rolling Department. Finally, the Company emphasizes that its records indicate that—far from discriminating against grievant—it actually rehired him on two or three earlier occasions after he had been discharged.

FINDINGS

The first problem here is whether grievant actually was responsible for acts which endangered Pozivniak on April 25, 1964, in violation of safe working procedures. Evaluation of the voluminous evidence, coupled with observation of the facilities at the plant, leaves no doubt that the Company version of the incident is more credible than that of the Union and grievant.

The evidence in balance requires a finding that grievant failed to observe safe working procedures when he ran a T-161 bar through the 7th pass of the mill when he knew (or should have known) that Stamper Pozivniak was in a position to be injured. It is incredible that grievant was not aware, in fact, that Pozivniak was where he was, since the latter was hooking up a cobble, directly under the crane positioned above for this purpose, and operations necessarily had been interrupted
for the very purpose of removing the cobble. Even if Poziviak were not fully visible to grievant, grievant knew what was going on and it was his responsibility to pay close attention until he knew that the cobbled T-161 bar had been hooked up properly for removal before he ran another hot bar through the 7th pass. The T-161 bar is 75 feet long and is the longest elevator bar run on the 21" Mill. This size bar presents greater difficulty in removing cobbles than do most other sections run; no Union witness claimed that another T-161 bar could have been run safely through the 7th pass under the circumstances which existed, even though with smaller or shorter bars this may be possible at times.

Grievant's safety violation on this date was of the same character as earlier serious safety infractions as Leverman (Finishing). It was closely similar to the accident in October of 1963, when an employee was injured through grievant's inability to operate the controls safely as Leverman (Finishing), and grievant was suspended for 5 days subject to discharge.

The principal issue here, however, is not whether the events of April 25, 1964 provided basis for some corrective action by Management. Rather, the question is whether discharge was proper. The fact that grievant earlier had been returned to work (after the accident in October of 1963) on the basis that the Company would give him "one last chance," does not change the Company's burden here to establish proper cause for discharge by cogent evidence.

The Union stresses the temporary nature of grievant's assignments to the Leverman (Finishing) job under Section 13-F. The Union properly notes that if the Company has good reason to be concerned about an unsafe situation in training an employee under Section 13-F, it is not obliged to continue to make such training assignment. This view is correct, and provided the basis for decision in Case USC-588, where it was found that Grievant Kapczynski lacked necessary basic qualifications to learn safe operation of a Soaking Pit Crane. The background facts set forth in that case included the following:
"Bottom Maker (Class 10) Joseph Kapczynski here complains of failure to assign him to fill temporary vacancies as Soaking Pit Craneman (Class 15) in the Standard Structural Department, Structural Rolling Division, South Works.

"Grievant has worked in the Soaking Pits since 1936 and hopes to promote ultimately to Heater (Class 18). Under the existing promotional sequence, however, it is necessary for grievant to become a Soaking Pit Craneman before promoting to Heater. Upon learning this in 1953, grievant requested an opportunity to train on the Pit Crane, and this was provided in the customary manner.

... ... ...

"Late in 1954, grievant complained to his Grievance Committeeman that he was not getting enough temporary assignments on the crane. After intercession of the Committeeman, grievant was given a larger proportion of relief assignments on the Pit Crane until May of 1955. At this point the General Foreman once more concluded that grievant was impeding operations seriously and was not likely to learn Pit Crane operation successfully for lack of basic qualifications. His assignments to the crane once more were curtailed.

"The present grievance then was filed, and in the Third Step the Superintendent concluded that grievant should have another opportunity to learn the job. Thereafter he was assigned
to the job regularly for 33 consecutive turns until the latter part of September, 1955. During this period his continued slowness, uncertainty, and inefficiency in operating the crane produced numerous delays. These included dropping a significant number of ingots, jamming crane jaws in the pits, crossing ingots at the mill entry end, knocking moulds off their bottoms, and the like. Other Cranemen, required to take over operation of grievant's crane on such occasions to straighten out the difficulty, complained of being required to handle more than their share of the work. Management once more concluded that it was impracticable to provide grievant further training at the expense of safe and efficient operations.

"When grievant was removed from the crane late in September, 1955, he was in a highly nervous condition. He expressed relief, in the presence of three Foremen, that he had been taken off the crane and would not be required to endure the nervous stress any longer. Grievant is nervous in demeanor, and reacts poorly under pressure. He has not consulted a physician to learn whether treatment might improve the speed and accuracy of his reactions.

... ... ...

"The evidence fails to establish any discrimination against grievant in providing him the customary opportunity to break-in on the Pit Crane. There is no showing of any specific shifts on which grievant claims he should have
been assigned rather than some other employee with lesser service, under Section 13-F and the Local Seniority Agreement. There is no basis to find that the total number of assignments which he received during the period covered by this grievance is any less than he was entitled to fairly under the applicable agreements. His complaint rather seems to rest on the assumption that the Company is bound absolutely to train him by regular assignment to the Pit Crane for however long may be necessary to overcome his serious deficiencies. Section 13-F does not impose such an obligation in regard to a job of this sort, where the problem is one of basic qualifications, nor is there anything in the local Seniority Agreement or relevant practices as to training which would support this grievance."

When Management concludes that an employee cannot be given further training assignments under Section 13-F because of a safety problem growing out of the employee's incapacity to learn the job, it must establish the employee's lack of necessary basic qualifications by convincing objective evidence. A denial of assignments under Section 13-F in this respect is similar to the situation where Management removes an employee from his regular job for lack of necessary basic ability or fitness to perform safely. This problem already has been treated in numerous Board decisions, including Cases T-254, A-573, N-110, CI-141, and CI-218. Moreover, it is entirely clear that when an employee is removed from his regular job because of inability to perform, he may not be demoted all the way down to Laborer, or discharged, when there are lower rated jobs which he can perform safely and to which his seniority entitles him. On this score, the decision in Case USC-450 is important. It included the following relevant findings:
"This grievance protests demotion of Joseph Raclaw from the job of Stove Tender to that of Laborer in January 1952, and seeks reimbursement for loss of earnings. It arose in the 5-12 Blast Furnace Department, Blast Furnace Division, South Works.

"Raclaw was promoted to the job of Stove Tender (Class 14) from Tuyereman Helper (Class 7) on November 5, 1946.

"The Company asserts that Raclaw did not perform satisfactorily as Stove Tender and cites various safety violations by him commencing June 3, 1948. Other violations of safety rules or failure to perform efficiently occurred on September 11, 1948; January 9, 1949; February 22, 1950; May 7, 1950; July 13, 1950; July 19, 1951; and two instances on January 18, 1952.

"As a result of changing stoves without an Observer present on July 19, 1951, grievant was suspended for 3 days. Again on January 18, 1952, grievant changed stoves with no Observer present in violation of a posted safety rule and repeated safety instructions. On the same day, while workmen were engaged in repacking the bleeder valve on top of No. 5 Blast Furnace with the furnace off blast, grievant opened peep sites in violation of specific instructions earlier given by General Foreman Ries. This action could have resulted in serious injury to employees working on the bleeder valve.
"When grievant changed the stoves on No. 5 Blast Furnace with no helper present on January 18, 1952, he sustained an injury when he fell backward and struck his head on a gas door. More serious consequences of this accident were avoided by prompt action of a supervisor passing by, who arranged for an ambulance.

... ...

"It was early recognized by the Board in Cases N-110 and CI-218 that Management is entitled to remove an employee from a job which he has proven incapable of filling. The undisputed evidence in this case precludes overturning Management's removal of grievant from the Stove Tender job in January 1952.

"The remaining question is whether any basis existed for demoting Raclaw all the way to Laborer (Class 2). It is agreed that when a man is demoted at South Works for failure to perform adequately on a job, the demotion will be made in the reverse order of promotion. This is consistent with the local seniority agreement dated May 15, 1949. Upon demotion from Stove Tender, therefore, grievant prima facie was entitled to assignment to Tuyereman Helper (Class 7) unless Management could demonstrate by objective evidence that he no longer had the necessary ability and physical fitness at that time.
"In the Third Step the Union claimed specifically that grievant 'should have been placed on the job he held before his promotion to the position of Stove Tender'. Management's reply was that grievant had been offered a job as Clayman (Class 4) but preferred to remain on the Labor job rather than accept this more arduous assignment.

"Since the Company elected to assign grievant immediately to the Laborer job, without demoting him to Tuyereman Helper - as it presumably should have done -, it must establish affirmatively by objective evidence that grievant was not qualified to work as Tuyereman Helper after demotion from Stove Tender. This it has not done. An assumption, or a bare claim, that grievant was not qualified to fill all the intervening jobs which he held between Class 2 and Class 14 is not enough to warrant a demotion all the way to Class 2 on the ground of incapacity to perform. One who makes such a sweeping claim as to an employee with long and faithful service must be prepared to back it up with convincing evidence."

Against the background provided by the above quoted decisions, and similar cases, the Board here finds that:

1. Grievant LeMon was guilty of the safety infraction charged to him on April 25, 1964.
2. His actions on this date were similar to earlier acts which also indicated a lack of basic ability on his part to perform the Leverman (Finishing) job properly.

3. Grievant's pattern of unsafe work on the Leverman (Finishing) job extended over a sufficient period to reveal a lack of essential qualifications to perform the job safely.

Grievant's lack of basic qualifications as Leverman (Finishing) reflects no discredit on him as a person. The Leverman job, under the conditions which exist in the 21" Mill, requires considerable manual dexterity, excellent reflexes, quick perception, swift and sure mental reactions, steady nerves, clear vision, and ability to maintain sustained concentration. There must be many employees at Clairton and elsewhere who could not qualify to perform this particular kind of a job, even though fully qualified to fill other responsible jobs requiring different skills and qualifications and which a capable Leverman (Finishing) might not be able to fill.

Grievant's lack of basic qualifications for Leverman (Finishing), moreover, provides no basis to sustain his discharge. It is entirely clear that Grievant LeMon can perform the Hot Bed Operator job safely and satisfactorily, and that he has done so for years. Thus, it should have been recognized that his unsafe acts reflected only a lack of qualifications to function as Leverman (Finishing) and did not show that he no longer could be regarded as a satisfactory employee. The appropriate action for Management at this time was the same as it had attempted twice earlier: to return LeMon to his regular job of Hot Bed Operator and discontinue assigning him for training as Leverman under Section 13-F.
The Company seeks to explain its failure to take this action on the ground that the Union had protested the two earlier instances successfully. The Board cannot accept this explanation. Management cannot abdicate responsibility to take proper or required action simply because a grievance may be filed and prosecuted vigorously. Accordingly, grievant will be returned to his job as Hot Bed Operator with back pay in accordance with Section 8-D of the Basic Agreement.

A final word seems necessary because of the claim of racial discrimination against grievant. Normally, a proper application of such safeguards as appear in Section 8 (in disciplinary matters) and in Section 13 (in respect to seniority rights) should assure that there will be no discrimination against individual employees. Nonetheless, there may be situations—such as here asserted—where an intent or design to discriminate exists, and the parties accordingly have made plain, in Section 4-7 of the Basic Agreement, that—

"It is the continuing policy of the Company and the Union that the provisions of this Agreement shall be applied to all employees without regard to race, color, religious creed or national origin."

If any conspiracy to discriminate against grievant were revealed in the evidence (contrary to this clear policy), the Board would not hesitate to make appropriate findings and direct necessary remedial action. Here, however, there is no tangible evidence to support the claim of a conspiracy. What does seem clear is that there has been friction between grievant and fellow employees for some years, and that grievant sincerely believes (mistakenly or not) that other employees and supervisors long have
been persecuting him. While there was no proper cause here to discharge grievant, the discharge does not of itself establish discrimination because of race or any conspiracy against grievant. Over the years many employees have been discharged because of a good faith belief by Management that such action was proper, and the Board later has held that the discharge was improper. The Company here acted in good faith, being influenced by the fact that grievant's total discipline record over the years has been quite bad, compared to the records of other employees in the 21" Mill. If grievant's bad record over the years were the result of a conspiracy against him, the Board has no doubt that he would have pushed this point vigorously through the filing of grievances long ago. Two impressive witnesses before the Board were of the same race as grievant (and a third was available to testify). All three of these employees have performed the Leverman (Finishing) job for about as long as the grievant, but none ever was disciplined for unsafe work as Leverman (Finishing), and their disciplinary records as a whole are almost perfect. After careful evaluation of the whole record, the Board cannot find any substance to the claim that grievant was the victim of a conspiracy in the present case. Rather, it convincingly appears that he simply lacks necessary basic capacity to perform the Leverman (Finishing) job safely. Management was entitled to act on this basis as long as grievant's rights under all provisions of the Basic Agreement, and relevant local agreements, were observed fully.

AWARD

The grievance is sustained in that Grievant LeMon's inability to perform the Leverman (Finishing) job safely was not a proper cause for discharge. Management was entitled only to return him to his regular job of Hot Bed Operator and should
have done so. In accordance with Section 8-C of the Agreement, grievant shall receive compensation for the period of his improper suspension and discharge, based on his regular Hot Bed Operator job.

BOARD OF OPERATION

[Signature]

Sylvester Garrett, Chairman