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United States Steel Corporation Tubular Operations National Works and United Steelworkers of America Local Union 1408

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BOARD OF ARBITRATION

Cases USS-5149-T,
-5150-T

September 27, 1965

ARBITRATION AWARD

UNITED STATES STEEL CORPORATION
Tubular Operations
National Works

and

Grievance Nos.
TN-64-439,
TN-64-443

UNITED STEELWORKERS OF AMERICA
Local Union No. 1408

Subject: Safety.

Statement of the Grievances: Grievance TN-64-439 (USS-5149-T):
"That he be compensated the time
lost for this day in which he was told to work in an
area which was unsafe for conditions."

This grievance was filed in the
Third Step of the grievance procedure November 5, 1964.

Grievance TN-64-443 (USS-5150-T):
"That the unsafe practices be
stopped and the Company live up to safety rules that
they have published in the safety books which were
distributed to each employee in the Shipping Dept."

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This grievance was filed in the Third Step of the grievance procedure November 10, 1964.

Contract Provisions Involved: Section 14-C of the April 6, 1962 Agreement, as amended June 29, 1963.

Statement of Award: Case USS-5149-T (Grievance No. TN-64-439). The issue of alleged insubordination and resultant disciplinary suspension is returned to the parties for full consideration in the grievance procedure. The grievance is denied insofar as it claims that grievant should be made whole for earnings lost because his request for relief from the job on November 2, 1964 was granted.

Case USS-5150-T (Grievance No. TN-64-443). This grievance is denied.

BACKGROUND

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These two cases grow out of a safety issue raised by members of a Pipe Loading crew in the Shipping and Stocking Unit, Seamless Finishing Department, at National Works.

About 3 p.m. on November 2, 1964, a B. & O. gondola car was positioned for use by pipe loading crews. Attached to the car was a "shop order" tag, dated November 2, 1964, apparently stating in substance: "Bad floor -- set out to home road for repairs." This card had been attached earlier by the McKeesport Connecting Railroad, a U.S. Steel subsidiary operating in and about National Works. The grievants were at work loading pipe in 40-foot lengths for intra-plant shipment on the 3 p.m. to 11 turn. Around 8 p.m. the crew was ready to use the tagged car, which apparently was the only car remaining for loading pipe at that location. Grievant James Will was instructed by the Shipper to stage the car with the customary 4 by 4's prior to loading, and climbed a side ladder to inspect the car. According to Will's testimony, he observed that "a little over half of the floor was burned partially out." Will told the Shipper that the car was unsafe to load, and the latter then called Turn Foreman Hill to check the car. Hill testified that he observed five holes of various sizes in the floor of the car, with 20% to 25% of the car floor (including the holes) charred in varying degree. Hill then entered the car and tested the floor by stamping in the charred areas and was satisfied that the car was usable because the holes were not in the areas where the 4 by 4 staging was to be erected. The holes also could be covered by corrugated sheets which were available in the car. Hill covered 4 of the 5 holes and directed the crew to cover the remaining hole and to then proceed to stage and load the car. Grievant Will refused to comply, saying that it would be unsafe to enter the car, and requested that he be relieved from the job. This request was granted; Will was relieved from work at 8:48 p.m. and went home.

The remaining three grievants again were instructed to proceed with the work, and did so under protest. The car ultimately was staged and loaded without incident; it then was moved to the barge unloading track where it was unloaded by another crew the next day, also without incident.

Grievance TN-64-439 (Case USS-5149-T) was filed by Will on November 5, 1964, requesting: "That he be compensated the time lost for this day in which he was told to work in an area which was unsafe for conditions."

On November 6, 1964 Will was given a notice that he was being suspended for one day on the basis of "Insubordination 3rd turn Monday, November 2, 1964, and repeated past instances of insubordination as listed on reverse side." (Two earlier instances of alleged insubordination were listed.)

Grievance TN-64-443 (Case USS-5150-T) was filed November 10, 1964 by the other three members of the Loading Crew, requesting: "That the unsafe practices be stopped and the Company live up to safety rules that they have published in the safety books which were distributed to each employee in the Shipping Dept."

The Union holds that Management failed to make "reasonable provisions for the safety and health" of the grievants, as required under Section 14-A, when Turn Foreman Hill directed them to stage and load the defective gondola car. It stresses that the car already had been tagged for repair, and argues that the car floor was so badly burned that it could not be rendered safe to work in merely by covering the holes with corrugated steel sheets. In particular, it emphasizes

that Foreman Hill's foot went through a portion of the floor when he was stamping on it. Since Hill weighs only about 140 pounds, the Union believes this incident demonstrates that it was clearly unsafe for the members of the Loading Crew (one weighing about 250 pounds) to enter the car at all. The Union requests an award that employees shall not be required to work under such conditions again.

In respect to Will's grievance, the Union finds it in- 8
credible that Management should have disciplined him with a one-day suspension when he requested relief from duty as permitted under Section 14-C, reading:

"An employee or group of employees who believe that they are being required to work under conditions which are unsafe or unhealthy beyond the normal hazard inherent in the operation in question shall have the right to: (1) file a grievance in the third step of the grievance procedure for preferred handling in such procedure and arbitration; or (2) relief from the job or jobs, without loss to their right to return to such job or jobs, and, at Management's discretion, assignment to such other employment as may be available in the plant; provided, however, that no employee, other than communicating the facts relating to the safety of the job, shall take any steps to prevent another employee from working on the job."

At the outset of the hearing the Company noted that Will's grievance was filed one day before he was suspended, and that on its face the grievance claims only that he should be made whole for "time lost" on November 2, 1964. The grievance Minutes, moreover, contain no reference to the November 6, 1964 imposition of a one-day suspension. The Union Fourth Step representative asserted, however, that the suspension problem was discussed fully in Step 4 without any claim being made that it was not properly within the scope of the grievance. After discussion, the parties then agreed that the suspension aspect of Will's grievance would be returned to them for full consideration and possible settlement in the grievance procedure, and thus would not be dealt with by the Board in this decision.

As to the remaining issues, the Company emphasizes that the placing of a "shop tag" upon an "outside" railroad car does not mean that the car is not to be used within National Works; the intent of such a tag, it says, is to make certain that the car is not used for shipment outside the plant. Such a tag does not mean, in other words, that the car cannot be loaded for intra-plant use: there are a good many cars in use at National Works which cannot be sent out of the plant, and it is not uncommon to load cars in as bad shape as the B. & O. gondola here in issue.

On this score the Company notes that Safety Rule No. 23-02 (Shipping Department) states in part: "Before loading cars, shippers must inspect cars for holes in floor or other accident hazards which must be corrected before loading." In its judgment, this rule is plainly applicable here, and Turn Foreman Hill followed the correct procedure in testing the floor and ascertaining that it could be made safe for loading by proper positioning of the available corrugated sheets.

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Grievant Will, the Company notes, refused to enter the car in order to complete the necessary steps to correct the accident hazard, as contemplated in Safety Rule No. 23-02. It can see no hazard involved in the specific act of entering the car to cover a hole, and then loading the car. Thus the Company can see no basis for finding that any of the grievants were required to work under conditions which were unsafe beyond the normal hazard inherent in the shipping operation.

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FINDINGS

Since the railroad car involved in these grievances cannot now be inspected by the Board, and there being only the testimony of the opposing witnesses, it in truth is impossible to know what the precise condition of the car floor actually was when these grievances arose.

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There is no question that the car was defective: the question on which these cases must turn is how defective for safety purposes insofar as this crew is concerned. For intra-plant shipments of large dimension pipe (40 feet long), using 4 by 4 staging, it is possible to use safely cars which would not be used for shipments outside the plant. This, indeed, has been the long-standing practice at National Works; this practice is in no way challenged in the present grievances. Instead, the Union charges only that this particular car was so defective that it was unsafe to enter.

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There understandably was conflict between the testimony of Grievant Will and Turn Foreman Hill at the hearing. Will asserted that over half the floor was "partially burned

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through," and explained that "there were places where it was burned clean through where this sheet iron was covering, and the rest I couldn't say exactly how far it was burned, but it was burnt." Hill asserted that only 20% to 25% of the floor was charred, but he recalled that there were five holes in the floor. The largest two of these were at each end of the car, while three smaller ones were located near the middle. Hill further stated that none of the holes was at a spot where members of the crew would have to walk in order to install the 4 x 4 staging prior to loading, and that all holes could be covered by the corrugated sheets which were available. He emphasized that a 24-inch wide supporting steel member ran under the entire length of the wooden floor, in the middle, and that this provided clearly safe support for employees entering the car.

There is no doubt that cars with holes in the floors long have been used for loading pipe for intra-plant shipment at National Works. This is recognized in Shipping Department Safety Rule No. 23-02 which requires that such hazards be corrected before actual loading. Lumber and corrugated sheets are available for this purpose. Foreman Hill took the steps which he believed necessary to correct the hazard on November 2, 1964. He has had more than 10 years' experience in this work, and apparently this is the first time that his judgment on such a matter ever has been questioned.

It well may be that Will and the other members of the Loading Crew believed, in good faith, that the floor was unsafe because it was charred over a substantial area. Such a belief, however, does not establish that the floor actually was unsafe. The evidence now available to the Board--without actual inspection of the car--does not support a finding that the specific staging and loading work could not be performed safely, given the fact that the crew was fully aware of the problem and that extraordinary care would be required even after the holes in the floor were covered.

Section 14-C of the Basic Agreement appears to have been written in full recognition that problems of this sort would arise, where employees reasonably might believe that given work could not be performed safely even though it might not be possible--as a practical matter--for them later to prove that their belief was correct. Safety problems often are of an emergent nature, where the same circumstances are not likely to be duplicated later. Section 14-C thus provides employees with an effective means of avoiding what reasonably appears to be serious potential danger, beyond the normal hazard inherent in the operation, by requesting relief from the job.

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Such a request, based upon reasonable belief, cannot be refused under Section 14-C. It was on this basis that Will was relieved from duty at 8:48 p.m. on November 2, 1964. Once relieved in this manner, however, an employee is not entitled to be assigned to other work for the balance of the turn as a matter of right. Whether such other assignment is to be made rests in Management's discretion, absent abuse or discrimination. There is no basis in the evidence here to find that Will should be compensated for the remainder of the turn on November 2, 1964.

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AWARD

Case USS-5149-T (Grievance No. TN-64-439). The issue of alleged insubordination and resultant disciplinary suspension is returned to the parties for full consideration in the grievance procedure. The grievance is denied insofar as it claims that grievant should be made whole for earnings lost because his request for relief from the job on November 2, 1964 was granted.

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Case USS-5150-T (Grievance No. TN-64-443). This
grievance is denied.

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BOARD OF ARBITRATION


Sylvester Garrett, Chairman