

7-20-1965

United States Steel Corporation Heavy Products Operations South Works and United Steelworkers of America Local Union 65

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BOARD OF ARBITRATION

Case No. USS-5177-H

July 20, 1965

ARBITRATION AWARD

UNITED STATES STEEL CORPORATION
HEAVY PRODUCTS OPERATIONS
South Works

and

Grievance No. HS-64-78

UNITED STEELWORKERS OF AMERICA
Local Union No. 65

Subject: Discharge

Statement of the Grievance: "The Union on behalf of Tom Ward #44-770 requests that Management comply with Basic Labor Agreement of April 6, 1964, Section 2 and 8.

"On October 6, 1964, Mr. T. Ward was disciplined and suspended for five days and subsequently discharged without proper cause.

"To remove the discipline and reinstate Mr. Ward and reimburse him for any monies lost."

This grievance was filed in the Third Step of the grievance procedure October 28, 1964.

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

Statement of the Award: The grievance is sustained.

BACKGROUND

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At issue in this case is the discharge of grievant Ward from his position as Catcher in the Alloy Bar Mill of South Works for fighting in the mill on October 5, 1964. He justifies his actions as self-defense; he has worked in the mill for 18 years with an unblemished record.

For many years, employees in the Alloy Bar Mill have been subjected to the preaching of Amos Johnson who preferred to be called the Reverend Amos Johnson by his fellow employees, but was generally known only as "Cap-buster." Preacher Johnson, about 48 years old and 6' 2" tall, was a thin and agile man, who was given to dancing around the subjects of his religious exhortations. When he felt that preaching the Bible was not successful, he would resort to strong mill language and talk himself into a frenzy. His fellow employees looked out for him since they considered him somewhat of a "character." On several occasions, they distracted him from his reluctant potential converts. Among the employees on whom he could count as being his friends was grievant Ward who not only was a "guardian" to Preacher Johnson in the mill but also visited him in the hospital on one occasion.

On Friday, October 2, 1964, Preacher Johnson observed grievant Ward eating a cheese sandwich in the L-shaped shanty used as a lunchroom by employees of the Alloy Bar Mill. Ward's eating a cheese sandwich was an act of treason in Preacher Johnson's mind, and he exploded into showing Ward the errors of being a Roman Catholic. The preaching became rather heated, and Ward avoided an escalation by walking out of the shanty.

The following Monday at high noon Preacher Johnson cornered Ward again in the shanty. Although Ward did not want to resume the disputation, Preacher Johnson would not desist and berated his erstwhile friend for sticking to his faith. Ward took his sandwich and left the shanty. After he had finished eating outside, Ward remembered the instructions of his Supervisor to pick up some cable in the shanty. He went back and looked for it. Unable to find the cable, Ward turned to leave. At this point, he found himself cornered by Preacher Johnson who pranced around him and informed him that he was not going to get away this time and that he better be prepared to hear the truth. Ward proceeded to try to leave but Preacher Johnson barred the way. In the words of an eyewitness, Ward then pushed Preacher Johnson "out of his face" and went for the door. Preacher Johnson picked up a Swedish roller guide. One or more employees cried out a warning. Turning back, Ward faced the tall, prancing Preacher who raised the roller guide menacingly. Quick escape was impossible, because egress to the door was blocked by several employees. Ward saw his only protection in landing a blow on Preacher Johnson's left eye. Having stunned the Preacher, Ward got a hold on him and wrestled him to the ground without inflicting any further harm. He released Johnson who got up, seemingly cooled off. When they left the shanty, they were met by Plant Protection who took them into custody. In the squad car, Preacher Johnson tried to resume his assault on Ward but was restrained by an officer. He then accused the Company of paying Ward to kill him.

Medical examination of Preacher Johnson at the plant hospital disclosed a swollen left eye, a one-quarter inch laceration on the left side of the bridge of his nose, two one-half inch lacerations of the left upper eyebrow, and extensive subconjunctival hemorrhage. He left the mill around 3:00 in the afternoon and drove home. The same day, he went to the Veterans Hospital where he stayed for 11 days.

FINDINGS

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After an investigation of the fight, the Company discharged both employees. This decision was reached on the basis of a hearing held on October 15, 1964. The minutes reflect the facts then available to the Company. Witness Bowens reported on the altercation:

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"Johnson kept talking and Ward pushed him back out of his face. Mr. Johnson reached up and got the piece of steel in his hand. They were standing about 3 or 4 feet apart and that was when Ward hit him."

The Company representative then asked the witness if Johnson threatened Ward. He replied "that he did not recall him making any definite threats in words but he moved his hand toward him."

According to witness Munson, Johnson "reached back and got the steel roll and was coming back with it when Ward hit him."

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Employee Lumpkin related that when Ward came back, "Johnson was acting like he was loco....he used unnecessary words....Ward said "Let me alone" and made a move to start toward the door." The witness was "facing Ward with his back to Johnson, and when he looked around to see, Johnson got a piece of iron."

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Employee Blumenberg gave a signed statement to Plant Protection. It reads in part:

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"Ward finally shoved him out of the way. It was not a violent push by any means. Johnson then grabbed for a piece of steel and when he did this, Tom Ward struck him

"in the face with his fist. The minute he hit him I turned and walked away because I did not want to become involved."

Employees Pettie, Wozniak, and Daniels did not see any blows struck. The Union pleaded in the grievance procedure, and also before the Board, that grievant has worked for 18 years without a blemish on his record. 10

After reviewing this evidence, Management came to the conclusion that a "vicious fight" had taken place; "even though Johnson made a threatening motion toward Ward after picking up the steel bar, this does not absolve Ward from beating Johnson severely, particularly in view of Ward's overwhelming physical advantage." (Although of about equal height, Ward weighs fifty pounds more than Johnson.) 11

Under Section 8-D of the Basic Agreement, the Board has sustained discharges for fighting in the mill unless blows are struck in self-defense, as in Case T-570. Therefore, the sole issue in this case is whether the Company had proper cause for Ward's discharge in view of his claim that he had acted in self-defense. 12

There can be no doubt that the tirades delivered by Preacher Johnson were known in the mill as unnerving and upsetting. When Johnson turned on grievant, he walked away twice. But when he was finally cornered by the Preacher, he saw no way out, and it was not unreasonable for him to try to push the Preacher out of his face. The record does not indicate that the grievant then used any excessive force in clearing a path for his retreat. He proceeded to leave the shanty but, warned by shouts from his fellow employees, turned around and was faced by the Preacher raising a roller guide in his hand. 13

At this point, the Company argues, grievant should have turned again and tried to escape from the shanty. But the question is whether--at that precise time and under the existing circumstances--this would have been a reasonable reaction, whereas an act of self-defense would not be, and whether the force used was proportionate to the threat as seen by grievant. Here, Ward faced a man, known as somewhat irrational, wielding a potentially lethal weapon. He did not see an opportunity for escape and reacted with a single well-placed punch, followed with a firm grip on the momentarily stunned attacker. This falls far short from being a "vicious attack." The injury to Johnson's eye may have been aggravated by wearing goggles - the record is not clear as to whether he wore them in the shanty. In any case, he was treated by an ophthalmologist in the hospital.

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The Company also maintains that grievant should have informed Supervision of the Preacher's ranting. However, up to the point of Johnson's attack, there was nothing so unusual about the Preacher's behavior as to suggest that his missionary zeal would lead to physical threats. Considering himself a friend of the Preacher, grievant could not reasonably anticipate that the Preacher would attack him.

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Thus, the evidence supports grievant's claim that he was cornered by Preacher Johnson, that he saw no possible way of escape, and that, in defending himself, he used force reasonable under the circumstances and aimed to ward off the immediate threat of serious bodily harm. Therefore, the record sustains the Union's argument that grievant acted in self-defense, and the grievance is sustained.

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AWARD

The grievance is sustained.

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



Peter Florey
Assistant to the Chairman

Approved by the Board of Arbitration



Sylvester Garrett, Chairman