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United States Steel Corporation Eastern Steel Operations Homestead Works and United Steelworkers of America Local Union 1397

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BOARD OF ARBITRATION

Case USS-8160

March 29, 1971

ARBITRATION AWARD

UNITED STATES STEEL CORPORATION
EASTERN STEEL OPERATIONS
Homestead Works

and

UNITED STEELWORKERS OF AMERICA
Local Union No. 1397

Grievance Nos.

HH-70-110; -70-111

-70-112; -70-113

-70-114; -70-115

Subject: Discipline

Statement of the Grievances

HH-70-110

"I, C. Morris #30389, hereby request that the slip issued me on 1/12/70 for an alleged infraction on 1/6/70 be removed from my record.

"Facts: Mr. Crouse saw the holes closed up and admitted so at the hearing. He apparently was satisfied but the automatic situation prevails and a slip must be issued.

"Remedy Requested: Take the foreman's word for the work accomplished."

HH-70-111

"I. S. Radakovic, #37276, hereby request that the slip issued me on 1/12/70 for an alleged infraction on 1/6/70 be removed from my record.

"Facts: Mr. Crouse saw the holes closed up and admitted so at the hearing. He apparently was satisfied but the automatic situation prevails and a slip must be issued.

"Remedy Requested: Take the foreman's word for the work accomplished."

HH-70-112

"I, C. Morris, #30389, hereby request that the slip issued me on 1/16/70 for an alleged infraction on 1/11/70 be removed from my record.

"Facts: Mr. Crouse saw the holes closed up and admitted so at the hearing. He apparently was satisfied but the automatic situation prevailed and a slip must be issued.

"Remedy Requested: Take the foreman's word for the work accomplished."

HH-70-113

"I. S. Radakovic, #37276, hereby request that the slip issued me on 1/16/70 for an alleged infraction on 1/11/70 be removed from my record.

"Facts: Mr. Crouse saw the holes closed up and admitted so at the hearing. He apparently was satisfied but the automatic situation prevails and a slip must be issued.

"Remedy Requested: Take the foreman's word for the work accomplished."

HH-70-114

"I, C.Morris #30389, hereby request that the slip issued me on 1/29/70 for an alleged infraction on 1/22/70 be removed from my record and all monies lost be repaid.

"Facts: Mr. Crouse saw the holes closed up and admitted so at the hearing. He apparently was satisfied but the automatic situation prevails and a slip must be issued.

"Remedy Requested: Take the foreman's word for the work accomplished."

HH-70-115

"I. S. Radakovic, #37276, hereby request that the slip issued me on 1/29/70 for an alleged infraction on 1/22/70 be removed from my record and that all lost monies be paid.

"Facts: Mr. Crouse saw the holes closed up and admitted so at the hearing. He apparently was satisfied but the automatic situation prevails and a slip must be issued.

"Remedy Requested: Take the foreman's word for the work accomplished."

Contract Provisions Involved: Sections 3 and 8 of the August 1, 1968 Agreement.

Grievance Data:

Date

Grievances Filed:	February 6, 1970
Step 2 Meeting:	Not Available
Appealed to Step 3:	May 7, 1970
Step 3 Meeting:	May 13, 1970
Appealed to Step 4:	June 16, 1970
Step 4 Meeting:	August 13, 1970
Appealed to Arbitration:	November 9, 1970
Case Heard:	February 23, 1971
Transcript Received:	None

Statement of the Award:

The grievances are sustained.

BACKGROUND

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These grievances, filed by a First Helper and Second Helper at the No. 5 Open Hearth Shop, Homestead Works, protest the imposition of disciplinary action on three separate occasions in January 1970. It is said that the disciplines were not for proper cause under Sections 3 and 8 of the August 1, 1968 Agreement.

1

The two grievants have each in excess of 20 years' experience at their respective jobs. On the dates of January 6, 11, and 22, 1970 both grievants were part of the crew assigned to the No. 68 Furnace. On each of these occasions they were involved during the course of their turn in closing a tap hole on that furnace and, later during the course of the succeeding heat, the heat walked out of the furnace prior to tapping.

2

On the first two occasions each grievant was issued a written warning and on the third occasion each was suspended for one day. The disciplinary notices issued the First Helper read as follows:

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Notice dated January 8, 1970:

"You worked as First Helper, #68 furnace, on the 12:00 midnight to 8:00 a.m. turn on January 6, 1970 at O.H.#5. As such you are paid and required to properly and satisfactorily close the furnace tap hole and to direct fellow worker in same, and in this case for heat #68A016. When this heat had approximately 109 carbon, it walked out the tap hole resulting in remelts to be poured and causing a loss in furnace production time.

"The above constitutes unsatisfactory work and is a violation of Rule 1, Section II, Page 33, of the General Safety and Plant Conduct Rules and Regulations relative to '...carelessness in the performance of duties assigned...'"

Notice dated January 11, 1970:

"You worked as First Helper, #68 furnace, on the 8:00 a.m. to 4:00 p.m. turn on January 11, 1970 at O.H.#5. As such you were paid and required to properly and satisfactorily close the furnace tap hole and to direct fellow worker in same, and in this case for heat #68A032. At approximately 8:15 p.m. this heat walked out the tap hole resulting in the heat to be poured as remelts and causing loss in furnace production time.

"The above constitutes unsatisfactory work and is a violation of Rule 1, Section II, Page 33, of the General Safety and Plant Conduct Rules and Regulations relative to, '...carelessness in the performance of duties assigned...'"

Notice dated January 22, 1970:

"You worked as First Helper, #68 furnace, on the 12:00 midnight to 8:00 a.m. turn on January 22, 1970 at O.H.#5. As such you are paid and required to properly and satisfactorily close

"the furnace tap hole and to direct fellow worker in same, and in this case for heat #68A062. When this heat had approximately 25 carbon it broke out through the tap hole necessitating the making of a 'no order' heat.

"The above constitutes unsatisfactory work and is a violation of Rule 1, Section II, of the General Safety and Plant Conduct Rules and Regulations relative to, '...carelessness in the performance of duties assigned...'"

The disciplinary notices issued the Second Helper were essentially the same as those set forth above.

The Company stresses the high degree of responsibility required of the First and Second Helper for assuring the proper operation of the Open Hearth to which they are assigned. With respect to the tap hole, it is noted that, after a heat has been tapped the Second Helper is primarily responsible for properly closing the tap hole with the assistance of the Third Helper. This is performed from the rear of the furnace with the Third Helper shoveling dolomite into the hole while the Second Helper pushes it to the front end of the hole. It is important to be sure that no voids exist within the hole in which gas could form and prematurely blow out the dolomite. Finally at the outside of the hole the dolomite is covered with a mud plug. Meanwhile the First Helper, in addition to his over-all directional functions, is responsible for facing off the hole at the inside or front end thereof by covering that end with two or three shovels of double burned dolomite. He then must assure that that end remains dry until the furnace is charged.

In essence the Company would hold that the fact that the heats walked out of the tap hole on the three occasions in question in and of itself indicates that the tap hole must have been improperly prepared. It is said broadly that on none of the occasions involved was there any evidence that scrap had lodged in the tap hole or that any other possibilities existed that might have absolved grievants from responsibility for the mishap. The Company notes since the three incidents in question neither grievant has been involved in the loss of a heat.

5

It is the Union's position that the sole reason that the disciplinary action involved here was imposed was because the heats involved walked out of the furnace. The Union accuses the Company of making no attempt to determine whether the mishaps were caused by factors other than the negligence of the grievants. It is said that on each occasion the grievants' work was observed by supervision before the next heat was charged and no comment made concerning any inadequacy in the manner in which the tap hole was prepared. The grievants testified that there have been occasions when heats have walked out even after a Foreman has closely observed the entire preparation of the tap hole and no one has been able to determine the reason for the loss of the heats. These witnesses note that it would be possible for a piece of scrap to be lodged in the tap hole and, after the heat had walked out, there be no evidence of it or of some other factor causing the failure of the tap hole which might absolve the employees working on the furnace.

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FINDINGS

The basic problem in the case such as that involved here is one of fact--can the grievants reasonably be held responsible for the loss of the heats in question because of their alleged carelessness in preparing the Open Hearth for the next heat. It is accepted doctrine that the burden of proving this fact by a clear preponderance of the evidence rests on the Company.

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It is recognized that what occurred here, involving the premature loss of the whole heat of molten metal through the tap hole, very possibly destroyed important evidence indicating the cause of the incident. This renders the burden that must be met by the Company more difficult but it does not mean that just because the heat was lost the Company is justified in placing the sole blame on those employees responsible for preparing the tap hole inferring that for that reason alone they must have been negligent. The use of such a presumption in establishing proper cause for discipline, amounting to a theory of absolute liability, cannot be accepted by the Board.

8

Thus it becomes of prime importance that, immediately after incidents such as those that occurred here, that there be a full investigation with a careful evaluation of the available evidence before any blame is cast about. Then should discipline be imposed and it is challenged as here, the Company must detail fully its investigation pointing up those factors upon which it based its decision to impose discipline.

9

In the instant matter, the Company representative stated in the Fourth Step that the protested discipline was imposed only after a careful investigation which revealed "no evidence of mechanical failure." The inference is that such

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investigation was made after each of the three occasions in question. Yet at the hearing the Company offered few details of how or when the investigation was made or of the specific facts developed in the investigation. Rather, the testimony of its witnesses was limited largely to a general description of how a tap hole is prepared, which, indeed, established the responsibility of the First and Second Helper to perform that work properly, and to responding to certain suggestions made by the Union that might have absolved grievants.

In evaluating proper cause for discipline under the particular circumstances involved here, the Board and the Union are entitled to have full knowledge of all the facts that are in the possession of the Company revealed during the investigation that must be held. The evidence here is lacking in that detail and, therefore, it must be concluded that proper cause for the protested disciplinary action for alleged carelessness in preparing the tap holes on the turns in question has not been established.

Therefore, based on the particular presentations made here, the grievances will be sustained.

AWARD

The grievances are sustained.

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7.

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



Alfred C. Dybeck
Assistant to the Chairman

Approved by the Board of Arbitration



Sylvester Garrett, Chairman