

1-13-1971

United States Steel Corporation Western Steel Operations Gary Works and United Steelworkers of America Local Union 1066

Sylvester Garrett
Chairman

Edward E. McDaniel
Assistant to the Chairman

Follow this and additional works at: http://knowledge.library.iup.edu/garrett_series

Recommended Citation

Garrett, Sylvester and McDaniel, Edward E., "United States Steel Corporation Western Steel Operations Gary Works and United Steelworkers of America Local Union 1066" (1971). *Arbitration Cases*. 94.
http://knowledge.library.iup.edu/garrett_series/94

This Article is brought to you for free and open access by the Sylvester Garrett Labor Arbitration Collection at Knowledge Repository @ IUP. It has been accepted for inclusion in Arbitration Cases by an authorized administrator of Knowledge Repository @ IUP. For more information, please contact cclouser@iup.edu, sara.parme@iup.edu.

BOARD OF ARBITRATION

Case No. USS-8196

January 13, 1971

ARBITRATION AWARD

UNITED STATES STEEL CORPORATION
WESTERN STEEL OPERATIONS
Gary Works

and

Grievance No. SGa-70-1368

UNITED STEELWORKERS OF AMERICA
Local Union No. 1066

Subject: Discharge

Statement of the Grievance:
discharge.

"Management issued improper

"Facts: Same as above.

"Remedy Requested: Reinstate
grievant to his job and make whole for all monies
lost."

2.

USS-8196

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

Grievance Data:

Date

Grievance Filed in Step 3:	September 22, 1970
Step 3 Meeting:	September 25, 1970
Appealed to Step 4:	October 8, 1970
Step 4 Meeting:	October 14, 1970
Appealed to Arbitration:	November 25, 1970
Case Heard:	December 16, 1970
Transcript Received:	December 22, 1970

Statement of the Award:

The grievance is denied.

BACKGROUND

USS-8196

This grievance from Gary Works, Sheet and Tin Division, protests discharge of grievant for alleged insubordination, i.e., "attempting bodily harm to his Foreman," on September 9, 1970, as without proper cause under the Agreement. 1

Grievant, on September 9, 1970, and for approximately one year prior thereto, was employed as a Laborer in the Sheet and Tin Division. "On that day, while scheduled as a Laborer on the second turn, grievant reportedly struck his Foreman across the face with his time card and then shoved him," for which grievant was suspended for five days and, subsequently, discharged. Detailed "Background Information and Facts," thus, appear in Step 3 Grievance Procedure Minutes as follows: 2

"Grievant...was employed by the Company on August 20, 1969. At the time of the incident at issue, he was a seniority listed Laborer in the North Sheet Mill Cold Reduction Department.

"He protests the fact he was discharged for striking and shoving his foreman.

"On Second turn, September 9, 1970, grievant was scheduled and worked as a Laborer. At approximately 2:30 p.m., he was missed from his assigned work area, and three foremen were unable to locate him. When grievant returned to the area at 3:15 p.m., he was told he would be suspended for one day. At 3:25 p.m., he was handed his time card and a discipline notice indicating he was suspended for one day for being out of his

"assigned area. Upon receipt of the discipline slip, he reportedly struck his foreman across the face with the notice and then shoved him.

"Grievant subsequently was suspended five days subject to discharge. On September 15, 1970, a Hearing was held in grievant's behalf at the request of the Union. During the Hearing, grievant testified that he pushed the foreman away because he was standing too close and he was spitting in grievant's face.

"Following a review of the facts as presented in the Hearing and Grievant's prior record of discipline, the suspension was converted to discharge.

"A review of grievant's prior record of discipline follows:

<u>"Date</u>	<u>Infraction</u>	<u>Discipline</u>
3-24-70	Absenteeism	Warning
3-25-70	Out of Work Area	Suspended Balance of Turn + 1 day
4-13-70	Absenteeism	Suspended four days
4-18-70	Failed to do Assigned Work	Suspended Balance of Turn
4-29-70	Handling Spreader Bar Cables without Gloves	Suspended 1 day
5- 5-70	Excessive Absenteeism	Suspended 1 day
8-28-70	Absenteeism	Warning
9- 9-70	Out of Work Area	Suspended 1 day"

The "Statement of Company Position" therein is set forth 3
as follows:

"It is the Company position that grievant deliberately struck his foreman across the face with his time card and then he pushed him. It is Management's contention that if grievant felt the foreman was standing too close and was spitting in his face, grievant could have chosen a more prudent course of action than to push the foreman. Contrary to grievant's claim, there is no doubt that he pushed the foreman to emphasize the fact he objected to being suspended for being out of his area.

"Discharge under the circumstances is proper and for just cause."

And, under "Statement of Union Position" therein it is 4
asserted:

"The Union contends that Management did not have proper cause to discharge grievant. Grievant did not strike or shove his foreman in an act of insubordination as charged, he merely was moving the foreman back because the foreman was spitting in his face. Further, the Union claims that the discipline record referred to by the Company is not a fair appraisal of grievant's history, since his record prior to being assigned in the North Sheet Mill is clear.

"The Union asks that grievant be reinstated to his job and paid all monies lost."

The Fourth Step Grievance Minutes, under "Summary of Discussion," further reflect the following:

5

"The Parties discussed their respective positions as stated above; additional comments were as follows.

"At the outset of the Fourth Step Discussion, Union Witness Mulligan indicated that he had a general statement which he wanted to make before the Grievant was called upon to give his version of what happened on the date and at the time in question. His remarks were directed toward the Foreman involved and his manner when issuing instructions to employees. The employees, he said, resent the way the Foreman instructs them to perform their duties.

"The Union's Representative said that, it is his understanding that, when the Foreman talks to employees he has a tendency to get his face close to theirs with the result they may get spit on due to the Foreman's mannerism when talking. In this case, he said, Grievant did not want to get spit on.

"Grievant...testified that at the time in question, he was away from his work area approximately ten minutes to go to the toilet; that

"when he returned to the job, the Foreman handed him his time card and said that he was being suspended for the balance of the turn plus one day for being out of his assigned work area. He said that the Foreman was angry and shouting to the point where he did not know whether the Foreman was going to hit him or not. [Grievant] contended that the Foreman had his face very close to his and was standing on his feet so that he could not step back. Fearing what might happen, when he received the time card he waved it in the Foreman's face then pushed him away. The next thing, he said, he knew was that he was discharged."

At the arbitration hearing, notably, grievant denied striking and/or pushing his foreman as charged. He denied, moreover, having made such "admissions" in the lower steps of the Grievance Procedure. Upon direct examination grievant testified:

6

"Q Now, will you relate to the Arbitrator, [Grievant], what happened on this particular turn in question?

"A At the time, it was about -- it wasn't 2:30 any way from the start. It was after 3:00; it was almost the end of the turn. I was in the wash house. I was in there for about five or 10 minutes, and I came back out and Woody was on the front of the mill side.

"So, when I came out, he had the suspension slip and the time card. So, he got to hollering, getting frantic.

"I am just telling you like it is. He got to hollering, getting frantic, spitting in my face and carrying on. I am backing off.

"About this pushing deal, I don't even know how that got in there. I threw my hands up. When he got real close to me, I threw my hands up like that. And his feet is bigger than mine. He wears about a size 12 or 13. So, he actually had his feet on mine, almost, and I couldn't do anything but in self-defense, throw my hands up. So, he backed.

"So, I guess the Company interpreted that as I was shoving him."

7

And, the Union further charged Management with "procedural" violations, to wit, inadequate predischarge hearing and nondisclosure of facts in the lower steps of the Grievance Procedure. Specifically, the Union reported (1) that grievant's Foreman at no time appeared at pre-arbitration meetings between the Parties; (2) that upon questioning his absence, Union representatives were told, in effect, that the Foreman "worked midnights and wasn't available," and that Management "didn't want to bother him unless it was absolutely necessary"; (3) that certain written statements of the turn Foreman and another witness (allegedly in Management's possession) were not introduced or otherwise made available to the Union at any time; and finally, (4) that Management "wait/ed/ until arbitration to...try to make a case out of this...thing."

In arbitration, as during lower steps of the Grievance Procedure, Management held fast to its position that grievant was discharged for proper cause under the Agreement. That grievant did strike his turn Foreman about the face with a time card and that grievant did shove or "push" the turn Foreman, Management argues, clearly has been established. It, moreover, denied any irregularity with respect to predischarge proceedings under Section 8-B and/or with respect to pre-arbitration grievance procedure meetings with the Union. 8

The controlling question here remains whether grievant improperly was discharged, without proper cause, under the Agreement. 9

DISCUSSION AND FINDINGS

Notwithstanding procedural questions raised by the Union, 10 this case appears to turn entirely upon a question of credibility. On the procedural questions presented, we do not believe that grievant, in these circumstances, was denied a proper hearing-- nor does it appear that his rights under the Agreement otherwise were violated by Management. And, though the Union claims that grievant's turn Foreman was not present and, thus, was not available for cross-examination either at the predischarge hearing or at subsequent grievance procedure meetings, it does not appear that Management ever refused any request by the Union for his presence. It does not appear, moreover, that any relevant facts improperly were withheld from the Union prior to arbitration. Under the particular circumstances of this case, therefore, we conclude and find that the Union claims of "procedural" violations by Management are not substantiated.

The sole question remaining, then, is whether grievant here reasonably was discharged for proper cause under the Agreement. As has been pointed out, this question, we believe, must be determined upon a resolution of credibility as between grievant and his turn Foreman--the specific point of conflict being whether grievant struck and/or pushed the turn Foreman as alleged.

Upon the entire evidence presented, we view the account of relevant events, as reported by the involved turn Foreman, reasonably to be factual. Grievant's own testimony on these events, plainly has been equivocal and inconsistent on relevant detail. Moreover, grievant's general manner and demeanor at the hearing, as viewed and judged by the Arbitrator, belied his veracity.

Admitting that he waved his time card in the Foreman's face, grievant notably reports, "If I popped him against the face or something, I didn't know it--I am quite sure I didn't." And, with respect to "pushing," grievant further claims, "I raised my hands, but I didn't push him back...you know, in self-defense," because the Foreman "got to hollering and getting frantic and started spitting as he talked in my face," and because "he was almost standing on my feet." Grievant, thus, explained, "It looked like he was going to hit me or strike me or something." The grievant added, "If I had put my hands on him, I wouldn't have pushed him, I would have hit him. I might as well have, that is what that insinuated." And, this testimony was offered at the hearing despite lower step records reflecting an admission by grievant that he, indeed, had pushed the turn Foreman. On balance, then, the credibility question, in our view, reasonably must be resolved against the grievant.

Upon the foregoing and upon the entire evidence presented, grievant is not shown to have been discharged without proper cause under the Agreement. This finding is made also upon consideration of grievant's past disciplinary record as a short-service employee. Accordingly, the grievance may not be sustained.

14

AWARD

The grievance is denied.

15

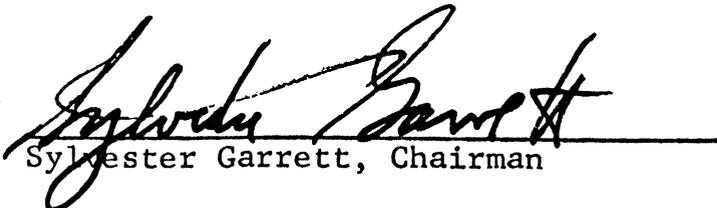
Findings and Award recommended pursuant to Section 7-J of the Agreement, by



Edward E. McDaniel

Assistant to the Chairman

Approved by the Board of Arbitration


Sylvester Garrett, Chairman