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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 No. USS-8336

March 29, 1971

ARBITRATION AWARD

UNITED STATES STEEL CORPORATION
EASTERN STEEL OPERATIONS
Homestead Works

and

Grievance No. HH-70-416

UNITED STEELWORKERS OF AMERICA
Local Union No. 1397

Subject: Discharge

Statement of the Grievance: "I, the aggrieved request to be re-instated to my job. I further request all lost wages.

Facts: To be presented at the hearing.

Remedy Requested: Honor the statement of the grievance."

Contract Provisions Involved: Sections 4 and 8 of the Basic Labor Agreement dated August 1, 1968.

Grievance Data:

Dates

Grievance Filed to Step 3:	October 30, 1970
Step 3 Meeting:	November 11, 1970
Appealed to Step 4:	December 23, 1970
Step 4 Meeting:	January 22, 1971
Appealed to Arbitration:	February 24, 1971
Case Heard:	March 15, 1971
Transcript Received:	March 16, 1971

Statement of the Award:

The grievance is sustained to the extent outlined in these Findings.

BACKGROUND

USS-8336

This grievance from Homestead Works' Slab and Plate Department challenges the suspension and subsequent discharge of grievant, a Motor Inspector, on or about October 23, 1970, as violative of rights protected under the Basic Labor Agreement.

1

The basic facts herein are not in dispute. It appears that on or about June 7, 1970, and continuously for about fourteen years prior thereto, grievant was employed by the Company at Homestead Works. He held a Motor Inspector job; he had an excellent work record; he had no history of disciplinary actions against him; and, he enjoyed substantial seniority benefits based on his continuous service.

2

On or about Sunday, June 7, 1970, upon returning to work from a three-week vacation, grievant personally informed his immediate supervisor that he, grievant, no longer intended to work, as previously scheduled, between sundown on Fridays and sundown on Saturdays, because of a newly acquired religious faith. Grievant told the supervisor, in effect, that he recently had been converted to, and that he wished to abide by, tenets of the Worldwide Church of God. Grievant explained that his new Church recognizes Saturday as the Sabbath, and, that work on that day is forbidden under its tenets. Grievant's normal work schedule, at the time, included a full 4 to 12 turn on Fridays.

3

In any event, commencing on or after Friday, June 12, and on each following Friday thereafter, grievant reported off and/or failed to work his scheduled turn in observation of his Sabbath. For such failure to report to work he subsequently was warned, disciplined and ultimately discharged by Management as of about October 30, 1970.

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Relevant "Background Information and Facts," thus, appear in the Fourth Step Grievance Procedure Minutes as follows:

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"Some time prior to June 13, 1970, the Grievant became a member of the Worldwide Church of God. This church forbids its members from working between sundown Friday and sundown Saturday.

"Commencing on June 13, 1970, the Grievant began absenting himself without approval whenever he was scheduled for work on hours occurring between sundown Friday and sundown Saturday and other days that his church forbids its members from performing work.

"A patient and progressively severe disciplinary program was followed by Management in an effort to have the Grievant comply with his work schedules. This disciplinary program was not successful and eventually the Grievant was discharged from employment."

And, the respective positions of the Union and Company are set forth therein, thusly:

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"STATEMENT
OF UNION
POSITION

"The Grievant, because of his religious beliefs, has just cause for regularly being absent from his scheduled work from sundown Friday to sundown Saturday. His beliefs are so strong in this request that he believes he will be 'eternally damned' if he works on his Sabbath.

"STATEMENT OF
MANAGEMENT
POSITION

"The Grievant in effect is insisting that he have the unilateral right to arrange his own work schedules and, for that matter, select his own occupation. This course of conduct is not only insubordinate but disregards Section 3 and Section 10 of the Basic Labor Agreement.

"The award in USS-5918-S is relevant."

The Union argues that Management properly should have adjusted grievant's work schedule so as to allow him to be off between sundown Fridays and sundown Saturdays--to observe his Sabbath. The Company, however, urges that such an arrangement would amount to favoritism or "reverse discrimination" as against all other employees for whom such arrangements are not and never have been made.

At the hearing, notably, both the Union and Management conceded the instant situation to be one which concerns, "a matter involving Civil Rights," within the meaning of Section 4 of the Basic Agreement. The record reveals, however, that the matter never was referred to, nor considered by, the Joint Committee on Civil Rights at the plant. In this regard, the Basic Agreement, at Marginal Paragraphs 25.2 and 25.3 provides:

"A joint Committee on Civil Rights shall be established at each plant. The Union representation on the Committee shall be no more than three members of the Union, in addition to the President and Chairman of the Grievance Committee. The Union members shall be certified to the plant manager by the Union and the Company members shall be certified to the Union.

"The Company and Union members of the joint Committee shall meet at mutually agreeable times, but no less than once each month. The joint Committee shall review matters involving Civil Rights and advise with the Company and the Union concerning them, but shall have no jurisdiction over the filing or processing of grievances. This provision shall not affect any existing right to file a grievance nor does it enlarge the time limits for filing and processing grievances."

The Union reported at the hearing that although it earlier requested review of the "Civil Rights" aspect of this situation by the Joint Committee on Civil Rights, Management would not agree to submit the matter to that Committee on grounds that it properly could not entertain any matter which already had become the subject of an active grievance. This, the Company at the hearing acknowledged.

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FINDINGS

That the above quoted Agreement language requires review of matters involving Civil Rights by the Joint Committee on Civil Rights, we think, is patently clear. The express direction therein that, "The Joint Committee shall review matters involving Civil Rights and advise the Company and Union concerning them..." plainly is not qualified or limited to matters which are not, as the Company has contended, the subject of active grievances.

10

Apparently, Management has interpreted the added language, i.e., "...but /the Committee/ shall have no jurisdiction over the filing or processing of grievances" as precluding review by the Joint Committee of all matters concerning Civil Rights which become the subject of formal grievances. Such an interpretation is untenable, if, for no other reason than that it would serve to limit or negate other express "redress" rights of employees under the Agreement.

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Marginal Paragraph 25.3 makes plain that the Joint Committee on Civil Rights has no jurisdiction over handling of grievances. In this respect the Joint Committee on Civil Rights appears to be on the same footing as the Joint Safety Committee (under Section 14-D) which also excludes the handling of grievances from the Committee's work. Here, however, the problem is not whether the grievance should be referred to the Joint Committee on Civil Rights, but only whether it was proper, procedurally, to discharge grievant for conduct, agreed by both the Company and Union to concern a matter involving Civil Rights, which never had been considered (as a general policy matter) by that Committee. Significantly, in this situation, grievant continued in active employment for some months prior to the final decision to discharge him. And, while it apparently recognized an involved "Civil Rights" problem, the Company neither took the initiative nor did it respond favorably to a Union request to have that problem (and not the subject grievance) reviewed by the Joint Committee.

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Surely, the right of an employee to file a grievance is a separate and distinct right from that of employees to have the Joint Committee review matters involving Civil Rights and advise with the Company and Union concerning them. Management, thus, erred in refusing to allow the Joint Committee to consider the underlying Civil Rights problem herein raised prior to this appeal, and, indeed, under these circumstances, prior to its actual discharge of grievant.

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At this juncture, therefore, to rule on the substantive merits of grievant's claim, and, thus, to decide whether his unauthorized absences from work, alone, provided just cause for his discharge, would be premature. That grievant is entitled

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to complete consideration of the Civil Rights matter affecting his situation, under the Agreement, is unquestionable. And, complete consideration for him means here that he should not be denied the benefit of a review by the Joint Committee on Civil Rights (of "Civil Rights" aspects of the particular conduct for which grievant was suspended and discharged), in accordance with the Agreement. It is not entirely improbable, to be sure, that such a review earlier would have resulted in a satisfactory adjustment of this matter--without any necessity of invoking the grievance procedure.

In any event, we conclude that grievant's suspension and discharge should be set aside, based on the denial here of complete consideration of the "Civil Rights" matter underlying his situation, under the Agreement. Management, therefore, hereby, is directed, forthwith, to return grievant to active employment in his regular job and to continue him in that status pending review by, and advisement with, the Joint Committee on Civil Rights on the matter herein raised involving Civil Rights. Grievant will be made whole, then, on the basis of a four-day work week, for all losses sustained as a result of his suspension and discharge.

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Upon conclusion of such review by the Joint Committee, and failing agreement on recommendations advanced by it, Management, thereafter, will be free to consider anew grievant's subsequent record of attendance and to impose whatever disciplinary measures, if any, it deems appropriate under Section 3--subject only to the right of grievant to file a new grievance under the Agreement--for any excessive absenteeism.

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AWARD

The grievance is sustained to the extent outlined in these Findings.

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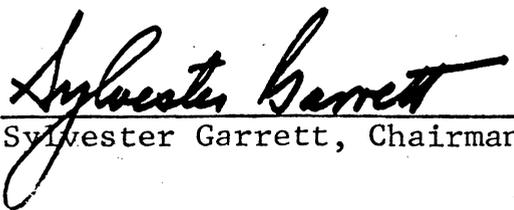
USS-8336

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

A handwritten signature in cursive script that reads "Edward E. McDaniel". The signature is written in black ink and is positioned above a horizontal line.

Edward E. McDaniel
Assistant to the Chairman

Approved by the Board of Arbitration

A handwritten signature in cursive script that reads "Sylvester Garrett". The signature is written in black ink and is positioned above a horizontal line.

Sylvester Garrett, Chairman