

Award No. 685
In the Matter of the Arbitration Between
INLAND STEEL COMPANY
AND
UNITED STEELWORKERS OF AMERICA
AND ITS LOCAL UNION 1010

Grievance No. 10-N-39

Appeal No. 1290

Arbitrator: Bert L. Luskin

March 19, 1980

INTRODUCTION

An arbitration hearing between the parties was held in Harvey, Illinois, on March 10, 1980. Pre-hearing briefs were filed on behalf of the respective parties.

APPEARANCES

For the Company:

Mr. R. T. Larson, Labor Relations Coordinator
Mr. T. L. Kinach, Arbitration Coordinator, Labor Relations
Mr. G. Lundie, Director, Safety and Plant Protection
Mr. T. J. Peters, Assistant Superintendent, Labor Relations
Mr. R. S. Rogich, Assistant Superintendent, 24" Bar Mill
Mr. E. A. Rippe, General Foreman, 24" Bar Mill
Mr. E. Gomez, Turn Foreman, 24" Bar Mill
Mr. P. Kallay, Check No. 2416, 24" Bar Mill
Mr. N. Elish, Check No. 791, 24" Bar Mill
Mr. R. V. Cayia, Labor Relations Representative

For the Union:

Mr. Theodore J. Rogus, Staff Representative
Mr. Joseph Gyurko, Chairman, Grievance Committee
Mr. John C. Porter, Acting Chairman, Grievance Committee
Mr. Phil King, Acting Secretary
Mr. Fedro Hicks, Griever
Mr. Arthur Mata, Griever
Mr. John A. Santos, Grievant

BACKGROUND

John A. Santos was employed by the Company on August 6, 1969. He was established as an employee in the 24" Bar Mill, Plant No. 1 Mills.

On August 20, 1979, Santos was assigned to operate a crane. He was asked by a billet stocker to operate the No. 3 crane for the purpose of placing one billet in a car and using the crane and magnet to move the car from the scarfing and of the No. 1 bloomer track to the charging end. Although there are some fact disputes with respect to the number of cars that were moved, the parties are in agreement that the crane struck the east and crane rail bumpers causing a substantial amount of damage that required immediate repairs. The repairs were completed over a span of approximately twenty hours, and the crane was in full operation at the time that an investigation was conducted on August 22, 1979.

Immediately after the accident, Santos left the crane cab, walked across the bridge to the 4 x 4 yard where he boarded the No. 13 crane which he had been originally scheduled to operate. He remained in that crane for approximately 35 minutes until he was approached by the Department foreman who asked him whether he had been involved in the accident. Santos responded in the affirmative, and Santos was then informed that an investigation would be conducted that same afternoon. Santos was informed at approximately 3:00 P.M. that the investigation would be conducted at 3:15 P.M. in the office of General Foreman Rippe. Santos asked whether the investigation could result in disciplinary action and, when he was informed that there was a possibility of disciplinary action, Santos requested Union representation. The investigation was postponed until 4:00 P.M. in order that Departmental Union representatives could be present, since the Grievance Committeeman and the Assistant Grievance Committeeman were scheduled to start work at 4:00 P.M. At approximately 3:35 P.M. Santos informed the General Foreman that he would not be able to attend the investigation since he had an alcoholism counseling session scheduled at 4:15 P.M. at St. Mary's

Medical Center. Santos refused to postpone that session and the investigation meeting was re-scheduled for 3:30 P.M. on August 22, 1979, since the General Foreman would not be in the plant on August 21, 1979. On August 21, 1979, Santos was informed of the re-scheduled meeting. At the start of the turn on August 22, 1979, Santos informed the General Foreman that he (Santos) had asked the Chairman of the Union's Safety Committee (Ferry) to attend the investigation meeting. Santos insisted that he had the contractual right to be represented by the Chairman of the Union's Safety Committee. Santos was then informed that in accordance with the provisions of the Collective Agreement he was entitled to Departmental Union representation and the provisions relating to investigations to be conducted by the Union's Safety Committee were not applicable. Santos insisted that he did not want Departmental Union representatives to represent him. Santos was then informed that the Chairman of the Union's Safety Committee would not be permitted to attend the meeting in a representative capacity.

At approximately 3:05 P.M. on August 22, 1979, Santos entered the foreman's office and requested his timecard. He again entered the office at 3:20 P.M. and requested his timecard. On both occasions he was informed that he would be expected to attend the investigation that would commence at 3:30 P.M. Santos left the Department and left the plant without receiving his timecard. He did not attend the investigation meeting that was held at 3:30 P.M. and, after certain facts were elicited at that meeting, the Department Superintendent wrote to Santos on August 23, 1979, informing Santos that he was being suspended subject to discharge for violation of Rules 127 j, k and o of the General Rules for Safety and Personal Conduct. A reference was also made to Santos' alleged violation of Rule 125, and he was informed that those violations, together with his overall work record, constituted the basis for the Company's decision to suspend Santos subject to discharge.

Santos requested and was granted a suspension hearing that was held on August 31, 1979. On September 10, 1979, Santos was informed that the investigation failed to disclose any circumstances which would justify altering the suspension action and the suspension was thereupon converted to discharge. Santos thereafter filed a grievance on September 12, 1979, contending that the discharge action was unjust and unwarranted. The grievance was processed through the preliminary steps of the grievance procedure and the issue arising therefrom became the subject matter of this arbitration proceeding.

DISCUSSION

Rule 125 and Rules 127 j, k and o, of the General Rules for Safety and Personal Conduct are hereinafter set forth as follows:

"REPORTING DAMAGE

"125. Report to your foreman, all cases of damage to equipment, machinery, mill product, tools, buildings, etc. Failure to do so may cause further harm or injury.

"127. The following offenses are among those which may be cause for discipline, up to and including suspension preliminary to discharge:

"j. Stealing or malicious conduct, including destroying, damaging, or hiding any property of other employees or of the Company, and the destruction, damaging or pilfering of vending machines or any equipment made available to employees for the purposes of in-plant feeding.

"k. Falsifying or refusing to give testimony when accidents are being investigated; or falsifying or assisting in falsification of personnel records or any other records; or giving false information in making application for employment.

"o. Insubordination (refusal or failure to perform work assigned or to comply with instructions of supervisory forces)."

Santos committed a form of insubordination when he refused to appear at an investigation meeting called by members of supervision for the purpose of determining the cause of the accident which resulted in severe damage to the crane bumpers. Santos was under the mistaken assumption that he had a right to be represented in the meeting by the Chairman of the Union's Safety Committee. Santos was mistaken since he confused his right of representation at a meeting where he may have become subject to the imposition of disciplinary measures with the type of meeting referred to under the provisions of Article 14 (Safety and Health). The Chairman of the Union's Safety Committee was never denied the right to conduct an investigation pursuant to any of the applicable provisions of Article 14. Santos was asked to appear at a meeting in order to determine whether he had operated the crane in a negligent manner which resulted in damage to the crane and to the building's physical structure. Under those circumstances Santos was entitled to representation pursuant to the provisions of Article 8, Section 2 (Discharges and Disciplines). He was offered that departmental Union representation. Two Union representatives were present at the meeting and were available to serve in a representational capacity. Santos did not want to be represented by those

persons since he believed that they were "not good enough," and he insisted on picking and choosing his own representative. He was not contractually entitled to unilaterally make that choice. The meeting was designed to serve a preliminary investigative purpose, and Santos' refusal to attend that meeting did constitute a violation of Rule 127 k.

Santos was charged with causing damage to the crane and the bumpers because of inattention, carelessness and gross negligence on his part. Santos was not charged with any form of vandalism or deliberate destruction of Company property. His failure to report the accident immediately after it occurred did constitute a violation of Rule 125.

In substance, the arbitrator must find that, although Santos did commit a minor act of insubordination and although he did fail to give testimony when an accident was being investigated, those violations, in and of themselves, were not so serious in nature as to justify the imposition of the penalty of termination. Santos did, however, operate the crane in a careless and negligent manner. He was inattentive and he failed to exercise ordinary care. He must be charged with the primary responsibility for the damage that was caused by his failure to follow and comply with the ordinary operating procedures expected of any employee in his classification.

Two Bargaining Unit employees testified to the events which preceded the incident in question. A billet stocker (Kallay), who has been employed with the Company for twenty-three years and who has also had extensive experience as a craneman, testified that Santos entered the crane, discovered an electrical problem and obtained the services of a motor inspector. The crane was immediately repaired by the replacement of a fuse. Kallay testified that Santos positioned the magnet in a car and the movement of the crane caused the magnet to pull the car. Kallay testified that the crane movement was "too fast" and he immediately noted the possibility of an accident. Kallay used his hand signal to indicate that he wanted the crane to stop, and he whistled. The signals were ignored by Santos, and the crane continued at an excessive rate of speed. Kallay testified that there was no loss of power until the crane hit the bumper. He testified that he observed the entire operation end since the magnet was behind the car, a loss of power would have released the magnet. He testified that, under the circumstances, the crane could not have been "pulled" into the bumper.

An assistant billet stocker (Elish) testified that he was a Bargaining Unit employee who had been asked to inform Santos that he was to proceed to the crane and to move a billet for the purpose of completing an order. He testified that a motor inspector replaced a fuse, after which Santos operated the crane, picked up a billet, put it in a stake car and positioned the magnet behind the car in order that the car could be pushed by the magnet. He testified that he heard Kallay whistle and saw the crane approaching the bumpers. He testified that the crane was being operated at an excessive rate of speed and that it did not slow down before hitting the bumpers. He testified that he waved his arms and yelled, but that Santos did not respond to the signals.

Santos testified that he was called to the crane and, after checking it out, determined that there was an electrical problem. He discovered the problem, called a motor inspector, and a fuse was replaced, after which the crane was operational. Santos testified that he placed a billet in a car and proceeded to use the magnet to push the car into the charging area. He testified that the car coupled with a gondola and that when he attempted to raise the magnet, the hoist control did not function. He testified that the magnet remained in the car and caused the crane to strike the bumper.

During the course of the grievance procedure Santos was asked why he had failed to use the crane brake. He responded by stating that a stool was blocking the footbrake and he had not removed the stool. He conceded that the bumper was hit "hard" and he conceded that he did not inform a member of supervision that the accident had occurred until some 25 minutes later when he was approached by a supervisor who asked him about the details of the accident. There is some evidence in the record concerning the condition of the crane when it was checked out some six weeks after the accident. The fact remains, however, that when the incident occurred on August 20, 1979, the crane was operational, as were all of the controls. The crane had undergone regular and periodic inspections and Santos himself had reported the crane to be in good operational condition after the last inspection.

From an analysis of all of the evidence in the record, the arbitrator must find that the accident was caused by Santos' failure to follow the basic rules regulations relating to crane operations. He was careless and inattentive. He failed to be alert to the operating signals from the billet stocker. Had he exercised ordinary and normal care, he would have realized that he was going much too fast and an accident was almost inevitable. Santos was guilty of gross negligence in the operation of that crane. He failed to take the simple precaution of making certain that he could reach the brake if he needed to reach the brake, and he permitted

a stool in the cab of the crane to block his access to the footbrake. His explanation for failing to move the stool borders on the incredible. He complained about the filthy condition of the crane, but he failed to offer any explanation concerning the failure on his part to take the steps necessary to make certain that he had ready access to all of the operating controls.

Since October of 1974, Santos has built a disciplinary record that can only be characterized as "shocking." He has been suspended on seven different occasions for periods ranging from one turn to five turns for acts of insubordination, leaving assigned work areas, deliberate alteration of posted schedules, and for using profane and abusive language directed toward a supervisor. He has been reprimanded verbally and in writing for various other offenses.

In December, 1978, Santos was suspended and subsequently discharged after he was charged with submitting fraudulent insurance claims and for his otherwise unsatisfactory work record. A grievance was filed and an arbitration hearing was held on June 22, 1979. On July 12, 1979, this arbitrator issued an award restoring Santos to employment with the Company, with seniority rights, but without back pay. This arbitrator found that, although Santos was responsible for the series of events which ultimately resulted in the commission of a fraud against the Company, the evidence would not support a finding that Santos actually committed the unlawful, deliberate, fraudulent act. The arbitrator did find that Santos' part in the incident subjected him to the imposition of disciplinary measures, and the entire period of time between the date of Santos' termination and his restoration to employment would be considered to constitute a period of disciplinary suspension from employment. In addition thereto, Santos was required to repay the amount of money that the Company (or its carrier) paid out for the dental services performed on behalf of Santos' divorced wife.

Santos returned to employment with the Company approximately one month preceding the incident of August 20, 1979. Santos' conduct on August 20, 1979, subjected him to the imposition of severe disciplinary measures. When viewed with his prior record, it would under ordinary circumstances constitute just and proper cause for Santos' termination from employment. Consideration must be given, however, to the Company's failure to carry out a directive which it had issued relating to the type of crane operations that were performed by Santos on August 20, 1979.

In June, 1979, an accident had occurred at the No. 1 Warehouse when a crane that was being operated in a manner whereby the magnet was being used to "side-pull" a gondola car struck and severely damaged a building girder. A verbal directive was issued by supervision at that time that the technique of "side-pulling" cars with a crane magnet could be continued, provided, however, that a supervisor must always be present when that technique was being used. The directive was never reduced to writing nor was it fully and completely distributed to all employees involved and to all of the appropriate members of supervision. The Company conceded that the directive was issued and the Company conceded that a member of supervision was not present on August 20, 1979, when the technique of side-pulling a gondola car with a magnet was to be used to move the car containing the billet. Santos was not informed of that directive. The General Foreman of the 24" Mill was on vacation at the time the directive was issued and he was not aware that a member of supervision should have been assigned and directed to be present at the time that the side-pull technique was to be used. It is conceivable that, if Santos was aware of the fact that a foreman was on the floor and was watching the operation, he might have exercised greater care and caution. That does not, however, serve to absolve Santos from the responsibility for his reckless conduct.

The arbitrator, in determining whether proper cause existed for Santos' termination from employment must consider a number of relevant factors. The accident occurred and it caused extensive damage. The arbitrator has found that the accident was caused by Santos' carelessness, negligence and inattention. The arbitrator has found that the procedural steps of the Agreement were followed and he must find that Santos was afforded the opportunity to have a Union representative present during the investigation. The Company did comply with the applicable provisions of the Agreement. However, in view of the fact that the Company failed to follow its own directive requiring the presence of a member of supervision when the car was being moved by Santos by means of a side-pulling procedure, the penalty of termination imposed by the Company in this case should be modified and reduced to a penalty of suspension from employment.

For the reasons hereinabove set forth, the award will be as follows:

AWARD

Grievance No. 10-N-39

Award No. 685

John A. Santos shall be restored to employment with the Company, with seniority rights, but without any back pay for the period between his suspension and subsequent termination from employment and the

effective date of his restoration thereto. The intervening period shall be considered to constitute a period of disciplinary suspension from employment.

/s/ Bert L. Luskin

Arbitrator

March 19, 1980