

Award No. 698
In the Matter of the Arbitration Between
INLAND STEEL COMPANY
AND
UNITED STEELWORKERS OF AMERICA
AND ITS LOCAL UNION 1010

Grievance No. 4-N-64

Appeal No. 1300

Arbitrator: Bert L. Luskin

January 26, 1981

INTRODUCTION

An arbitration hearing between the parties was held in Harvey, Illinois, on January 13, 1981. Pre-hearing briefs were filed on behalf of the respective parties.

APPEARANCES

For the Company:

Mr. R. B. Castle, Senior Representative, Labor Relations

Mr. W. P. Boehler, Assistant Superintendent, Labor Relations

Mr. D. A. Schramm, Mechanical Foreman, No. 4 B.O.F.

MR. W. Perkins, Casting Foreman, No. 4 B.O.F.

Mr. A. Powell, Safety and Training Forman, No. 4 B.O.F.

Mr. M. Roglich, Senior Representative, Labor Relations

Mr. D. Guadagno, Senior Safety Engineer, Safety & Plant Protection

For the Union:

Mr. Jim Robinson, Grievance Committeeman

Mr. Theodore J. Rogus, Staff Representative

Mr. Joseph Gyurko, Chairman, Grievance Committee

Mr. John C. Porter, Acting Secretary, Grievance Committee

Mr. Earl Neal, Grievance Committeeman

Mr. Anthony Sandoval, Jr., Grievance Committeeman

Mr. Linc Cohen, Steward

Mr. William Pratchett, Grievant

BACKGROUND

William Pratchett had been an employee of the No. 4 B.O.F. Department since July 30, 1970.

On August 2, 1978, Pratchett reported for work as a scheduled Tundishman Helper for the 11:00 P.M. to 7:00 A.M. turn of August 3, 1978. Some time preceding the start of that turn the Company had learned that problems had developed with strand No. 1 of the slab caster. The Company determined that the bearings on several segments of the strand would have to be replaced at some later point in time.

At approximately 8:15 P.M. on August 2, 1978, problems developed with the flow on strand No. 2 with resulting damage to the tundish car. A breakout occurred. Molten steel coated the rolls and created damage that required that the caster be shut down for repairs. The damage caused by the breakout was limited primarily to strand No. 2 which had to be shut down because of the damage and the ensuing smoke and flames. Molten steel which had escaped had solidified and had to be removed. Several control valves on the tundish car had to be replaced. A number of segments had to be removed and replaced. The basic repairs had to be performed by mechanical employees. The Company concluded that members of the casting crew could be assigned to assist the mechanics in hooking and unhooking segments for the crane, assist in the hooking and unhooking of the replacement segments, the movement of needed plywood to the job site and the performance of general clean-up functions.

The mechanical repairs commenced at 9:00 P.M. The Company had eight mechanics available in the department. Six mechanics had been scheduled on the 3:00 P.M. to 11:00 P.M. shift and two mechanics had been held over from the day shift. Additional mechanical help from the B.O.F. was not available and the Company asked the six mechanics from the afternoon turn to double over on the midnight turn in order to provide additional assistance for the mechanics who would be scheduled on the midnight turn. Four of the six afternoon-turn mechanics agreed to stay for four additional hours and two of the six mechanics refused the offer of overtime.

The Company determined that since the caster could not be placed into operation, the midnight-turn casting crew could be utilized to assist the mechanics. The Company anticipated that the crew could be used to

clean up the hardened steel, signal for crane service, hook and unhook segments and bring spare segments to the tundish car, as well as to bring needed plywood to the job site. The foreman of the slab caster crew (Perkins) was asked to provide the assistance of the slab caster crew, and Perkins suggested that he would address the entire crew at the start of the shift. At approximately 11:00 P.M. Perkins informed the mechanical day foreman who was supervising the repairs to the slab caster that he expected to encounter difficulties in getting help from the slab caster crew.

At the start of the turn Foreman Perkins entered the lunchroom where the crew had assembled. He informed the crew of the problems that had developed, including the consequent reduction of production. The crew was directed to assist the mechanics in the removal and transport of damaged and replacement segments and to bring plywood to the area and perform the necessary clean-up work incident to the return to operations. Foreman Perkins testified that one member of the crew indicated that he would refuse to assist the mechanics when he stated that the work referred to by Foreman Perkins was "not my job." Several members of the crew remained silent, offered no comment and made no move to proceed to the slab caster where the mechanical repairs were in progress. Perkins then informed the group that they would be disciplined if they refused to perform the assignment. He then suggested that they would have ten minutes time to talk among themselves and reach a decision with respect to whether they would or would not carry out the foreman's direction. Foreman Perkins testified that he returned to the lunchroom where he again addressed the crew and received no response. He then stated, "I am directing you to assist the mechanical division." When Perkins received no affirmative response he then informed the group that they were to punch out and that he would arrange to have Plant Protection escort them from the plant. Eight members of the slab caster crew left the plant. One member of the crew (Torrez) who had not been present when Foreman Perkins had spoken with the crew, was unaware that the crew had been sent home. When he learned what had occurred he offered to stay and he thereafter spent the turn of work performing clean-up functions and generally assisting the mechanical crew.

The eight members of the slab caster crew lost approximately seven hours of work on the shift in question. They were thereafter suspended for one additional turn of work. Grievances were filed protesting the action taken by the Company. The grievants contended that they were not insubordinate and had properly invoked Article 14, Section 6, of the Collective Bargaining Agreement when they had informed the foreman (Perkins) that they considered the job to be unsafe and they were thereby entitled to be relieved from the operation.

The Company contended that Pratchett and the rest of the crew had committed an act of insubordination since the work they were asked to perform in assisting the mechanics was work of the type that they regularly performed and with which they were completely familiar. The Company contended that the crew could not have had a sincere belief that the job was unsafe and that their insubordinate conduct made it unnecessary for the Company to thereafter follow the precise procedures outlined in Article 14, Section 6, of the Collective Bargaining Agreement.

The grievance filed by William Pratchett was processed through the preliminary steps of the grievance procedure. In the early steps of the grievance procedure Pratchett did not offer any explanation for his failure and refusal to carry out the instructions of his supervisor. At the arbitration hearing Pratchett contended that he had properly raised a safety issue pursuant to the provisions of Article 14, Section 6, and he had been denied the right to be relieved from the assignment pursuant to the contractual procedures. The issue arising out of the grievance filed by Pratchett became the subject matter of this arbitration proceeding.

DISCUSSION

The provision of the Agreement cited by the parties as directly applicable in the instant dispute is hereinafter set forth as follows:

"ARTICLE 14

"SAFETY AND HEALTH

14.7 "SECTION 6. DISPUTES. An employee or group of employees who believe that they are being required to work under conditions which are unsafe or unhealthy beyond the normal hazard inherent in the operation in question shall discuss the complaint with his or their foreman. Following such discussion, the oral disposition form provided for in Step 1 of Section 3 of Article 6 shall be immediately prepared, signed, and distributed as therein provided. If the complaint remains unsettled, the employee or group of employees shall have the right to: (a) file a grievance in Step 3 of the grievance procedure for preferred handling in such procedure and arbitration or (b) relief from the job or jobs, without loss to their right to return to such job or jobs; and, at the Company's discretion, assignment to such other employment as may be available in the plant; provided, however, that no employee, other than communicating the facts relating to the safety of

the job, shall take any steps to prevent another employee from working on the job. Should either the Management or the arbitrator conclude that an unsafe condition within the meaning of this Section existed and should the employee not have been assigned to other available equal or higher-rated work, he shall be paid for the earnings he otherwise would have received."

Pratchett had a contractual right to invoke the procedures outlined in Article 14, Section 6, if he believed that the work to which he was being assigned involved the performance of duties that were "unsafe or unhealthy beyond the normal hazard inherent in the operation in question" There are substantial numbers of arbitration awards in the steel industry that have analyzed similar provisions, as well as the application of the word "believe," under similar sets of facts and circumstances. The arbitrators in those cases have interpreted the word "believe" to mean that the employee must have a "sincere" belief or a "good faith" belief that the performance of a working function as directed would be "unsafe or unhealthy" beyond the normal hazard inherent in the operation.

Arbitrator David Cole, who served as the permanent umpire under Contracts between these parties for many years, had interpreted the word "believe" appearing in Article 14, Section 6, in Inland Awards No. 208 and No. 464. In Award No. 208 Arbitrator Cole stated that the primary test must be the "sincerity or the good faith of the employee's belief that the work is unsafe or unhealthy" He pointed out that "clearly, this calls for more than a mere assertion that he has such a belief."

The entire fact situation must be examined in order to determine whether a statement attributed to an employee that he believes the job to be "unsafe," is a "sincere" belief and is made in good faith. An employee may be completely mistaken when he states that he "believes" that the job is unsafe, but if his belief is sincere and is made in good faith, then and in that event he is entitled to the protection afforded to an employee under the language of Article 14, Section 6, of the Collective Bargaining Agreement. If it is obvious and apparent that a contention that the job is "unsafe" is made solely for the purpose of improperly avoiding or evading an assignment, then and in that event the position adopted by the employee may be characterized as an act of insubordination and the employee subjects himself to the imposition of disciplinary measures.

By the inclusion of Article 14, Section 6, and the protective language established therein, the parties sought to distinguish between a good faith expression of concern by an employee from a statement of concern by an employee that is designed solely to seek relief from an assignment that the employee may consider to be onerous, unpleasant or difficult as distinguished from "unsafe."

The evidence is conclusive in several major respects. Pratchett (along with other members of the crew) was asked and then ordered and directed to proceed to the slab caster and to assist the mechanics in the performance of functions designed to complete the necessary repairs to the slab caster. The work would be performed on segments of the slab caster in precisely the area where the slab caster crew would normally be performing their regular functions. Pratchett was completely and totally familiar with the slab caster and he had, on numerous occasions, assisted members of the slab caster crew in performing some of the identical functions that the mechanics would be performing with the assistance of the members of the slab caster crew.

Pratchett had assisted in removing roller aprons. He had worked in the "hole" at segment zero. He was completely familiar with hooking and unhooking procedures and he could precisely identify "pinch points" in order to avoid injury to himself when performing those functions. He had assisted in bringing segments to the slab caster by crane and he had assisted in bringing replacement parts to a tundish car whenever repairs were necessary. He had brought supplies and plywood to the area. All of those functions were enumerated in general terms in job descriptions for various members of the slab caster crew. Pratchett and other members of the crew were told in general terms precisely what they would be doing. They were not asked to perform mechanical functions. They were told that they would assist the mechanics and would generally perform all of the other clean-up functions that they normally performed on a regular basis whenever breakouts occurred and hardened steel had to be removed from the areas affected by an overflow. Neither Pratchett nor any other member of the crew went to the job site to examine the work that had to be performed. All members of the crew were informed generally that they would be shown what to do and they would be working with a mechanic. The crew would be directly supervised by three supervisors in the area who would remain in the area until the entire repair function had been completed.

There is evidence in the record that several members of the crew, when directed to perform the assignment, simply stated that the work was "unsafe." Other members of the crew stated that it was "not my work."

Neither Pratchett nor any member of the crew ever stated to the foreman who made the assignment that any specific phase of the work was new or different from work that had been performed by the crew in the past.

No member of the crew ever represented to the foreman that there was any specific phase of the repair functions that would have made the work of assisting the mechanics "unsafe or unhealthy beyond the normal hazard inherent in the operation."

Pratchett and other members of the crew were provided with an opportunity to think about the order, discuss it among themselves, and to thereafter express their intention to comply with the order or continue to refuse to do so. They were told that a refusal would constitute insubordination. When they continued to refuse to carry out the supervisor's direction, Pratchett and the other members of the crew were sent home. The foreman did not prepare an oral disposition form. He was never, however, asked to do so and the failure of the foreman to prepare such a form did not serve to deny Pratchett or other members of the crew the right to file a grievance in Step 3 of the grievance procedure or to seek relief from the job or jobs. Since the position adopted by Pratchett was not made in good faith and since it was not based upon a sincere belief that the assignment would have required Pratchett to work under conditions that were either unsafe or unhealthy beyond the normal hazard inherent in the operation, the foreman was not required to prepare an oral disposition form.

When a slab caster is in operation, the slab caster crew works under conditions that are far more hazardous than are the conditions that exist when the slab caster is down and the crew is asked to assist the mechanics in the repairs. There are far greater hazards inherent in the operation when work is being performed around the slab caster while it is in full operation than would be present when the slab caster is not in operation and the entire area is "cold."

When the employees reported for work, they learned that the slab caster was down for major repairs that would, in all probability, cover their entire turn of work. Under ordinary circumstances the slab caster crew would have been assigned to perform "broom and shovel work" while the mechanical crew was performing the major repair functions to the slab caster. Under ordinary circumstances members of the crew might have been assigned to bring some material to the site and to remove the steel which had overflowed and had hardened. It is readily evident that the assignment to assist the mechanics would have involved performance of duties more difficult, more demanding, and far more unpleasant at times than would have been the assignments that the crew expected they would receive when they learned that the slab caster was down for repairs.

In substance, the evidence would conclusively demonstrate that Pratchett was given an assignment that would have involved the performance of duties and functions falling within the scope of the job description for the position to which he was assigned on the turn of work in question. He was completely familiar with the general scope of the duties involved in assisting a mechanic or any other member of the slab caster crew in making the type of repairs to the slab caster that were involved on the shift in question. Pratchett would have at times assisted the mechanics in exactly the same way that he had assisted the slab caster crew in making similar repairs in the past. He was trained to perform those duties. Those duties could not possibly be construed as involving the performance of work that was either unsafe or unhealthy beyond the normal hazard inherent therein.

The failure and refusal of Pratchett to respond to the assignment was not based upon Pratchett's sincere belief that the assignment would have involved the performance of duties that were either unsafe or unhealthy beyond the normal hazard inherent therein. His mere assertion that the job was unsafe did not entitle Pratchett (under these facts and circumstances) to be relieved from the assignment in accordance with the procedures set forth in Article 14, Section 6, of the Collective Bargaining Agreement. Pratchett was insubordinate and the discipline imposed under those circumstances would have to be considered to have been invoked for proper cause. The loss of two turns of work could not be considered to be unreasonable or excessive under the circumstances that prevailed on the turn in question.

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

AWARD NO. 698

Grievance No. 4-N-64

The grievance of William Pratchett is hereby denied.

/s/ Bert L. Luskin

ARBITRATOR

January 26, 1981