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(D) *Gravida*
Retro

In the Matter of Arbitration

Between

Inland Steel Company

and

United Steelworkers of
America, Local 1010

Grievance No. 14-M-32
Appeal No. 1229
Award No. 632

LABOR RELATIONS
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Appearances:

For the Company

- William P. Boehler, Arbitration Coordinator, Labor Relations
- Robert H. Ayres, Manager, Labor Relations, Industrial Relations
- Donald F. Kilburg, Labor Relations Representative
- Homer Smith, Superintendent, No. 3 Blooming Mill and No. 4 Slabbing Mill
- Edgar L. Casada, Electrical General Foreman, No. 3 Blooming Mill and No. 4 Slabbing Mill
- Kyle D. Davis, Electrical Foreman, No. 4 Slabbing Mill
- Walter C. Wingenroth, Assistant Superintendent, Labor Relations
- Rene Vela, Labor Relations Representative

For the Union

- Theodore J. Rogus, Staff Representative
- Joseph Gyurko, Chairman, Grievance Committee
- William Gailles, Vice Chairman, Grievance Committee
- Gavino Galvan, Secretary, Grievance Committee
- Nick Paunovich, Grievance Committeeman
- Nathaniel Ross, Grievant
- Cruz Rubio, Witness

The grievant, Nathaniel Ross, was discharged on March 29, 1976 for allegedly violating Rule No. 3-(o) of Section K of the Slabbing Mill Safety Rules, the charge being that he had refused or failed to comply with work instructions and had used profane, abusive or threatening language toward his foreman. The failure to perform assigned work was said to have occurred on Saturday, March 13, 1976, and the abusive and threatening language to his foreman on Wednesday, March 17, 1976.

The grievance complains that the suspension and discharge were unjust and unwarranted, and contrary to the provisions of Article 3, Section 1 and Article 8, Section 1 of the current collective bargaining agreement.

Grievant was working as a Vocational Motor Inspector on the 3 - 11 turn on March 13, 1975. At 10:40 p.m., some 20 minutes before he was to be relieved, a whistle call was given at No. 27 Pit Crane for electrical assistance. It was Grievant's responsibility to answer the call. He was some distance away at the time, in a toilet, and did not respond before the relief employee arrived. There were other toilet facilities closer to No. 27 Pit Crane. It was estimated by the general foreman that perhaps a five minute delay resulted, considering the fact that it would have taken some time for Grievant to arrive at the location if he had responded within a reasonable time.

The electrical foreman learned of this delay on Monday, March 15, and testified he asked Grievant about the incident, received his explanation, but told him he would receive a reprimand for this. Grievant denies this, maintaining nothing was said about any reprimand. Two days later, on March 17, the electrical foreman says he called Grievant in and handed him a reprimand letter, whereupon, the foreman insists, Grievant abused him with profane language, and shortly thereafter threatened him with bodily harm.

~~X~~ Grievant denied he threatened the foreman, but admitted he used profane language. He justified this because, he contends, the foreman used an offensive racial slur in explaining why he gave him this reprimand.

This denial and the alleged racial slur as provocation raise the fact issues governing this grievance. There were no witnesses other than the two men. This presents the credibility question which is so frequently faced in such cases.

Most of the arbitration awards cited are superfluous because the parties agree that if Grievant did what the foreman charges him with, then the Company was justified in discharging him. One cited award, however, goes into the manner of weighing the evidence and in dealing with the presumptions and burdens of proof in cases of this type, and seems pertinent to our problem. This is Arbitrator Charles C. Killingsworth's award issued April 16, 1964 as Youngstown Steel Decision No. 23. It is there pointed out that questions of credibility must often be decided on the basis of probabilities rather than certainties. Arbitrator Killingsworth stresses the consideration of the grievant's disciplinary record in the plant giving "significance to what is not in the record, indicating the absence of reprimands for insubordination, abusive language to Supervision, or similar offenses which would indicate a hot temper or unwillingness to accept the authority of Supervision" (referring to the particular offenses in that case). The conclusion reached in this Youngstown case was:

*Grievant's record is perfect. No record at all.
left out*

* "The 'presumption of innocence' which is a cornerstone of our laws must be interpreted to mean that the evidence of guilt should be stronger than the evidence of innocence to establish 'proper cause' for discharge. For the reasons stated, the Arbitrator cannot find that proper cause for discharge has been established by the evidence in this case."

*pertinent to
our case*

In our case the evidence in favor of Grievant and which raises doubts as to whether the Company's action was justified, seems stronger than that in the Youngstown case. The reasons may be stated succinctly. The alleged threat was witnessed by no third party, and when the foreman suggested to the general foreman that Grievant should be sent home he spoke of profanity and made no mention of any threat. This grievant's personnel record over a period of six years is devoid of any findings of misconduct of the kind with which he is charged by his foreman, and indeed is a good record. Grievant, the only black in this electrical crew insists that fellow employees have been giving him a bad time because of discrimination and that although he complained of this to this very foreman and was promised an investigation, there never was any such investigation. The foreman testified that he never heard of any complaint about racial discrimination until March 17, 1976, whereas the fact is that Grievant filed charges of such discrimination against the Company and the Union before the Human Relations Commission of East Chicago in December, 1975 and again in February, 1976. While this Commission found no probable cause against the Company, nor had such probable cause been found against the Union as of the time of our hearing, the fact nevertheless is that the foreman in this electrical crew can hardly maintain that he had not heard of any such claim of discrimination.

*By
his
file
record
for over
4 years*

The foreman apparently had developed a critical attitude toward Grievant. Grievant testified that he first heard of the foreman's intention to give him a reprimand from another employee in the electrical crew, the foreman having spoken of this to one or more employees before he confronted Grievant with the reprimand, and that the foreman had indicated that he was unhappy about an earlier instance in which a two day penalty against Grievant had been revoked and reduced to a reprimand.

Moreover, the charge that Grievant had neglected his responsibility by not responding immediately to the signal from Pit Crane No. 27 seems to be without substance. As indicated, the general foreman estimated that the delay caused because Grievant was at the moment taking care of his personal needs was probably five minutes. There was testimony that no one could specify any case in which a member of the electrical or maintenance crew had been disciplined for such a delay, and the foreman's decision to take action against Grievant because of this reflects his personal feeling toward the Grievant.

The conclusion reached, after considering all the available and

credible evidence, is that there is serious doubt whether Grievant made the threat alleged by the foreman, that there was provocation by the foreman which led to the exchanging of profanity or racial slurs between them, and that the so-called failure to follow work instructions rested on a very weak basis. In other words, the disciplinary penalty of discharge has not been shown to have been for cause within the contemplation of Article 3, Section 1 and Article 8, Section 1 of the parties' collective bargaining agreement.

art. III sect. 1 just cause

This grievance is granted.

Dated: October 22, 1976

*for discharge
points out the need to establish
"just cause" to sustain
/s/ David L. Cole Discharge*

David L. Cole, Permanent Arbitrator

The chronology of this grievance is as follows:

Grievance filed (Step 3)	March 31, 1976
Step 3 hearing	April 22, 1976
Step 3 minutes	May 13, 1976
Step 4 appeal	May 24, 1976
Step 4 hearing	June 3, 1976 July 15, 1976 July 22, 1976
Step 4 minutes	September 8, 1976
Arbitration appeal	September 10, 1976
Arbitration hearing	October 12, 1976
Award issued	October 22, 1976