

Award No. 676
In the Matter of the Arbitration Between
INLAND STEEL COMPANY
AND
UNITED STEELWORKERS OF AMERICA
AND ITS LOCAL UNION 1010

Grievance No. 28-N-52

Appeal No. 1283

Arbitrator: Burt L. Luskin

December 14, 1979

INTRODUCTION

An arbitration hearing between the parties was held in Harvey, Illinois, on November 29, 1979. In accordance with the contractual procedures, the parties filed pre-hearing briefs.

APPEARANCES

For the Company:

Mr. T. L. Kinach, Arbitration Coordinator, Labor Relations
Mr. R. H. Ayres, Manager, Labor Relations, Industrial Relations
Mr. J. T. Surowiec, Coordinator, Labor Relations
Mr. J. F. Silverman, Assistant Superintendent, No. 3 Cold Strip Mill
Mr. J. L. Federoff, Assistant Superintendent, Labor Relations
Mr. S. Amatulli, General Foreman, No. 3 Cold Strip Mill East
Mr. R. Michalak, Senior Turn Foreman, No. 3 Cold Strip Mill East
Mr. R. Rivera, Turn Foreman, No. 3 Cold Strip Mill East
Mr. R. Vela, Coordinator, Labor Relations
Mr. R. Castle, Senior Representative, Labor Relations

For the Union:

Mr. Theodore J. Rogus, Staff Representative
Mr. Joseph Gyurko, Chairman, Grievance Committee
Mr. Rudy Schneider, Grievance Committeeman
Mr. Ron Matlock, Assistant Grievance Committeeman
Mr. Edward T. Perkins, Grievant

BACKGROUND

Edward T. Perkins was employed by the Company on August 25, 1977. After periods of assignments in the coke plant and in the 76" hot strip mill, Perkins elected to transfer to the No. 3 Cold Mill East Department on February 5, 1979. He initially worked in the labor pool and accepted various assignments based upon his comparative seniority rights. Perkins bid for an assignment to the Weigher Sequence (Article 13, Section 6-e). He was thereafter scheduled for training assignments in the Tandem Recorder occupation in that sequence. That position is a part of the 80" Tandem Mill rolling occupations. Perkins had received two training assignments, and he was again scheduled for that assignment on the 7:00 A.M. to 3:00 P.M. turn on May 21, 1979. When Perkins reported for work on May 21, 1979, he was assigned to train under the direction of the scheduled Tandem Recorder, Ms. Carrie Spasske. Turn Foreman Rivera instructed Spasske to train Perkins and to allow him to perform the duties and functions of the occupation and, since Spasske was responsible for the performance of those functions, she was asked to closely observe Perkins and to offer Perkins any assistance that he might require. Spasske was also requested to inform the foreman if she had any problems with Perkins in connection with his work performance.

At approximately 10:15 A.M., Turn Foreman Rivera approached the tandem scale for the third time for the purpose of observing Perkins. Perkins was not in the area. Spasske testified that in response to Rivera's question concerning Perkins' whereabouts, she had stated that Perkins was on his break. Rivera testified that Spasske informed him that she did not know where Perkins might be.

Turn Foreman Rivera testified that after a wait of approximately ten minutes, he observed Perkins leaving the locker room and he thereupon approached Perkins and allegedly stated to Perkins, "The only way you're going to learn the job is to run the job." (Perkins' version of Rivera's initial statement was that Rivera stated to him, "Do you want to learn this goddamn fucking job?") Foreman Rivera testified that in response to his statement concerning the "running of the job," Perkins made the response, "Quit fucking with me." Rivera testified that he responded by stating, "I'm not fucking with you," after which Perkins allegedly responded by stating, "Quit fucking with me or I'll hit you upside your head."

Perkins testified that when Rivera stated "Do you want to learn this goddamn fucking job," Perkins responded by stating, "Yes, I want to learn the goddamn fucking job." Perkins testified that he then stated to Rivera, "Why are you harassing me like this?" Perkins testified that he liked the job, enjoyed the work, and was convinced that he could learn to perform all of the duties of the occupation. He testified that he wanted to learn the job since the alternative would have been for Perkins to have received labor assignments.

Turn Foreman Rivera testified that after hearing the threat from Perkins, he felt threatened and was concerned for his safety. He testified that he reported the matter to the Senior Turn Foreman who proceeded to the area, escorted Perkins to the General Foreman's office, and Perkins was thereafter escorted from the plant.

An investigation was conducted on May 22, 1979, and Perkins was suspended from employment for five days pending discharge. Perkins requested and was granted a hearing on May 25, 1979, and on June 5, 1979, the suspension was converted to discharge. Perkins thereafter filed a written grievance on June 7, 1979. The grievance was thereafter processed through the remaining steps of the grievance procedure and the issue arising therefrom became the subject matter of this arbitration procedure.

DISCUSSION

Foreman Rivera's assignment of Perkins as a trainee on the day in question was appropriate. His instructions to the Recorder (Spaske) were reasonable and consistent. The foreman placed no undue or unusual burdens on Perkins, and it was completely logical for Foreman Rivera to ask the Recorder to watch Perkins, to make certain that he was correctly performing the duties of the occupation, and to offer him any assistance that he may have required. It was equally reasonable for the foreman to ask the Recorder to report to him any problems that she may have encountered with Perkins during the course of the shift. Those instructions were consistent with what would be expected in an assignment of the type in question. Perkins was never asked to assume responsibility for the performance of the duties of the occupation. He was expected to do the best that he could under the circumstances and under the watchful eye of the Recorder who would be, in effect, performing the training functions under the general supervision of the foreman.

There is nothing in the record that would in any way indicate that Perkins failed to perform the duties of the occupation to the best of his ability, and there is nothing in the record that would support a conclusion or finding that Perkins did not receive the benefits of training instructions and the opportunity to learn the duties of the occupation by actually performing those duties in the presence of a trained and experienced Recorder.

The fact that the foreman may have appeared in the area on three occasions between the hours of 7:00 A.M. and 10:00 A.M. would not support a conclusion or finding that the foreman was "harassing" Perkins. It was the foreman's responsibility to check the work being performed by the persons under his supervision, and he had a right (and an obligation) to pay special attention to the work being performed by an employee who was being trained. The foreman placed no undue or unusual burdens on Perkins, and it is evident from the testimony in the record that Perkins had not been troubled or harassed nor had he been made the subject of unusual pressure or stress from a member of supervision. Perkins apparently was performing the duties to which he had been assigned in an adequate manner. The problem arose when the foreman approached the area where Perkins was working and found that Perkins was away from the work area shortly after 10:00 A.M. When the foreman noted that Perkins was not in the work area, he asked Spaske where Perkins might be. That was normal and consistent with the exercise of the foreman's functions. It would make little difference whether Spaske knew that Perkins had gone to the washroom. She was made aware of the fact that Perkins had "taken a break."

The foreman testified that he remained in the area for approximately ten minutes and then saw Perkins coming out of the locker room where the washroom was located. The foreman approached Perkins and the testimony with respect to the conversation that ensued between Foreman Rivera and Perkins is in serious conflict. There can be no question but that Foreman Rivera initially addressed Perkins. The foreman testified that his initial statement to Perkins was that the only way to learn the job was to actually "run the job." Perkins testified that the initial statement made to him by Foreman Rivera was, "Do you want to learn this goddamn fucking job?" Under either of the versions, it is difficult to understand the purpose of Foreman Rivera's form of address to Perkins. There is no evidence to support a conclusion or finding that Perkins had not, in fact, performed the duties of the job for the first three hours of the shift. There is nothing in the record that would support a conclusion or finding that Perkins had been away from the work area for any unreasonable or excessive period of time. If Rivera had made the initial statement to which he

testified, then and in that event Perkins' alleged response of "quit fucking with me" would have been improper and might have justified the imposition of some form of disciplinary measure. Rivera testified that he responded to those words by stating "I'm not fucking with you," after which Perkins allegedly stated "Quit fucking with me or I'll hit you upside your head." That was, according to Foreman Rivera, the total extent of the conversation that ensued between them. Perkins, on the other hand, testified that when he was asked by Rivera whether he wanted to learn "this goddamn fucking job," he responded by repeating the identical words used by Foreman Rivera when he stated, "Yes, I want to learn the goddamn fucking job." There is evidence in this record that Foreman Rivera, who had been a craneman before becoming a turn foreman, was prone to using obscene and profane words for purposes of emphasis. While the words were generally directed toward inanimate objects and were in effect expletives which could be characterized as shop talk, the fact remains that they were profane and, if the foreman used them, the foreman could expect that a response from the employee could be equally profane and obscene. In essence, a member of supervision who uses profanity for purposes of emphasis, even though the remarks are not directed toward an individual, can expect the employee to respond in a similar vein.

The only conclusion that can be drawn from all of the evidence in this record is that Foreman Rivera used some profane words when describing the job, and Perkins responded by using the identical words in describing the job. Foreman Rivera never contended that Perkins directed profanity toward the foreman. In Foreman Rivera's version, Perkins used the word "fucking" as a figure of speech and in Foreman Rivera's response he used the identical word. The exchange assumed serious and significant proportions only after Perkins allegedly threatened Rivera when he allegedly stated, "Quit fucking with me or I'll hit you upside your head." Foreman Rivera testified that Perkins made no threatening gesture. He testified that Perkins did not raise his hands nor did he approach Foreman Rivera. Perkins made no move to carry out the alleged threat, and there was no further conversation between them. Perkins emphatically denied directing any threats toward Foreman Rivera, and he denied using the words attributed to him.

A threat of physical harm to a member of supervision cannot be tolerated and the Company would be completely justified in imposing severe disciplinary measures against an employee who directs a threat of physical harm to a member of supervision. The degree and extent of the penalty to be imposed under such circumstances would depend upon the degree of the committed offense and the consideration of other relevant factors. The fact that there was no witness to the exchange between Rivera and Perkins would not necessarily be controlling. A charge that an employee has threatened a member of supervision must be supported by all of the competent evidence in the record.

In the instant case, the arbitrator is far from convinced that Perkins made the threat attributed to him by Foreman Rivera. The arbitrator must find from all of the evidence in this record that Foreman Rivera did use profane expressions when he addressed Perkins, and Perkins' initial response merely served to repeat the same words. Neither Rivera nor Perkins directed obscene or profane expressions toward each other in a personal vein. There is nothing in this record that would indicate that Perkins was prone to using those words, and there is nothing in this record to indicate that Perkins had on any occasion during his period of employment with the Company ever exhibited a threatening or violent attitude toward fellow employees or toward any member of supervision. The fact that Perkins had been reprimanded in 1978 for a failure to work as scheduled, and the fact that he had been reprimanded and suspended on two occasions in April, 1979, for being out of his assigned work area and for insubordination, would not and could not support a conclusion or finding that he had directed profane expressions toward his foreman in a personal vein. The record in this case will not support a conclusion or finding that Perkins had threatened his foreman with physical violence.

The arbitrator must, therefore, find that the evidence does not establish with any reasonable degree of certainty that Perkins was guilty of having committed the serious offense with which he was charged. Under those circumstances, the arbitrator must find that proper cause did not exist for Perkins' termination from employment. Perkins should, therefore, be restored to employment, with full seniority rights, and compensation for time lost from work.

AWARD

Grievance No. 28-N-52

Award No. 676

The grievance of Edward T. Perkins is sustained. Edward T. Perkins should be restored to employment, with seniority rights, and with back pay pursuant to the applicable provisions of the Collective Bargaining Agreement.

/s/ Burt L. Luskin

ARBITRATOR
December 14, 1979