

Award No. 679
In the Matter of the Arbitration Between
INLAND STEEL COMPANY
AND
UNITED STEELWORKERS OF AMERICA
AND ITS LOCAL UNION NO. 1010

Grievance No. 4-N-91

Appeal No. 1275

Arbitrator: Burt L. Luskin

December 28, 1979

INTRODUCTION

An arbitration hearing between the parties was held in Harvey, Illinois, on December 17, 1979. Pre-hearing briefs were filed on behalf of the respective parties.

APPEARANCES

For the Company:

Mr. T. L. Kinach, Arbitration Coordinator, Labor Relations

Mr. Robert H. Ayres, Manager, Labor Relations, Industrial Relations

Mr. L. J. Trilli, Superintendent, No. 4 B. O. F.

Mr. C. Vermejan, Pit and Mold Yard General Foreman, No. 4 B. O. F.

Mr. J. Kolondzic, Labor Foreman, No. 4 B. O. F.

Mr. S. Bozack, Assistant Pit Foreman, No. 4 B. O. B.

Mr. R. Vela, Labor Relations Coordinator

Mr. J. T. Surowiec, Labor Relations Coordinator

For the Union:

Mr. Theodore J. Rogus, Staff Representative

Mr. Joseph Gyurko, Chairman, Grievance Committee

Mr. Don Lutes, Secretary, Grievance Committee

Mr. Jim Robinson, Grievance Committeeman

Mr. Marvin Strong, Steward

Mr. Lester McCullough, Jr., Grievant

BACKGROUND

Lester McCullough, Jr., was employed by the Company on August 16, 1975. On May 1, 1979, McCullough was working the 7:00 A.M. to 3:00 P.M. turn as a stopper maker helper at the No. 4 Basic Oxygen Furnace and Slab Caster Department. At approximately 9:00 A.M. Labor Foreman Kolondzic was called on the departmental public address system. A voice made the following statement: "Labor Foreman Johnny Jaws, I need a high lift driver." Kolondzic responded (on the public address system) by stating that a high lift driver was in the area and the caller should ask the high lift driver to obtain whatever material was needed. Approximately five minutes later Foreman Kolondzic was again called on the public address system. The caller made the following statement: "Jaws, I need a high lift in the south end right away." The statement was made in what was characterized as an "angry voice." Foreman Kolondzic left his office and proceeded to the area.

Foreman Kolondzic testified that when he reached the area he saw a high lift driver seated on his parked vehicle. Kolondzic then informed stopper maker Watkins to tell the driver to obtain the refractory material that was needed. Foreman Kolondzic testified that Watkins walked toward the high lift driver, and Kolondzic then entered the shanty where the stopper rods were being assembled. He testified that he approached McCullough and asked "Who called me Johnny Jaws over the p.a.?" McCullough responded by stating "It was me." Foreman Kolondzic then informed McCullough that he "didn't prefer being called Johnny Jaws." He testified that he stated to McCullough "Call me foreman or call me by my real name." Foreman Kolondzic testified that McCullough responded by stating "Fuck you, I'll call you anything I want." Kolondzic then informed McCullough that he intended to report the matter to McCullough's supervisor (S. Bozack) and he intended to ask that McCullough be escorted from the plant for using abusive language. Foreman Kolondzic testified that McCullough thereupon picked up a board from a stack. The board was a 1-inch-by-4-inch piece of wood that was more than three feet in length. The foreman testified that McCullough raised the board over his head in a threatening manner and stated to Kolondzic, "Get the fuck out of here, I'm going to kick your ass." Foreman Kolondzic testified that McCullough started

to swing the board in the foreman's direction, whereupon the foreman turned and ran out of the shanty. He testified that as he was leaving the shanty he heard McCullough state "You don't have no witnesses." Foreman Kolondzic reported the incident to Foreman Bozack. The two foreman returned to the area and, after Foreman Bozack talked with McCullough, approximately four employees who were in the general area were called together in a group and asked if any of them had heard or seen anything. All the employees who were asked that question responded in the negative. McCullough was then asked to accompany his foreman (Bozack) to the superintendent's office where an investigation was conducted. During the course of the investigation, McCullough conceded that he had called Foreman Kolondzic on the p.a. system and had asked for the services of a high lift driver. He stated that he had made a second call since he was running out of material. McCullough conceded that he had addressed Foreman Kolondzic as "Johnny Jaws" on the p.a. system, and he contended that he had heard that other employees had used that nickname in addressing Foreman Kolondzic. He denied directing any profane language toward Foreman Kolondzic and he denied that he had used any threatening words or made any threatening gestures toward Foreman Kolondzic. McCullough was suspended from employment, and, following a hearing, the suspension was converted to a discharge.

A grievance was filed and was processed through the preliminary steps of the grievance procedure. McCullough at all times denied the offense with which he had been charged and he contended that members of supervision in the area where he was employed had been angry and disappointed after McCullough had been restored to employment as the result of an arbitration award issued by this arbitrator on March 16, 1979. McCullough contended that various members of supervision were looking for ways and means to cause McCullough to be terminated from employment, and McCullough contended that, although he had referred to Foreman Kolondzic as "Johnny Jaws," he had never directed profane remarks toward Foreman Kolondzic nor had he used any threatening words toward Kolondzic. He denied making threatening gestures toward Kolondzic either with his hands or with a piece of wood.

The issues arising out of McCullough's termination from employment became the subject matter of this arbitration proceeding.

DISCUSSION

On October 8, 1978, McCullough had been charged with committing an assault upon a foreman. McCullough was charged with driving his vehicle in a manner which resulted in Foreman Morrison's vehicle being tailgated by McCullough, after which McCullough allegedly pointed a gun in Morrison's direction on two different occasions after McCullough's vehicle had pulled alongside Morrison's car. McCullough was identified by Morrison as the person who had driven a vehicle that tailgated Morrison's car and as the person who, on two different occasions, pointed a gun in Morrison's direction in a threatening manner. McCullough was terminated from employment as a result of that incident. McCullough denied driving that vehicle and denied that he was in any way responsible for the incident in question. McCullough was discharged from employment and he filed a grievance protesting that termination. That issue became the subject matter of an arbitration proceeding held on February 22, 1979. On March 16, 1979, this arbitrator issued an award finding that just cause did not exist for the discharge of McCullough from employment. McCullough was restored to employment with full seniority rights and back pay. That award was issued on the basis that the arbitrator could not find from the evidence in the record that the identification of McCullough was so positive and certain as to remove all doubt that McCullough was the person who had committed the assault upon Morrison on the day in question. That decision and the award in that case assumed significance in this case only because McCullough contended in this proceeding that he had been made the subject of discrimination by members of supervision who were antagonistic toward him because of his alleged participation in the assault.

There may have been some measure of resentment among certain members of supervision who believed that McCullough was the person who had committed the assault upon Foreman Morrison. The evidence, however, would indicate firmly and conclusively that Foreman Kolondzic had never supervised McCullough, and the evidence demonstrated conclusively that Kolondzic did not initiate the developing circumstances that caused Kolondzic to come to the shanty and engage McCullough in a conversation. McCullough conceded that he had called Foreman Kolondzic on the public address system, and he conceded that he addressed Foreman Kolondzic by the words "Johnny Jaws." McCullough conceded that he had called Foreman Kolondzic a second time and again referred to him as "Jaws." The primary responsibility for taking the steps necessary to obtain the needed refractory material would rest with the stopper maker (Watkins). There would have been nothing wrong, however, in McCullough's calls to Kolondzic to obtain the refractory material. Foreman Kolondzic saw nothing wrong in a stopper maker or a

stopper maker helper making a call to Kolondzic to seek the services of a fork lift driver to obtain needed material. The request could also have been made to Foreman Bozack, who was McCullough's direct supervisor. The fact remains, however, that Foreman Kolondzic responded to the calls and proceeded to the area in order to make certain that a fork lift driver would be directed to obtain the refractory material that the stopper maker and his helper needed.

The Union's contention that the Company must carry the burden of proof in discipline cases, is eminently sound. That principle was enunciated by Arbitrator Cole on numerous occasions and more specifically in his Award No. 626.

This arbitrator, in his opinion in Award No. 639, made the following statement:

"The Company does have the burden of proof and it must establish by clear and convincing evidence that Moore did, in fact, use the words attributed to him by Foreman Jakubin when Moore threatened Jakubin's life."

In Award No. 639, this arbitrator stated that "the issue turns squarely on the matter of credibility. The fact that there were no witnesses to the conversation . . . does not necessarily mean that the Company could not prove its case." The Company has always conceded that it must carry the burden of proof in discipline cases. That principle was made eminently clear when this arbitrator, in Award No. 656, sustained McCullough's grievance and restored him to employment with full seniority rights and back pay after finding that the evidence would not permit the arbitrator to reach a firm conclusion that McCullough was guilty of the offense with which he was charged on October 8, 1978.

This arbitrator has pointed out in Awards 634, 639 and 653 that threats toward members of supervision must be viewed in the most serious vein. Identical views were expressed by Arbitrator Cole in a number of other decisions involving the same parties.

There can be no question but that Kolondzic resented being called "Johnny Jaws" and "Jaws" over the public address system. After going to the area and arranging for the fork lift truck to provide the needed material, Foreman Kolondzic entered the shanty and informed McCullough that he "did not appreciate being called "Johnny Jaws." That statement was not made in anger and it was a reasonable request under all of the circumstances.

The fact that McCullough had referred to Foreman Kolondzic as "Johnny Jaws" over the public address system did not, at that point in time, constitute the commission of an offense that would have justified the imposition of any form of disciplinary measure other than a request from the foreman that he cease and desist making further reference to the foreman as "Johnny Jaws" or as "Jaws." If at some later point in time McCullough had continued to refer to Foreman Kolondzic as "Johnny Jaws," then and in that event some reasonable form of disciplinary measure would have been appropriate in light of such an act of insubordination. That, however, is not the issue in this case. The issue must center on Foreman Kolondzic's charge that McCullough cursed him, threatened him, and picked up a 1 x 4 board, raised it and started to make a striking motion with that board in Kolondzic's direction.

From an analysis of all of the evidence in this record this arbitrator is completely convinced that the version of the incident testified to by Kolondzic was credible and truthful. The evidence will not support a conclusion or finding that Kolondzic's version was untruthful because he and other members of supervision in that area resented McCullough's restoration to employment after having allegedly threatened another foreman. Kolondzic did not supervise McCullough and there was no real evidence of any prior animus or hostility between Kolondzic and McCullough. When McCullough shouted out as Kolondzic was hurrying from the shanty "you have no witnesses," it indicated conclusively that McCullough erroneously believed that he was immune from discipline because there were no witnesses present who heard the words used by McCullough or who saw McCullough pick up a piece of wood, raise it over his head, and begin to swing it in Kolondzic's direction.

Kolondzic reacted in a normal fashion. He left the shanty and he reported the incident to McCullough's immediate foreman.

Although the stopper maker (Watkins) testified that he heard the discussion between Kolondzic and McCullough and was able to see Kolondzic and McCullough from his vantage point, his testimony supporting McCullough's version of the incident cannot be credited as factual. Watkins was asked on two different occasions shortly after the incident occurred whether he had witnessed the incident and he denied having any knowledge of the incident.

The Union has cited the opinion expressed by Arbitrator Cole in Award No. 626 concerning the actions and attitudes expressed by a foreman whose conduct was described as ". . . almost too much like that of a

prosecutor." The factual situation in that case is substantially different from the factual situation in this case.

In the opinion of this arbitrator, the Company has carried the burden of proof. It has established that McCullough did, on May 1, 1979, direct obscene and profane expressions toward Foreman Kolondzic in a most personal vein. It has established the fact that when Kolondzic informed McCullough that he intended to report McCullough's conduct to Supervisor Bozack and to request that McCullough be escorted from the plant, McCullough at that point in time picked up a board, raised the board over his head in a threatening manner, and again directed a profane remark toward Foreman Kolondzic.

The arbitrator must conclude that the profane remarks directed toward Foreman Kolondzic in a personal vein, when coupled with a threat of bodily harm followed by a threatening gesture, constituted a violation of Rule No. 127p of the Company's General Rules for Safety and Personal Conduct, and subjected McCullough to the imposition of discipline ranging from suspension to discharge. In the opinion of the arbitrator the offenses committed by McCullough were so serious in nature as to justify the imposition of the penalty of termination from employment.

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

AWARD

Grievance No. 4-N-91

Award No. 679

The Company had just cause for terminating Lester McCullough, Jr., from employment. The grievance is hereby denied.

/s/ Burt L. Luskin

ARBITRATOR

December 28, 1979