Award No. 730
In the Matter of the Arbitration Between
UNITED STEELWORKERS OF AMERICA
AND ITS LOCAL UNION 1010
Grievance No. 22-N-41
Appeal No. 1341
Arbitrator: Bert L. Luskin
January 25, 1983

INTRODUCTION

An arbitration hearing between the parties was held in Harvey, Illinois, on January 17, 1983. Pre-hearing briefs were filed on behalf of the respective parties and exchanged between them.

APPEARANCES

For the Company:
Mr. R. V. Cayia, Senior Representative, Labor Relations
Mr. R. T. Larson, Arbitration Coordinator, Labor Relations
Mr. C. V. DeWitt, Assistant Superintendent, No. 3 Open Hearth
Mr. R. Conklin, Maintenance Foreman, No. 3 Open Hearth
Mr. T. Little, Turn Foreman, No. 3 Open Hearth
Mr. D. E. Guadagno, Senior Safety Engineer, Safety Department
For the Union:
Mr. Thomas L. Barrett, Staff Representative
Mr. Joseph Gyurko, Chairman, Grievance Committee
Mr. Don Lutes, Secretary, Grievance Committee
Mr. James Alexander, Griever
Mr. Charles Julkes, Grievant

Charles Julkes was employed by the Company on August 27, 1970. Julkes be came a craneman, and on May 31, 1978, he was scheduled to operate the No. 3 scrap crane at the No. 3 Open Hearth Department. Julkes was scheduled to work the 7 to 3 turn on May 31, 1978. Julkes reported for work on that turn and he was informed that the crane had developed a mechanical problem that became apparent at 9:00 P.M. on the preceding day (May 30, 1978). Julkes was informed that the mechanical section had examined the crane and had concluded that a part had to be replaced. He was informed that the part was not immediately available and he was directed to continue to operate the crane with certain restrictions. He was told that there would be no "pulling" and the crane would have to be "very slowly bridged" until the defective mechanism could be replaced.

At approximately 10:00 A.M. on the 7 to 3 turn of May 31, 1978, Julkes informed his turn foreman that the crane was swaying even though he had followed instructions and had not performed any pulling operations with the crane. He informed the turn foreman that he had bridged the crane very slowly but that there was a swaying and that he (Julkes) was concerned for his safety.

Julkes requested relief from the job pursuant to the provision of Article 14, Section 6, on the basis that he believed the conditions under which he was told to operate the crane were "unsafe beyond the normal hazards inherent in the operation." The grievant was relieved from the crane and he was allowed to leave the plant. He was not offered any other type of assignment for the balance of the shift.

When Julkes left the crane, a craneman who had been operating a different crane was asked to operate the No. 3 scrap crane. That employee completed the turn of work.

Julkes filed a grievance contending that he was contractually correct in asking for relief from the operation of the crane and, since the operation of the crane in question constituted an unsafe condition within the meaning of Article 14, Section 6, the grievance requested that Julkes be compensated for the moneys that he was caused to lose as a result of his having gone home before the end of his shift without being assigned to other available work. Julkes requested that the Company cease directing employees to operate unsafe equipment.

The grievance was denied, and the issue arising therefrom became the subject matter of this arbitration proceeding.

DISCUSSION

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

"ARTICLE 14

"SAFETY AND HEALTH

"Section 6. Disputes. An employee or group of employees who believe that they are being required to work under conditions which are unsafe or unhealth 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 pre]ared, 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."

The No. 3 scrap crane in the No. 3 Open Hearth Department is a dual-drive crane. At approximately 9:00 P.M. on May 30, 1978, the craneman who operated the crane on that shift reported a mechanical malfunction. The crane was immediately inspected by mechanical employees who determined that the problem consisted of the loss of a gear bearing in the reduction box on the east side of the bridge line drive. As a result of that malfunction, one wheel of the crane was rendered inoperable. A replacement output gear assembly was not immediately available, and the Company was faced with the decision to either continue to operate the crane under restrictions or to shut down the operation of the crane until repairs could be completed. A maintenance foreman inspected the crane at approximately 8:30 A.M. on May 31, 1978, shortly after the commencement of Julkes' turn of work as the operator of that crane. The maintenance foreman concluded that the crane could be operated safely provided that the crane would do no pulling and provided that the crane would be bridged very slowly.

Julkes was informed that he could operate the crane, but it should not be used for pulling and he was told not to "plug" the crane. He was instructed to bridge slowly. In "plugging" a crane, the operator uses the controller to change the direction of the crane movement instead of using the brakes of the crane to come to a stop and to thereafter change the direction of travel by using the controller.

The Company offered evidence to support its contention that the malfunction would cause some degree of swaying of the crane, since one wheel would be in a frozen position. The crane would, however, be operational on a one-drive mechanism.

Although the grievant contended at a later point in time that he had encountered "plugging problems," the evidence would indicate conclusively that he did not at any time complain that the crane was sustaining a plugging problem. Under those circumstances, the supervisor had no reason to check the electrical operation.

Julkes' refusal to operate the crane was motivated primarily by a fear and concern on his part that the crane would jump the tracks and damage the supports to a degree that might cause the crane to fall to the ground. The Company, on the other hand, concluded that it was safe to operate the crane since similar malfunctions had occurred with regularity over a period of more than twenty-five years and in each of those instances the crane was operating with the same restrictions that were imposed on May 31, 1978, without any damage to the crane, the supports, or the runway.

In a period of more than twenty-five years there has never been a time when the No. 3 crane or any other similar crane in operation has fallen to the ground. There is evidence in the record that the crane is constructed in a manner whereby it could not possibly fall to the ground even if it jumped the track. There is evidence in the record that the only way in which the crane could fall to the ground is if the entire crane broke in half, and that condition never occurred in all of the years that the No. 3 scrap crane (or any crane similar to that crane) has been in operation.

There can be no question but that Julkes' concern for his safety was real, and not imaginary. Julkes is an experienced operator and he is well aware of the fact that the crane in question should not have been stopped by means of "plugging." Julkes contended, however, that the brakes were not in operating condition and the only way that the crane could operate was by "plugging" it in order to stop the crane after it had moved in a forward or reverse position for the several feet that were necessary to position the crane in order to perform its required operation.

The proper procedure would have been for Julkes to put the control at the first or second point of a five-point control and then to allow the crane to travel a few feet. He could then have stopped the crane and

performed his operation function. If it was necessary to "plug" the crane in order to stop it, the effect of the "plugging" might have resulted in some vibration in the crane and some possible minor swaying. Cranes have been operated with identical forms of malfunctions and under identical operating restrictions on numerous occasions. There was no condition in existence on the 7 to 3 turn on May 31, 1978, affecting the No. 3 scrap crane that would result in the operator working "under conditions which are unsafe or unhealthy beyond the normal hazard inherent in the operation in question...."

The arbitrator will accept without question Julkes' contention that he was concerned for his safety. It is evident that Julkes' concern was real rather than imaginary. Julkes raised the safety issue in good faith. The Company recognized that fact when it permitted Julkes to be relieved from the operation of the crane for the balance of his shift of work. The Company might have reassigned a number of employees in order to provide Julkes with work for the balance of the turn. Under the clear and unambiguous language of the Agreement, however, Article 14, Section 6, does not mandate that the Company had to find other work that Julkes could have performed for the balance of the shift.

The crane operator who relieved Julkes ran the crane for the balance of the shift. He followed the instructions that were identical to the instructions provided to Julkes. There was no incident and there were no problems prior to the time that the required replacement parts were obtained and the repairs were completed. The evidence is conclusive in that the identical type of mechanical problem has arisen countless numbers of times in the past twenty-five years. In every instance when the problem was diagnosed and the Company concluded that it was safe to operate the crane with the proposed operating restrictions, there were no hazards that developed as a result thereof.

The only conclusion that can be drawn is that the limited restrictive form of operation that Julkes was required to follow has occurred on many occasions and it cannot be construed as an operating procedure that would be "unhealthy beyond the normal hazard inherent in the operation in question…." The fact that Julkes believed, in good faith, that it was dangerous to operate the crane, is not the controlling issue in this case. What is controlling is that the evidence would conclusively demonstrate that the condition which existed on the 7 to 3 turn on May 31, 1978, did not constitute an operating condition which would have required to Company to pay Julkes for the balance of his turn of work when it did not provide Julkes with other work for that said corresponding period of time.

The arbitrator must, therefore, find that the Company did not violate Article 14, Section 6, when it permitted Julkes to be relieved from his assigned operation of the crane in question on May 31, 1978. The Company did not violate any provision of the Contract when it did not assign Julkes to "other available equal or higher rated work" for the balance of the turn. The Company did not violate any provision of the Contract when it did not pay Julkes for the earnings he otherwise would have received had he completed his shift of work on May 31, 1978.

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

AWARD NO. 730

Grievance No. 22-N-41

The Company did not violate Article 14, Section 6, or any other provision of the Collective Bargaining Agreement when it did not pay Charles Julkes for the hours for which he did not work on May 31, 1978. The grievance is denied.

/s/ Bert L. Luskin

ARBITRATOR

January 25, 1983