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IN THE MATTER OF ARBITRATION BETWEEN:

The Inland Steel Company,
Indiana Harbor Works,

and

United Steel Workers of America,
C. I. O. - Local 1010

ARBITRATION NO. 62
GRIEVANCE #19-C-90
DECISION AND AWARD

December 3, 1952

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Hearing at Office of Company, Indiana Harbor, Indiana
November 7, 1952

ARBITRATOR: Dr. Clarence M. Updegraff,
102 Law Building,
Iowa City, Iowa.

(Selected by mutual agreement of parties).

APPEARANCES:

FOR THE COMPANY:

Mr. H. C. Lieberum, Assistant Superintendent, Labor Relations,
Mr. T. R. Tikalsky, Divisional Supervisor, Labor Relations
Mr. W. A. Dillon, Divisional Supervisor, Labor Relations,
Mr. A. L. Schroeder, Superintendent, Field Forces Department,
Mr. D. N. Evans, Assistant Superintendent, Field Forces Department,
Mr. C. Bray, General Foreman, Field Carpenter Shop,
Mr. J. Richardson, Foreman, Field Carpenter Shop,
Mr. D. Frankenhauser, Foreman, Field Rigger Shop.

FOR THE UNION:

Mr. Joseph B. Jeneske, International Representative,
Mr. Peter Calacci, Chairman, Grievance Committee,
Mr. Fred Gardner, Vice-Chairman, Grievance Committee,
Mr. James O'Connor, Grievance Committeeman,
Mr. Anthony Burches, Aggrieved Employee.

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All agreed steps preliminary to arbitration, as contracted by the parties having been observed, waived, or modified by mutual agreement, a hearing was held at the office of the Company in Indiana Harbor, Indiana, on November 7, 1952, at which written and oral evidence and arguments

were received and heard. In accordance with an express agreement of the parties no post-hearing briefs were filed.

THE ISSUE

Anthony A. Burches by letter dated May 8, 1952, was notified that he was suspended from employment for five days effective on May 8, 1952, and at the end of that period he was subject to discharge. By letter dated May 13, 1952, and sent to Mr. Burches by registered mail, the latter was notified of his discharge on the ground that he had acted in violation of "Article III and Article IV of the Collective Bargaining Agreement."

The Union takes issue with the discharge and contends that it was discriminatory and unjust. It asserts that the conduct of the Company in this matter violated Sections 1 and 2 of Article III of the agreement and Section 1 of Article IX.

DISCUSSION OF EVIDENCE AND CONCLUSIONS

Article III of the contract between the parties contains a specific provision that each employee and each representative of management will specifically observe and abide by the terms and conditions of the Contract. The Company specifically undertakes that there shall be no discrimination against any employee nor coercion by the Company against any person because of membership in the Union. In Section 4 of that article, the Union specifically undertakes that "neither it nor its officers, agents, representatives or members will authorize, instigate, cause, aid, sanction, or take part in any strike, work stoppage, sit down, stay in, slow down, or other interruption or impeding of work." Section 4 (c) of Article III

again expressly recognizes the authority of the Company to discipline employees for participating in the above mentioned types of interferences with production. Article IV is a well-known type of "plant management" clause.

The facts leading up to the discharge of Burches, as presented by the Company, may be briefly related. Within a few minutes after Judge Pine's ruling voiding the Government seizure of the steel industry was made known on April 29, 1952, the president of United Steel Workers of America called for a strike. The workers left the plant here in question on that day. The work stoppage ended May 2, 1952. The Field Forces work schedule was posted May 5, 1952, at 2:00 P. M. though some of such workers had been recalled earlier. These men had been employed on a somewhat unusual schedule. A continuous turn of from eight to four and then from four to twelve was required as a step in putting the posted schedule into effect. This would have required payment for the second eight hour period at time and one-half. The Union contended that all of the men in the Field Forces group were entitled to have such sixteen hours work. The Company denied this. On account of this dispute, the Field Forces employees (including Burches) stopped work on May 7, 1952. Some eighty-nine men had left the job at eleven A. M. Other men employed as Riggers, Field Machinists, Boiler Makers, Pipe Fitters and Carpenters left the job at twelve. Anthony Burches left with still other Carpenters at 1:30 P. M.

Punishments of varying sorts were imposed upon all of those who had without justification withdrawn from the plant on the day in question. Two were discharged. One of these was Anthony Burches. All disciplinary actions excepting those of the two men discharged were unchallenged by the Union and no grievances were filed in relation to the same.

The Company argues that this is not a case of discriminatory discharge but is rather a situation in which with full right to discharge Burches and numerous others, management decided to apply leniency in favor of the others but not in respect to Burches. This, of course, is but to put the issue of discrimination on the basis of refusal to reinstate rather than on the basis of the positive act of discharge. To the undersigned arbitrator, it seems that if Burches' exclusion from employment was not justified when approached from one way, it could scarcely be justified when approached from the other.

The law contains numerous instances under which a second or third offense is evidently intended to be punished more severely than a first incident of misconduct. Moreover, it is a common assumption that the more aggravated and flagrant the type of wrongdoing, the more severe should be the resulting disciplinary action. According to the evidence most of the men simply left their work because they were advised that this collective action was expected of them by the Union. In the case of Burches the record appears to be somewhat different. It is somewhat colored by the fact that on September 23, 1951, Burches participated in an unjustified work stoppage in violation of the same type contract and was then informed in a reprimand letter that if this conduct was repeated he would be dealt with more severely on the next occasion of the same. Apparently, on May 7, 1952, Burches not only left the job but was observed and heard ordering other Field Forces employees to leave their jobs. According to some testimony he directed men to leave the Field Carpenter Shop and in another part of the plant ordered other workmen off the job. There was some dispute whether the men so spoken to by

Burches did in fact leave (see Transcript pages 73 - 80). There is reason to believe that at least several of them did. The test of Burches' conduct, however, is what he did, not what others did as a result of it.

There appears to be no unjust discrimination in imposing a more severe degree of punishment upon an offender who is not only a repeater of the same offense, but who, assuming authority to represent the organization, virtually directs and orders others to take action in clear violation of a no-strike and no slow down agreement. There have been numerous arbitrational awards to this effect. (See Freuhauf Trailer Co., 1 LA 155; Pittsburgh Tube Co., 1 LA 285; Atlantic Foundry Co., 8 LA 807; Chrysler Corp., 9 LA 789; Commercial Pacific Cable Co., 11 LA 219; Brown & Sharpe Mfg. Co., 11 LA 228; Everett Dyers & Cleaners, 11 LA 462; Intl. Harvester Co., 13 LA 610; Fern Shoe Co., 14 LA 268; Timken Roller Bearing Co., 14 LA 475; American Cyanamid Co., 15 LA 563; Gardner-Denver Co., 15 LA 829).

There was some dispute whether Burches was a union steward and as to whether his status as such had been reported to the employer as contemplated by the contract. In the view which must be taken under the non work stoppage terms of the present agreement, this cannot be regarded as decisive. Even if Burches is assumed to have been a fully qualified steward, he would not have been justified in sending men off the job to attend a union meeting held during working hours. Any meeting held at such time would necessarily involve a work stoppage and be inconsistent with the agreement.

The plant in question is generally known to be a very large steel mill. Steel is an important commodity at all times and a critical necessity in time of war. This country is involved in a de facto war or so-called "police action" in Korea at this time. Moreover, the world situation is well known to be one in which steel and the products thereof are

critically needed in the matter of re-arming forces all over the world to defend against possible Communistic aggression. One who participates in getting others out on strike under such circumstances, and in contravention of contractual undertakings, may fairly be thought of as having transgressed more severly than those persons who merely followed leadership. Even considerably more interference with production in a factory involved with less critically important material might be regarded as involving less culpability.

In Article IV of the contract between the parties, the Company is recognized as having the authority to "discharge employees for cause." Burches not only participated in violating Article III, Sections 1 and 4, but was guilty of that same misconduct on at least two occasions. And, as stated, on the last occasion, he induced other union members to violate contractual duties.

There appears to have been justification for the discharge of Anthony A. Burches. The arbitrator does not feel that sufficient evidence necessary to sustain a conclusion that the action by the Company was unjust or unlawfully discriminatory has been presented.

THE AWARD

It is awarded that the procedure followed by the Company in respect to the discharge of Anthony A. Burches was consistent with the provisions of Article IX of the contract between the parties.

It is further awarded that the discharge of Anthony A. Burches must be sustained since the record establishes no adequate justification for reversing the action taken by the employer.

Iowa City, Iowa
December 3, 1952

/s/ Clarence M. Updegraff
Arbitrator