

Award 120

IN THE MATTER OF THE ARBITRATION BETWEEN: *

INLAND STEEL COMPANY, EAST CHICAGO,
INDIANA *

- and - *

UNITED STEELWORKERS OF AMERICA, LOCAL
UNION NUMBER 1010, CIO, EAST CHICAGO,
INDIANA *

17874

DECISION AND AWARD

Dec. 9, 1954

Hearing at office of company, East Chicago, Indiana, November 11, 1954.

ARBITRATOR: Clarence M. Updegraff, appointed by mutual action of parties.

APPEARANCES:

FOR THE EMPLOYER:

W. T. Hensey, Jr., Assistant
Superintendent, Labor Rela-
tions Department

R. J. Royal, Divisional Super-
visor, Labor Relations Depart-
ment

G. Platisha, General Foreman,
Black Plate, Tin Mill Depart-
ment

J. Kopcha, Safety Engineer

G. Lunde, Safety Engineer

FOR THE UNION:

Cecil Clifton, International
Representative

Fred A. Gardner, Chairman,
Grievance Committee

Albert Garza, Secretary,
Grievance Committee

William Delk, Member, Grievance
Committee

William A. Chanall, Member,
Grievance Committee

Nancy Ellis, Aggrieved Party

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, East Chicago, Indiana, on November 11, 1954, at which written and oral evidence and arguments were received and heard. It was agreed by the parties at the hearing that no post-hearing briefs would be submitted.

THE ISSUE

On July 23, 1953, Nancy Ellis, the grievance claimant here, was a tractor driver in the Tin Mill Department of the Inland Steel Company and was involved in an accident. As a consequence of this she was removed from the tractor operator job at that time.

Subsequently, on January 22, 1954, the union filed a grievance requesting that said employee be restored to the position formerly held. It is to be understood that no issue is raised at this time as to the propriety of the action taken by the company in July 1953. The issue offered by the union is that the demotion imposed because of the incapacity of the claimant as charged by the company at that time should not operate so as to exclude her permanently from such work. It requests that she be now restored to the tractor driver classification and duties.

The contention of the company is that Nancy Ellis was properly removed from the job of tractor operator because of evidence that she was unsuited for such work and that no evidence has been presented to the company indicating that she has since become qualified for the duties of the job and should be restored to it.

PROVISIONS OF LABOR AGREEMENT SAID TO BE APPLICABLE

In part, the union relies upon Article VII, Section 8, paragraph (b) of the contract of 1952 between the parties. Said part of the agreement reads as follows:

"Section 8. Other Conditions Affecting Length of Continuous Service Factor (Sequential or Departmental).

" (b) Employees who have or shall request permanent demotion to a lower job may later change their minds, or employees who have been, or are, denied promotion in accordance with the provisions of this Article, and employees demoted for cause under Article IV, may later correct the cause for such action. In such cases the employees shall again be considered eligible for promotion, but they shall not be permitted to challenge the higher standing on the jobs above of those who have stepped ahead of them until they have reached the same job level above (by filling a permanent opening) as those who have stepped ahead of them." (Underlines supplied.)

Contentions of union.

The union makes no assertion at this time that the action taken against the grievance claimant, Nancy Ellis, is directly involved in this arbitration. It recognizes that the time for questioning that demotion as the subject of a grievance is long past under the terms of the contract between the parties. Its position is rather that even if the demotion is assumed to have been justified by the facts at the time the action was taken, there is no justification for a permanent demotion. It argues that a virtually lifetime sentence of loss of a more skilled somewhat higher compensated job than that to which the claimant was demoted is so severe that it constitutes unjust punishment for the offense involved.

Position of company.

The position of the company is that the demotion of Nancy Ellis in July of 1953 is not to be so much regarded as punishment as the removal of an employee from a position in which by two accidents she had demonstrated she could not work safely and was a menace to the safety of others and to the interests of the company. Management asserts that Nancy Ellis has not offered any evidence under Section 8 of Article VII of the contract quoted above that she has corrected the cause for her demotion but, on the contrary, has in subsequent, other work shown herself to be unsatisfactory by having an unusually high absentee record and being otherwise unreliable.

DISCUSSION OF EVIDENCE AND CONCLUSIONS OF ARBITRATOR

The arbitrator feels that the present case must be considered not so much as one dealing with discipline as one dealing with the management right of an employer to refuse permanently to put on a hazardous job a person who is indicated by evidence to be a careless or incompetent employee. It is to be particularly remembered that the job of tractor operator involves the driving of a somewhat heavy motor driven, small tractor which is capable by its weight and power of causing great damage to other employees and to other trucks and other property of the employer. If such vehicles are driven by employees who have been involved in earlier collisions or accidents the company will be wide open to the charge of being negligent because of entrusting such vehicles to drivers who have proven themselves to

be incapable of properly handling the same. This might well considerably increase the liabilities of the company should subsequent injuries result from poor operation of a truck by a driver who was previously demonstrated to be incompetent.

It cannot be forgotten that in November 1951 Nancy Ellis' operation of a truck caused a foot injury to employee George Harris which resulted in his being absent from work for a period of seven weeks, a loss of \$200 in his earnings and compensation and hospital payments amounting to \$293 as an expense of the company. Nancy Ellis was given a warning after this incident, but was permitted to continue the operation of the truck. In July 1953, Nancy Ellis, while working as a tractor operator, was involved in another accident. For this she was "grounded." The employer offered the subsequent employment record of Nancy Ellis and showed by it that she has received numerous reports, warnings, reprimands and discipline statements relating to absenteeism, leaving her job without due authority and certain violations of safety regulations.

In reference to paragraph (b), Section 8 of Article VII of the contract, the company took the position that the union has made no showing that the demoted employee has "corrected" the cause for the demotion. The union urges that there is no way that they can offer such evidence other than through the company restoring the employee to the former position for another demonstration or trial in doing the work of the same. But the present contract does not provide any such duty on the part of the employer. On the contrary, it is expressly authorized to transfer employees for "legitimate reasons." (See Art. IV of contract.) The safety of other employees and of company property will be generally accepted as such.

The undersigned arbitrator finds no authority in the contract whereby he could justify an award directing that Nancy Ellis be returned to her former work as a truck driver. Granted that it is a considerable hardship to be denied a chance to do higher paid work which the claimant has done and desires, it would be equally a hardship upon management to be required to put into the hands of an incompetent driver the type of truck with which such driver has twice previously been involved in accidents. It may well be that the words of the contract requiring that to be promoted again after demotion the employee offer evidence that he did "correct" the cause for the demotion may operate in this case rather harshly because there appears to be no practicable way to offer such evidence. Yet the wording of the contract is unquestioned and it is an indisputable fact that no evidence of such correction has been offered by the employee or the union to employer. As a matter of fact, such evidence as has come to the attention of the employer since the "grounding", has been adverse rather than favorable to the upgrading requested. The employment record is certainly not one which would convince anyone that Nancy Ellis is a conscientious and reliable employee in respect to other matters. Hence, it seems not unreasonable to assume that the careless attitudes in respect to her other behavior might be reflected in her handling of a tractor if she were again assigned to such work. If her record had been one showing great conscientiousness and excellence on all other work and conduct since she was "grounded", it might well be argued that this would sustain giving her another chance as a truck driver.

THE AWARD

It is awarded that the agreement between the parties herein concerned offers no basis for an award restoring Nancy Ellis to work as a truck driver. She has not offered any evidence of ability to "correct the cause" of her previous demotion and such evidence as appears to be relevant is contrary rather than favorable to her contentions.

It is further awarded that the grievance herein concerned must be and the same is disallowed.

Dec. 9, 1954
Iowa City, Iowa

/s/ Clarence M. Upedegraff
Arbitrator