#126

ARBITRATION

Inland Steel Company :

and : Grievance No. 16-D-87

United Steelworkers of America, :
Local 1010 :

The Submission to Arbitration

On November 3, 1954, the parties, through a joint communication, requested the services of the arbitrator to hear and decide this unresolved grievance. The hearing was held at the Company's plant in East Chicago, Indiana, December 9, 1954, with the following appearances:

For the Company--
Mr. W. T. Hensey, Jr., Assistant Superintendent, Labor Relations Department
Mr. J. A. Keckich, Assistant Superintendent, Cold Strip Department
Mr. W. A. Dillon, Divisional Supervisor, Labor Relations Department
Mr. R. Miller, Tandem Mill Foreman, Cold Strip Department
Mr. J. Kopcha, Safety Engineer

For the Union--
Mr. Fred A. Gardner, Chairman, Grievance Committee
Mr. Cecil Clifton, International Representative
Mr. James Stone, Grievance Committeeman
Mr. John Sargent, Secretary, Grievance Committee
Mr. J. Sanders, Aggrieved
Mr. J. Ross and
Mr. R. Thompson, witnesses

Written briefs and exhibits were presented by the parties. A transcript of the proceedings was made by the LaSalle Reporting Service, which was received by the arbitrator December 22, 1954, at which time the record was closed.

Factual Background

Joseph Sanders was hired as a laborer in the Galvanize Department on December 15, 1950, and was laid off January 3, 1951, because of "reduced operations". The Yard Department rehired him as a laborer the following day, January 4, 1951, where he continued until October 2, 1951, at which time he was transferred (at his request) to the Cold Strip Department. Three weeks later, October 23, he was the successful bidder for a vacancy on the job of Coil Tracer in the Tandem Mill Rolling Division. He continued in this position until December 1, 1952, when he was the successful bidder for a vacancy in the position of Extra Feeder in the Tandem Mill Sequence.

Under the provisions of Article VII, Section 4 of the Collective Bargaining Agreement, Sanders established continuous length of service within the Tandem Mill Sequence after working thirty turns. Therefore, his service in this sequence dates from December 1, 1952. He continued on the Extra Feeder job until June 7, 1954, when he was permanently

demoted to the Labor Pool. That is, he had served more than eighteen months in this position.

The reason given by the Company for this demotion are Sanders' safety record and his alleged poor work performance.

The Issue

As stated by the parties in their joint submission letter, the question to be decided is "whether or not the Company was in violation of Article VII, Section 2, and Article XIV, Section 5, of the July 30, 1952 Collective Bargaining Agreement when it denied Grievance 16-D-87, filed June 15, 1954, which contended that J. Sanders, Check No. 14103, was improperly demoted".

Our attention is called to the fact that all grievances pending at the time of the adoption of the parties' 1954 Agreement are to be dealt with under the grievance procedure set forth in the 1952 Agreement "as amended and supplemented, in effect at the time the cause of the grievance occurred".

The pertinent provisions of the 1952 Agreement are as follows:

Article VII, Section 2, Personnel Records.

"Records and ratings as to each employee's service with the Company shall be maintained in the department in which he is employed, and such records and ratings shall include matter relative to an employee's work performance and length of service in such department and in the sequences therein. Each employee shall at all times have access to his personnel record and in case of those employees whose record indicates unsatisfactory workmanship, the superintendent of the department or his assistant will call the employee in and acquaint him with the reasons for unsatisfactory rating.

"The superintendents of departments will, when necessary, continue the program of acquainting the employee with written notices of discipline or warning to stop practices infringing on regulations or improper workmanship. These letters are recorded on personnel cards. In all cases where one (1) year elapses after a violation requiring written notice, such violation will not influence the employee's record.

"These records of the employee's individual performance have much influence on the 'Ability to perform the work' clause in Section 1 of this Article, but in no case will the Company contend inability to perform the work when the procedure as outlined in this Section has not been strictly complied with. Should any dispute arise over the accuracy of the personnel record, it shall be disposed of through the normal grievance procedure." (Emphasis supplied).

And Article XIV, Section 5, Company Rules and Regulations provides that,

"The Company shall have the right to make and enforce reasonable Company rules and regulations consistent with the terms and conditions of this Agreement and a copy of new rules and regulations, when issued, shall be furnished the Union. The Union may request a meeting between Company and Union representatives and at such meeting the parties shall meet to discuss the reasonableness of such rules and regulations.

In any arbitration involving discipline of any employee for violation of a Company rule or regulation, the reasonableness of the rule or regulation involved may be an issue." (Emphasis supplied).

While the parties' joint letter submitting this grievance to arbitration did not make specific reference to Article VII, Section 6, (c), our attention was called to it at the hearing as having some possible bearing on the question of the reasonableness of the Company's application of its rules and regulations in the matter now before the arbitrator.

"(c) Stepbacks. All stepbacks within a sequence for any reason shall be in accordance with the provisions of this Article. When such stepbacks are being made, the Company shall not apply the ability factor where the employee has performed the duties of the job for six (6) months or more." (Emphasis supplied).

The Union's Contention

The Union contends that J. Sanders was discriminated against when he was permanently demoted to the Labor Pool on June 7, 1954. It is claimed that he was never given a reprimand or discipline notice for unsafe workmanship. As to poor workmanship, the Union further claims the Company never entered any charges of poor workmanship prior to June 2, 3, and 5, 1954. For a period of eighteen months prior to the first week of June, 1954, Sanders had satisfactorily performed the work of Extra Feeder, it is claimed, without any notice of poor workmanship. Then, suddenly, the Company found him both an unsafe and a poor worker.

The Union contends that the real reason for Sanders' demotion was that he is a Negro; that there are certain "diehard" Southern-born white men in the mill who are determined not to have a colored man on this job; and that these men have brought pressure on the new foreman, Jack Arndt, and that he has yielded to the pressure and played into the hands of the racists. (Tr. 23-26).

The Company's Response

The Company denies the Union's claim that there is not a poor record of workmanship, and a poor safety record and cites the following:

On April 14, 1954, it was reported to Foreman Arndt that Sanders fell twice during the turn. Following this, General Foreman S. Daily received the following memorandum from Arndt: "J. Brodie saw J. Sanders fall twice during our turn this morning, once while carrying wide steel over reel - from what I hear this happens often to him. As yet, I haven't seen it.

"Is there any way through the clinic that we could get him off the mills before we have another lost-time accident.

SIGNED: J. R. Arndt" (Co. Ex. "E").

As a result of this Sanders was referred to the clinic and the doctor made the following memorandum after examining him:

"4-16-54. Patient said he fell due to fact sheet was pulled back, he fell backward to keep from getting caught on coil.

"He did not feel that this was due to his ankle but rather to an accident that happen . Ankle is sore after a day's work but does not turn easily or give wa . Continue Whirlpool.

("M.F.A." Company Exhibit "F").

Company Exhibit "H" gives the accident record of Sanders.

(a) On the morning of December 27, 1950, there was a minor injury when the middle finger of right hand was cut.

(b) On May 4, 1951, while crossing #2 Track on his way to #9 Track, he tripped on a piece of wire and struck one knee against a track.

(c) On August 4, 1952, he received a "light bruise on side of leg just above his knee".

(d) On February 25, 1953, the palm of his hand hit edge of banding strip resulting in laceration.

(e) On December 15, 1953, Sanders backed into a piece of scrap that was laying on the floor with end turned up. He received a laceration on the calk of his left leg.

(f) On May 10, 1954, he received a bruise on right leg just above the knee. He did not report this promptly, as required by the Company's safety regulations, but reported it three days late, May 7, 1954. Because of this he was given a warning notice, indicating that discipline would be applied if such laxness in reporting accidents again occurred.

In response to the Union's charge of racial discrimination, the Company denies that such was a motivating force in its action in demoting Sanders. It points to the fact that Sanders was permitted to bid in and transfer to the Cold Strip Department. He was promoted in October 1951, and on November 5, 1952, on the basis of seniority, he was permitted to go into the Extra Feeder job. At his own request he was permitted to transfer from one crew to another, after he became an Extra Feeder. Other colored men have also moved into the department. Many of these are maintaining satisfactory records. In fact, another Negro, J. Simmons, Check No. 14147, was assigned to the 54" Mill, to the same job and on the same crew as J. Sanders had been assigned to at the time of his demotion (June 7, 1954). At the time of the hearing, Simmons was maintaining a satisfactory record, with no complaints from either the crew or his supervisors. In view of this, it is difficult to believe that the Union's charge of racial discrimination can be sustained.

As to the Union's claim that there was a violation of Article VII, Section 6, (c), this claim was not made at the time of the grievance; nor was it mentioned in the joint stipulation signed by the parties when appealing this matter to arbitration. (Letter of November 3, 1954). Furthermore, our attention is called to the fact that Section 6, (c), applies to "Stepbacks", as in the case of a reduction of working forces, and does not apply to a situation where an employee is being demoted for proper cause.

Discussion and Conclusion

We have considered carefully the charge of racial discrimination in this case. No conscientious arbitrator wishes to be a party to the kind of prejudice which denies to anyone his right to fair and equal treatment in his job relationships. While it is

true that racial discrimination on the job is often practiced both by fellow workers and their supervisors, some employees are inclined to make charges of this sort which are without foundation. It is often difficult to prove such discrimination, even when it may exist in a given situation.

An examination of the nature of the accidents in which Sanders has been involved does not indicate that most of them were the result of having been unfairly treated by fellow employees. One or two accidents occurred under circumstances which might suggest that he may have been put off balance by a careless or mischievous movement by another member of his working team. But most of those incidents reported in Sanders' accident record could not have been attributed to anything of the sort.

There are more compelling facts which prevent us from concluding that Sanders' demotion was motivated by racial prejudice. It has not been denied that another Negro went into the same crew within a week or ten days after Sanders' demotion. We understand that this latter employee was accepted by his fellow workers and was still there at the time of the hearing in this case. This kind of evidence does not support Sanders' contention that he has been unjustly treated because of his race or color.

A second point which we cannot ignore is that this decision to demote Sanders does not appear to have been made by Foreman Arndt alone. Those responsible for safety in the plant were consulted and concurred in this action. Therefore, we cannot conclude that this was the decision of a single official who yielded to pressure from a prejudiced group.

The Union is on sounder ground in rebutting the Company's charge that Sanders had a poor work record. It points out that he was steadily advanced over a period of several months. This progress is attributed to merit as well as seniority. Therefore, one can not conclude that Sanders had a generally poor work record, even though there were a few unfavorable items on it.

In short, we have before us a safety record which is not good; and a poor one which extends over a period of several months. Perhaps, too, Sanders could not work effectively with this team; and apparently not with another team, from which he had asked to be transferred. But apart from the safety factor, we cannot conclude that he has had a bad work record over an extended period of time.

With respect to Article VII, Section 6, (c), "Stepbacks", the Company has objected to the introduction of this at the hearing as being untimely, since no reference was made to it in either the initial grievance or in the joint submission letter. The Company was not charged with a violation of this provision when the matter was intially submitted to the arbitrator.

It is further claimed by the Company that Section 6 is meant to deal with promotions and demotions in increases and decreases of the working forces and not in such a matter as that now before us. Sanders was demoted for specific reasons which had nothing to do with ordinary reductions, or "stepbacks". In view of the fact that this subsection was not mentioned in the early stages of this grievance, we are inclined to conclude that the parties intended it to apply in the case of reductions in force. The very term "Stepbacks" suggests a progression backward under normal procedures rather than in cases of demotion for proper cause.

Our conclusion must be that there is insufficient evidence in this case to warrant a ruling by the arbitrator setting aside the Company's decision. For an arbitrator to substitute his judgment for that of those responsible for the day to day functioning of the plant, there should be substantial proof of the alleged discrimination. In this case we are not convinced that the discrimination was on any other basis than that of the individual employee's record.

Award

In answer to the specific question put to the arbitrator in the parties' joint submission letter dated November 3, 1954, I find no basis for holding that the Company has violated either Article VII, Section 2, or Article XIV, Section 5, when it denied Grievance 16-D-87, which contended that J. Sanders was improperly demoted.

/s/ John Day Larkin

John Day Larkin, Arbitrator

February 10, 1955