ARBITRATION NO. 133

OPINION

IN

ARBITRATION

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INLAND STEEL COMPANY
Indiana Harbor Works, East Chicago, Indiana

-vs-

UNITED STEELWORKERS OF AMERICA, CIO
LOCAL UNION NO. 1010

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ISSUE IN DISPUTE: GRIEVANCE NO. 10-D-13

Whether or not the Company violated the provisions of Article XIV, Sections 5 and 6 of the Agreement when it imposed a 3-day punitive lay-off on the complainant, George J. Krahn, for work errors charged to him.

ARBITRATION PROCEEDINGS

In a letter dated October 25, 1954, the undersigned arbitrator was notified that the parties had mutually selected him to act as "impartial arbitrator" in the cited Case.

On August 9, 1955, the date selected by the disputants, the undersigned heard the parties to the dispute. At the inception of the hearing, both parties acknowledged the propriety thereof and conceded that all the requirements of the prevailing Agreement respecting the grievance procedure had been complied with.

The transcript of the proceedings, made by Mr. J. R. Betz of the La Salle Reporting Service, Chicago, reached the undersigned on August 26, 1955.

APPEARANCES

For the Company: W. L. Ryan, Assistant Superintendent, Labor Relations Dept.
George Peck, General Foreman, No. 1 Blooming Mill Dept.
R. J. Stanton, Divisional Supervisor, Labor Relations Dept.

For the Union: Cecil Clifton, Representative, United Steelworkers of America, CIO
Joseph Wolanin, Assistant to Representative
William Bennett, Assistant Griever

PERTINENT PROVISIONS OF THE AGREEMENT

Article XIV provides as follows:

Section 5. Company Rules and Regulations

"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."

Section 6. Local Conditions and Practices.

"This Agreement shall not be deemed to deprive employees of the benefit of any local conditions or practices consistent with this Agreement which may be in effect at the time it is executed and which are more beneficial to the employees than the terms and conditions of this Agreement."

Article VIII. Adjustment of Grievances.

Section 2.

Step 4. ..... "The arbitrator's decision shall be final and binding on both parties. ..... the arbitrator shall have jurisdiction and authority only to interpret, apply or determine compliance with the..... Agreement. He shall have no power to add to, detract from or to alter in any way the provisions of this Agreement."

Article IV. Plant Management.

Section 1.

"Except as limited by the provisions of this agreement, the management of the plants and the direction of the working forces, including the right to direct, plan and control plant operations, to hire, recall, transfer, promote, demote, suspend for cause, discipline and discharge employees for cause, to lay off employees because of lack of work or for other legitimate reasons, to introduce new and improved methods or facilities, and to change existing methods or facilities, and to manage the properties in the traditional manner are vested exclusively in the Company, provided, however, that in the exercise of such functions the Company shall not discriminate against employees because of membership in or legitimate activity on behalf of the Union."

CONTENTIONS OF THE PARTIES

The Union, on behalf of the grievant who was not present, contends as follows:

(1) That while the error here charged by the Company admittedly did occur, the responsibility for it cannot properly be ascribed to the complainant, and that the penalty imposed upon him, therefore, was not reasonably justified.

(2) That the real cause for the mistake was the "Assistant Provider" who placed erroneous information in respect to the carbon content of heat No. 11078 on the "Cold" Steel Report and the "charging board" and that this misinformation, so placed, was the cause of the error.

(3) That the "Pit Recorder" is concerned with recording of information obtained from a number of plant functionaries (Provider, Metallurgical Dept., etc.). The achievement and the accuracy of the items he records are the responsibility of those from whom he properly received them. The "Pit Recorder" applies steel based on this information. He does not exercise wide discretion in the direction of others or determine what analysis, size, or shape will be rolled.

(4) That it has been the normal practice for the "Pit Recorders" to take the carbon content of cold steel from the "Cold Steel" Report. It is a practice known to and condoned by Supervision.

(5) That the "Ass't Provider" who was the initial cause of the error is responsible for a proper knowledge of analysis and specifications to insure correct application of steel rolled.

(6) That the Company has not, heretofore, imposed such a severe penalty on any "Pit Recorder" for the same offense.

(7) That the 3-day punitive lay-off imposed on the complainant should be found in violation of Article XIV, Sections 5 & 6, and that he should be fully indemnified for the earning losses sustained on that account.

The Company contends:

(1) That the "Pit Recorder's" function is the recording and maintaining of proper identification (chemical specifications) and disposition of all steel ingots charged into and drawn out of the "soaking (heating) pits" --- a function which is very important because the specifications cannot be visually distinguished.

(2) That the "Pit Recorder" applies the steel in the "soaking pits" to customer orders --- a function which requires him to know that the chemical specifications of the steel he applies meet the requirements set forth by the customer's order.

(3) That the "Ingot Record Book"is the proper source of information respecting the chemical specifications of any "Heat", and that the "Pit Recorders" have been specifically instructed that this book is the only source to be relied upon for such information.

(4) That the error involved in this Case was made because the "Pit Recorder" accepted, without proper checking, information which he found nn the "Charging Board". Had he referred to the "Ingot Record Book" for his information, as he should have done, he would have known that the steel in Heat No. 11078 did not meet the requirements of the two orders in question.

(5) That the "Provider's office" authorized the use of ingots from Heat No. 11078 because the complainant gave that office erroneous information respecting the carbon content of that "Heat".

(6) That the complainant has had previous warnings about failing to exercise the care required for the proper performance of his job.

(7) That because the complainant knowingly violated a reasonable rule and regulation for the conduct of his job and thereby caused a serious error to be made, the Company had "cause" to discipline the complainant.

(8) That the Company did not violate Article XIV, Sections 5 & 6 of the Agreement, as alleged.

(9) That the 3-day "punitive lay-off" imposed on the complainant for the action cited was reasonable, was within the proper discretion of the Company, and should be sustained in this proceedings.

FINDING OF FACT AND ARBITRATOR'S COMMENTS

The instant issue arose on May 25, 1954 when the complainant, George J. Krahn (No. 1622), a "Pit Recorder", then on the 8:00 A.M. to 4:00 P.M. "turn"

in the No. 1"Blooming Mill" of the Company, during the course of his normal duties applied the wrong steel to two customer orders.

There is no question that the error was made and that the complainant made it. There is dispute, however, whether the blame for the error can and should properly be ascribed to the complainant.

The reason for the dispute is as follows:

On the day in question (apparently during the previous turn), the "Provider's" office had brought into the "Pit Recorder's" office a so-called "Cold Steel Report" showing that some ingots of a certain heat of steel (No. 11078) were to be processed. As is customary, the "Assistant Provider", who prepared and delivers that report, listed the heat on the so-called "Charging Board" (A large blackboard on the wall) in the usual manner, for the information of supervision and some others affected by the order. He, however, made an error in listing the "carbon" content of this "heat". He gavw it as .22 when it actually was .14.

Some time during the course of the complainant's "turn", the Provider's office spoke with the complainant, among other things, about the need for a certain carbon content steel to fill certain orders. The complainant, remembering the listing on the Board, told the office that he had some .22 car-bon steel from Heat No. 11078 available. Based on that information, the "Provider"requested that some of the ingots from that heat be applidd to certain customer orders that were to be filled immediately. In the normal performance of his duty as a "Pit Recorder", the complainant applied the steel in question to the designated order.

The fact that the steel in heat No. 11078 was actually .14 instead of .22 carbon, and therefore not proper for the orders in question, was not discovered until the 7 ingots involved in one of the orders (No. 970-A) were "spark" tested preliminary to rolling in the 14" mill. This order called for a .19 - .23 carbon range. The discovery of this misapplication of steel provoked the further investigation which revealed that one ingot of the same .14 carbon steel had gone into an

order (No. 9325) which required a .22 - .26 carbon range. By the time the latter error was discovered, the purchaser of the steel had already fabricated it.

The dispute as to the responsibility for the error centers in the fact that the complainant gave erroneous information to the Provider's office and applied the wrong steel to an order because the Assistant Provider, on an earlier "turn", had placed the erroneous information in the "Cold Steel Report" and on the "Charging Board:. The complainant was deceived by this information. He therefore feels that he was not responsible for the error he made, but was the victim of some one else's mistake. The Company, on the other hand, is emphatic in its position that he is directly and completely responsible for the error made by him, because he neglected his duty when he accepted the information from the "Board" without checking the chemical specifications of the "heat" in question in the "Ingot Record Book" --- the Pit Recorder's "Bible". The Company insists that he violated his instructions and training when he accepted information from the "Board" without verifying it in the "Book".

Whether or not the complainant can properly be held responsible for the misassignment of steel here involved depends upon which of the above conflicting contentions is correct.

In determining the truth relevant to the issue, the arbitrator is handicapped by the fact that the complainant himself did not appear to testify on his own behalf and to explain the procedure, as he knows it, for the application of so-called "Cold Steel" to customer orders. The arbitrator, therefore, did not have the opportunity to examine his written allegations in the Grievance in the light of facts as the complainant himself could testify to them. The Union did, however, present a number of witnesses who testified on his behalf.

John Barschdorf, an Assistant Pit Recorder, testified that: "..... until this came up here I don't think many people checked the book, but they do now. We have been taking the analysis that he (Assistant Provider) had on his "Cold Steel

Report" because hs showed the specifications...."

In the cross-examination by Mr. Ryan, Mr. Barschdorf (pp. 148-149, Transcript) said that he was caught making the "same mistake" and got a "warning letter" which said "I misapplied steel and to watch myself in the future."

Later in the testimony the arbitrator asked Mr. Barschdorf:

Q "....When you made these mistakes (i. e. applying steel with wrong specifications to order), did your supervisor ever tell you you were supposed to get this (i. e. specifications) from the =Ingot Record-Book?" (p. 158, Transcript).

A "He told me I was to make sure I put the right steel on the right orders."

Q "How would you do that?"

A "Look in the book."

.....

Q "If it's on the =Cold Steel Report= board, are you sure it's correct?"

A "Sometimes I take his word for it....."

Q ".....How do you make sure what you are doing is correct?"

A "If you want to make sure you have to look in the book."

Q "So when your supervisor tells you to be sure you are correct, what do you do?"

A "Look in the book, I guess."

William Bennett, an "Assistant Griever", also appeared on behalf of the complainant. He said that: ".....so long as I have worked out there, I have never known any recorder to go to the heat record book on cold steel for carbon.... speedier .... if they could just look at ... bank chart. .....cold steel report.... replaces that old bank chart....." (p. 131, Transcript).

He also said that: "..... supervisers .... although maybe not condoning it, verbally, knew it was going on. I don't know who, but some of the immediate supervisers knew the pit recorders were using this cold steel report for information for cabbon range...." (pp. 132-133, Transcript).

The Company, on its behalf, introduced a number of signed statements, by supervisors and others, to substantiate its contentions that reference to the "Ingot Record Book" is a "must" for Pit Recorders when they apply steel to customer orders. Four "turn foremen", who functioned in that capacity on the date (May 25, 1954) when the error here in question was made, signed such statements. They state as follows:

(1) James Ferguson, Jr.,: "I.....have never sanctioned the applying of heats from the specification shown on the charging board in lieu of taking them out of the analysis book. To the best of my knowledge, this has not been done and is not the practice."

(2) Roger E. Yant: "I have never authorized any Pit Recorder.....to use the charging board as a substitute for the ingot record book in checking the specifications and the analysis of heats. To the best of my knowledge... Pit Recorders....under my supervision have not used the charging board as a source of such information."

(3) John Baltus: "I.....have never authorized a Pit Recorder.....to use the pit board information....for application of steel on orders without first checking the analysis book. To the best of my knowledge, the Pit Recorders.... under my supervision have not deviated from the practice of checking the analysis book rather than relying on the charging board."

(4) B. Bradley: "All steel.....must be checked by heat analysis in our record book against analysis specified on orders before rolling same. I have never sanctioned any deviation from this procedure....and to my knowledge, the Pit Recorders.....have always followed the procedure of obtaining their information from the ingot record book."

The Company also presented a statement by George Peck, currently General Mill Foreman, No. 1 Blooming Mill, Plant 1 Mills Department. He is supervisor to Pit Recorders and Assistant Pit Recorders on the day turn. On the day when the instant grievance arose (May 25, 1954), he was a "turn foreman". He states

as follows:

"I have never authorized any Pit Recorder.....to use the charging board as a substitute for the ingot record book in checking the specifications and the analysis of heats. To the best of my knowledge....Pit Recorders.... under my supervision have not used the charging board as a source of such information."

The Company, finally, presented the statements of two men who have done the Pit Recorder's work after working their way up through several progressive steps:

(1) Edward Murphy (Pit Recorder for 4 years): "It had been impressed on me numerous times....the importance of correct application of steel on customer orders....on all phases of the chemical composition. This was impressed on me by both supervisors and hourly employees. The....supervisor who instructed me....was Ed Knight..... He instructed me that my source of information must, of necessity, be the ingot record book.

"I was the Assistant Provider in charge of the Pit Recorder....on May 25, 1954. I have never authorized a Pit Recorder....to apply ingots from the charging board to orders without first checking the ingot record book, and to my knowledge, it has never been done."

(2) Carl E. Gaughan, currently an Assistant Provider, states: "....I was specifically instructed by Ed Knight....that I must check all the chemical specifications of an order before applying a heat through the use of the ingot record book. .... "To the best of my knowledge, no Pit Recorder....has ever applied a heat to an order without checking the chemical specifications in the ingot record book. I have never condoned the alleged practice of applying heats through the sole use of the ingot charging board."

The above statements (except that of Mr. Peck) were introduced into evidence without presenting the signatories for possible cross-examination. The Union

initially objected to the procedure as irregular. The Company reciprocally renewed its original objection to the admission of the complainant's grievance and the allegations contained therein without (because of his absence) an opportunity by the Company to cross-examine him. After some discussion, both parties withdrew their objections. Consequently, the signed statements submitted by both the complainant and the Company were admitted.

An appraisal of the evidence in the record shows that:

(a) 7 persons, who either because they have been responsible for the work of Pit Recorders or because they have been trained in the functions of that job, state unequivocally that the "Ingot Record Book", not the "charging board" is the authoritative source of information for the checking of the steel specifications. They likewise leave no doubt that this fact is known by the Pit Recorders who apply the steel. This evidence stands unimpeached.

(b) One of the witnesses for the complainant testified generally to the contrary, but could not identify any supervisor who knowingly tolerated the practice of taking the carbon specifications from the "board" (instead of the "Book"). The same witness contended that the usual source, as he knows it, is the "Cold Steel Report", the successor to the "Bank Chart". (The complainant's defense is that he took, as usual, the carbon specification for the "Heat" in question from the"charging board" as it was given there, and that he misapplied the steel in that "heat" because the information on the "board" was wrong.) The other witness (Mr. Barschdorf) made a similar general contention, but admitted that he himself had been warned "to be sure to put the right steel on the right order", and that, to accomplish it, he would have to "look at the book." It seems clear, therefore, that he, in common with the 7 men who submitted written testimony onbehalf of the Company, knew that, in order to comply with the Company's request for greater accuracy, reference to the "Ingot Record Book" was necessary and was a requirement. It follows that failure to use that source would constitute a willful violation of

and showed it as 16 carbon when it was 27 carbon." The letter goes on as follows:

"It is necessary for more care to be taken in writing our orders as we have had entirely too much mixed steel resulting from errors in our own department."

It concludes as follows:

"Future mistakes of this kind will merit disciplinary action."

(3) On February 26, 1954 a "Discipline Statement" was issued to the complainant. In this case he caused a 224-unit "over-rolling" (On a 690-unit order) of Acme slabs of 17" x 2½" dimensions when specific instructions to him disallowed any over-roll. This "Discipline Statement" detailed the actions which constituted the error and then concluded:

"It is evident that you have not been exercising the care required for the proper performance of your job. Because of this it is now necessary to discipline you to the extent of four (4) working days off....."

(4) On June 10, 1954 another "Discipline Statement" was issued to the complainant, the penalty of which is the subject of the instant arbitration. The statement reads as follows:

"On the 12 to 8 turn of May 22, 1954, you ordered heat No. 12125, specification 52-S5 rolled into squares and neglected to designate test ingots on the pit slip and did nor mark slip for test practice.

"On the 8 to 4 turn of May 25, 1954, you applied 7 ingots of heat No. 11078 which was a .14 carbon heat against 14" Mill order 970-A which called for .19 to .23 carbon steel. This was detected at the 14" Mill by the spark tester and placed in stock.

"On the same turn you applied 1 ingot of heat No. 11078, .14 carbon steel against Bar Mill sheet No. 9325 which called for .22 - .26 carbon flange quality steel with a 70 per cent yield. This was shipped to the customer and fabricated before error was discovered.

"Evidently you applied this heat against the orders without looking up the analysis in the Heat Record Book.

"On March 1, 1954 you were disciplined 4 days because you ordered 224 more slabs rolled than the order called for.

"Due to your neglect to take the proper precautions to insure correct application of steel rolled on May 25, 1954, you are being disciplined to the extent of three (3) days off during the week of June 14, 1954."

The above cited series of letters and personal warnings establish beyond a doubt the fact that the Company made known it wished for and was insisting upon

the highest possible degree of accuracy from Pit Recorders in the performance of their job. The matter of "mixed steel" (which is the offense charged in this Case) was one of the subjects of the November 4, 1953 general letter; it was also the subject of the "Warning Letter" of December 10, 1953, directed to the complainant personally, telling him that:

"Future mistakes of this kind will merit disciplinary action."

It is clear, therefore, that when the instant case arose the complainant knew that further errors by him which resulted in "mixed steel" would produce some disciplinary action. Since, in the absence of reasonable evidence to the contrary, we must assume that he, in common with the supervision and other Pit Recorders, knew that the accuracy required could be achieved only by getting the information respecting the specifications from the "Ingot Record Book", it follows that he knowingly subjected himself to the peril of disciplinary action when he chose to do otherwise. It is of little moment here whether he took the misinformation here in question from the "charging board", as he states in the Grievance, or from the "Cold Steel Report", as those who testified in his behalf content; the fact is that he failed to take it from the source (Ingot Record Book) designed for the purpose and so known to him.

The penalty imposed by the Company in the instant Case is contested on the ground that it violates the provisions of Sections 5 and 6 of Article XIV in the applicable Agreement.

Section 6 assures employees that they shall not be deprived of any "benefit of any local conditions or practices... which may be in effect at the time - the Agreement - is executed and which are more beneficial to the employees than the terms and conditions of this Agreement."

The complainant contends that reference to the "charging board" (instead of the Ingot Record Book) for the specifications of Cold Steel has become a "practice" by Pit Recorders and therefore falls within the purview of Section 6. In the opinion

of the arbitrator, based on the evidence in the record, the word "practice", as used by the complainant, is a self-confessed repeated violation of a job detail requirement --- a detail which management has a right to control and the affected employee has a duty to perform as management prescribes it. Such a deliberate failure to comply with an established job duty when, as in this Case, not sanctioned nor condoned by management, cannot reasonably be deemed to be a "practice" within the meaning of the cited Section 6.

Section 5 of the cited Article (XIV) reserves to the Company the right to make "rules and regulations" consistent with the terms of the Agreement. That section implies the requirement that "rules and regulations" made under this reservation of rights to the Company must be "reasonable", because their "reasonableness.... may be an issue" in an arbitration "involving discipline of any employee for violation" thereof.

The complainant contested the "reasonableness" of the penalty on several grounds: (1) That the complainant erred because the Assistant Provider, not subject to Union jurisdiction, put erroneous information on the Cold Steel Report and on the "board" and ordered its use in the manner applied by the complainant. The Assistant Provider was not penalized for his error.
(2) That the "job description" applicable to the complainant's job does not mention the "Ingot Record Book" and does not require reference to it.

In the opinion of the arbitrator, the fact that the Assistant Provider also made a mistake and was not penalized for it does not, in itself, invalidate the penalty imposed on the complainant. The record does not indicate that the Assistant Provider's past record in respect to errors is equal to or worse than that made by the complainant when that misinformation is applied by those who have a right to rely on it. The record gives little information upon which the case of alleged "discrimination" could be determined. It is not the province of the arbitrator to assume discrimination in an area where latitude and personal judgment

are manifestly necessary; he can properly find so only when there is adequate evidence of its actual existence.

In respect to the contention that the job description does not mention reference to the "Ingot Record Book" as a job requirement, the following facts are relevant:

The complainant's "Primary Function", as given in the "Job Description", is as follows:

> "Records and maintains proper identification and disposition of all ingots charged and drawn at soaking pits."

Under "Work Procedure" the "Description" says, among other things:

> "Receives and records heat number, specification, etc., of all heats delivered by Open Hearth.
> "Prepares order slips and maintains a record of total number of ingots in each pit and location of each ingot in pit, specification of steel...."

The record shows that the Pit Recorder is obligated to "record" the heats and their specifications in the "Ingot Record Book". There is no contention that recording it elsewhere would be proper. It must be noted, however, that this "Book" is not mentioned as the repository of such records. It must be assumed therefore, that the proper place for recording is a matter within the discretion of the Company to define. It must be assumed with equal weight, therefore, that, without evidence to the contrary, the place from which the specifications, etc., are to be taken when the duty of applying steel is being performed, is also within the discretion of the Company to define.

In view of the complainant's past history of errors made and warnings given by management, and because there is no doubt in the arbitrator's mind that the complainant knew not only the importance of the proper application of steel, but that such application was expected to be made on the basis of information derived from (or at least checked in) the "Ingot Record Book", the arbitrator cannot agree with the contention that the 3-day punitive lay-off imposed on the complainant was "unreasonable".

It is always a difficult task for an arbitrator to render a judgment which de-

prives a working man of earnings, even in part. But as long as his function is to act impartially in any dispute, he may not fail to remember that the employer, like the worker, has a right to complain effectively when, for what he has committed himself to give, he does not receive what he bargained for -- a reasonable amount of specified work performed at the time and in the manner prescribed by him. It is as much the duty of an employee to give the quantity and kind of work he owes as it is the obligation of the employer to pay the wages, etc. promised. An arbitrator cannot properly forget that although mortals are less likely to yell about them with equal intensity, there is equality between the parties in the area of duty as well as in the province of rights.

CONCLUSION: It is the considered judgment of the undersigned arbitrator that the Company did not violate the provisions of Article XIV, Sections 5 & 6 of the Agreement, and that therefore the petition of the complainant must properly be and hereby is denied.

EFFECTIVE DATE

The judgment rendered this 9th day of September, 1955 shall be in full force and effect from the date thereof.

/s/ H. Herman Rauch
H. Herman Rauch, Impartial Arbitrator by Mutual Agreement