and

UNITED STEELWORKERS OF AMERICA
Local Union 1010

Grievance No. 8-F-14
Docket No. III-192-187-6/19/57
Arbitration No. 210

Opinion and Award

Appearances:

For the Company:

L. E. Davidson, Assistant Superintendent, Labor Relations
R. H. Ayres, Divisional Supervisor, Labor Relations
R. J. Stanton, Divisional Supervisor, Labor Relations
William Dittrich, Superintendent, Plant #2 Mills

For the Union:

Cecil Clifton, International Staff Representative
Joseph Wolanin, Acting Chairman, Grievance Committee
Albert Garza, Vice Chairman, Grievance Committee
William Young, Grievance Committeeman

This award should be read in conjunction with that issued simultaneously as to Grievance No. 13-F-16. The analysis and interpretation of the contract provisions in that award are intended to apply equally to this grievance.

This grievance, filed by Matthew Szczepkowski on April 5, 1957, recites that he was ordered by his foreman to work "under conditions which he believed unsafe and beyond the normal hazards inherent in the 28" Mill, and after stating the facts to the foreman he was sent home on March 29th." Violation is charged of Article XI, Section 6 of the Agreement. Although the grievance notice originally requested that grievant be paid for lost time, the relief requested in arbitration is limited to a withdrawal from the personnel files of the discipline statement issued to the grievant on April 3, 1957.

This case was initially considered in the Third Step of the Grievance Procedure on April 17, 1957. The answer of the Superintendent of Labor Relations on behalf of the Company not having been regarded as satisfactory by the Union, the matter was appealed to arbitration.

Grievant is a Millwright in the 28" Mill. On March 29, 1957 on the 4-12 turn he approached the Mechanical Foreman in the toolroom and, referring to a job to which he had not been assigned but which he must have recognized as ready for assignment, stated that he would not work the job because it was unsafe. He then asked the foreman who would be assigned to the job and received the response, "We will cross that bridge when we come to it."

The job under discussion was the replacement of a worn crank on the #2 Rail Drop Saw in the 28" Mill which is located at a right angle to the 330C Table on its idler side. The machinery, repair and replacement of which was required, was in a pit about four feet deep. The crank is about five feet from the idler girder. There is a switch side-guard in front of the saw, the purpose of which is to direct and shunt bars away from the saw. The job is not one that is required to be performed with any high degree of regularity, but, rather, from time to time as replacement of parts or maintenance is required.

The work of replacing the crank had been started on the day turn by the 32" Mill Millwright and a Helper. They worked without questioning the propriety of the assignment. At about 4:30 p.m. the turn foreman instructed the grievant to continue the work. Grievant said the job was unsafe because the mill was rolling and in operation. He looked about for the Mechanical Foreman but could not find him. He then asked the turn foreman for other work and was told there was no other work to perform and to leave the job if he refused the assignment. Grievant then went home.

Another employee was assigned to continue the work, but, after starting, it was learned that necessary parts were not available and he was assigned elsewhere. No work on the crank was performed during the next 12 to 8 turn because of the press of other maintenance jobs. Again, work was performed on the job on the following 8-4 turn on March 30, but it was not completed. Grievant was reassigned to the job on the 4-12 turn and accepted the assignment under "protest." Grievant stated that he actually worked on the saw only during delay or down time when the mill was not operating. He did not finish the job.

The discipline letter issued to the grievant, dated April 3, 1957, stated that he was to receive only one and one-half hours pay for March 29, 1957. He then filed his grievance.

Grievant stated that his conviction that the job was unsafe was based upon the fact that he had seen bars fly off the table as much as 15 to 25 feet in 1952 and 1954. In the latter year, he claimed, a tie plate went under the saw. The Company denies these events and states that the only event of this nature took place some 18 years ago when the machinery, side-guards and switch side-guard were not positioned as they were in March, 1957.

Company witnesses testified that there are standing instructions that work on the saw pit is not to be undertaken while wide flange beams are being rolled because of the danger that may be involved. These instructions do not apply to beams of conventional dimensions which were being rolled on March 29, 1957. The Company's Safety Engineer reported and testified that there had been no previous injuries on this job and that he regarded the work as safe.

The Company witnesses all testified that although this job had been performed from time to time for years, it had never been protested before as unsafe, no employee had ever refused to work the job because of the hazards involved, the risks involved in the job had never been brought

up at regularly held safety meetings by members of the Union Safety Committee and, as stated above, the assignment was accepted by other employees on the 8-4 and on the 4-12 shift without protest.

This case presents the question of the proper interpretation and application of Article XI, Section 6 which had been written into the August, 1956 Agreement as a new provision. The Section reads as follows:

> "An employee or group of employees who believe that they are being required to work under conditions which are unsafe or unhealthy beyond the normal hazard inherent in the operation in question shall have the right to: (1) file a grievance in Step 3 of the grievance procedure for preferred handling in such procedure and arbitration; or (2) relief from the job or jobs, without loss to their right to return to such job or jobs; and, at 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.
>
> "The arbitrator shall have authority to establish rules of procedure for the special handling of grievances arising under this Section 6."

The respective positions of the parties, and the Arbitrator's general ruling with respect to these positions are set forth in the award rendered in Grievance No. 13-F-16, and need not be repeated here.

In Article XI, Section 6 the parties sought to deal with a difficult problem. The normal right of the employer to manage has as its corollary the duty of the employee to perform as assigned by his supervisor. One exception commonly carved out of this duty in collective bargaining agreements and in arbitration awards is the situation when the work to be performed presents more than normal hazard to life, limb or health.

The parties sought to codify and regularize the procedure to be followed in such exceptional cases in Article XI, Section 6. They provided that when the job is believed by the employee to be unsafe or unhealthy beyond the normal hazard inherent in the work the employee may file a grievance which is entitled to expeditious handling. That is to say, he may accept the assignment and perform the work under protest and then grieve to have the situation corrected and to protect himself in the future. On the other hand, it is provided that he may ask to be relieved from the assignment on the grounds of hazard and to perform other tasks, if the Company has other work available for him, without prejudicing his right to return to the job.

When this case was processed, both in Step 3 and in arbitration, the parties used inconsistent approaches. The Company proceeded on the theory that the employee must prove that the work is in fact unsafe

beyond the normal hazards of the job. In the award in Grievance No. 13-F-16 it has been pointed out why this theory is not in accord with the meaning of the provisions of Article XI, Section 6, where the course followed is predicated on what the employee believes. It was there held that while an employee may not rely on an unsupported or bald assertion of belief, he satisfies the contractual requirement if he can show that he believed sincerely and in good faith what he claimed to believe, and when he has such a belief he may ask for relief from the job without penalty other than the possible loss of pay for the time Management decides it has no other work available for him. If, on the other hand, the employee continues to work, although under protest, and files a grievance, the grievance will be expedited in handling and will present for determination the question whether the work is in fact unduly or atnormally hazardous.

In this case, Management filed a disciplinary warning in grievant's personnel record because it felt that the job is in fact not abnormally hazardous. The issue as presented was over this warning. No lost time or pay remains in question.

On the issue of grievant's belief, while the parties did not squarely meet, it must be found on all the evidence that grievant actually believed what he asserted.

AWARD

This grievance is granted. The discipline letter of April 3, 1957 shall be removed from his personnel record.

Peter Seitz
Assistant Permanent Arbitrator

Approved:

David L. Cole
Permanent Arbitrator

Dated: September 30, 1957