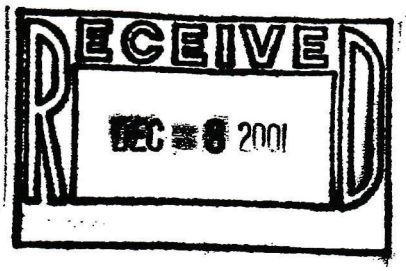
IN THE MATTER OF THE ARBITRATION)
BETWEEN)
AK Steel Corporation, Butler Operations)
AND)
Butler ARMCO Independent Union)



Grievance No. BU-01-118

Exhibit 29

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OPINION AND AWARD

****

IRWIN J. DEAN, JR., ARBITRATOR

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Appearances

For the Employer:

James R. Haggerty, Esquire
Employer Counsel

For the Union:

John W. Murtagh, Jr., Esquire
Union Counsel

JURISDICTION

This arbitration proceeding involves a dispute between AK Steel Corporation, Butler Operations, hereinafter referred to as the "Employer", and the Butler ARMCO Independent Union, hereinafter referred to as the "Union". The dispute concerns whether the Employer violated the provisions of the parties' collective bargaining agreement when it discharged the Grievant, Joseph Myers, for allegedly refusing a direct order to operate a vehicle within the plant.

The matter was referred to the Arbitrator, Irwin J. Dean, Jr., by agreement of the parties in interest. A hearing was held on August 20, 2001, in Butler, Pennsylvania. At the hearing, the parties were afforded an opportunity to present all pertinent testimony and exhibits and to cross-examine witnesses. All witnesses testified under oath, and a stenographic transcript of the proceedings was prepared and submitted.

Following the conclusion of the August 20, 2001 hearing, both parties filed post-hearing briefs setting forth their respective positions on the matters at issue. Upon receipt of the transcript and the post-hearing briefs, the record in this matter was deemed to be closed.

BACKGROUND

The Employer operates a steel manufacturing facility in Butler, Pennsylvania. The Employer's hourly production and maintenance employees are members of a bargaining unit which is represented by the Union. The facts and circumstances underlying this case are considerably disputed and are developed more fully in the separate position statements which follow. The following is intended only as a adumbration of the facts upon which the Employer predicated its decision to discharge the Grievant. The Grievant has been an employee of the Employer or its predecessor, Armco, Inc., since 1984. During his tenure,

the Grievant has held a number of positions, transferring to the truck services subdepartment in 1997. Since 1997, the Grievant has been employed as a truck driver.

The Grievant's duties consisted of transporting materials, including electrical coils in the plant along private roadways. In the performance of his duties, the Grievant did not customarily leave the plant confines to operate his assigned vehicles on public highways.

On March 23, the Grievant was directed to transport a load of electrical coils from the cold-rolled non-oriented (CRNO) building to be processed at the 26 car light line, a line located in a different area of the plant. The coils had been placed in a CRNO trailer a specially designed trailer containing a V-shaped trough which secured the coils without the requirement for strapping or chaining them. The load of coils which the Grievant was instructed to haul weighed approximately 96,000 pounds.

The Grievant refused his supervisor's directive to transport the coils, contending that his commercial driver's license required that he comply with state law. The Grievant stated his belief that state law did not permit the combined gross weight of a tractor, its trailer and its cargo to exceed 73,280 pounds. Following the Grievant's refusal to comply with his supervisor's directive, the Grievant was escorted from the facility by security personnel. On March 28, 2001, a meeting was convened to investigate the March 23 incident. At that meeting, the Grievant restated his position that he would not perform the job because the loads were allegedly overweight, that is in excess of 73,280 pounds and also that the coils should be tied down. Following the March 28 meeting, the Grievant was informed on April 5, 2001 that for his refusal to follow direct orders, he would be suspended for five (5) days with intent to discharge.

On March 12, 2001, the Union commenced this grievance, contesting the propriety of the Employer's discharge determination. The parties were unable to resolve their dispute through the preliminary stages of the grievance procedure set forth in their agreement, and the matter has accordingly been referred to this Arbitrator for full, final and binding resolution.

EMPLOYER POSITION

The Employer insists that the facts adduced at the arbitration hearing unequivocally demonstrate that the Grievant is guilty of insubordination. On March 23, 2001, the Grievant refused a direct order to perform his duties of transporting electrical steel coils. The Employer emphasizes that the Grievant's assignment was not unusual. Indeed, transportation of electrical coils occurs between sixteen (16) and eighteen (18) times per day seven (7) days per week. The directive issued to the Grievant was consistent with the Company's practices which have prevailed for over twenty-five (25) years. In fact, the Grievant himself admitted that during the first two (2) years of his tenure, he routinely performed the very duties which he refused to perform on March 23, 2001.

The Employer submits that the Grievant's prior disciplinary record is germane to an evaluation of the facts of this case and his insubordinate conduct on March 23, 2001. In June, 1998, the Grievant received a verbal warning when his negligent operation of a tractor trailer resulted in a rollover accident. The Employer determined that the accident was caused by the Grievant's failure to properly secure a pinion gear which he was transporting along the plant's private roadways. In July, 2000, the Grievant received a three (3) day suspension when he failed to follow proper safety procedures while operating a crane on railroad tracks. The Grievant had not placed fluorescent warning cones and had not utilized a derailer. Although the Grievant did not challenge either of these disciplinary actions through the grievance and arbitration procedure, the record reflects that he felt that the disciplinary actions were unfair and discriminatory. The record strongly suggests that the Grievant's current actions may well be a retaliatory effort to disrupt the Employer's efficient operations.

For more than a year prior to his discharge, the Grievant repeatedly inquired of company officials whether state law limited the maximum loads he could transport within the plant to 73,280 pounds, the maximum weight generally allowable for trucks operating on

Pennsylvania highways. The Grievant was repeatedly informed by company officials that the load limit restrictions set forth in the Pennsylvania Motor Vehicle Code did not apply to transportation of cargoes along private roadways such as those maintained in the Employer's facility. The Employer repeatedly informed the Grievant that the only load limits which were applicable to the facility were the weight specifications imposed by the equipment's manufacturers.

Although repeatedly informed that the Employer was not subject to the load limits prevailing on Pennsylvania highways and that his duties required him to haul loads so long as they were within the capacity of the equipment he was using as specified by the equipment manufacturer, the Grievant persistently renewed his complaints that he could not haul loads exceeding 73,280 pounds. The Grievant's complaints culminated in the events of March 22 and 23, 2001.

On March 22, 2001, the date before the Grievant actually refused to perform an assignment, he was scheduled to haul back up rolls. The Grievant commenced work at 6:30 A.M. that day, but when he arrived he determined that the trailer he was expected to use was in need of repairs and could not be operated safely. He informed his supervisor of this fact and was instructed to use another trailer.

Instead of performing his work with the second, fully safe and operable trailer, he proceeded to the weigh station to determine whether his vehicle would exceed 73,280 pounds when fully loaded. Concluding that it would exceed his self-imposed weight limitation, the Grievant returned the second trailer and proceeded to obtain a third. Concluding that that trailer would not exceed 73,280 pounds once loaded, he finally commenced his assignment. The Grievant's unnecessary exchange of trailers resulted in a loss of over five (5) hours of productive time. As a result of the Grievant's delays, he was not able to complete all of the work which was expected of him during the shift, and the Employer was required to add another driver to the following turn at overtime rates to meet its operational needs.

On March 23, 2001, the Grievant was scheduled to haul electrical steel coils. Because of their fragile nature, the Employer's customer had insisted that the coils not be chained down because chaining them damages the product. As a result, the Employer utilizes specially fabricated trailers which contain a padded V-shaped trough which secures the coils in place without the necessity of chaining them. When the Grievant's supervisor arrived at approximately 6:45 A.M., he observed that the CRNO trailer which the Grievant was to operate remained in the truck yard and had not left the building. At 7:00 A.M., the Grievant's supervisor was informed that the Grievant was in the locomotive shop copying a letter that he had prepared to various company officials, including the Chief Executive Officer of AK Steel. The supervisor questioned repair personnel whether there was any problem with the truck, but was informed that it was fully operable. As the supervisor was walking back through the garage, he was approached by the Grievant and two (2) Union representatives. They informed the supervisor that the Grievant would not haul the coils because he believed that they were over the weight permitted by the motor vehicle code and were required to be tied down. The supervisor thereupon issued a direct order to the Grievant to perform his assigned duties, but the Grievant persisted in his refusal. In the Employer's view, the Grievant's refusal constitutes insubordination *per se*.

Throughout these proceedings, the Union has maintained that the Grievant acted in good faith and in reliance on the Pennsylvania Motor Vehicle Code. At the time that he refused to perform his assignment, the Grievant insisted that hauling the load as it was then configured would violate the regulations governing his commercial driver's license. The Union conceded at the arbitration hearing, however, that the CDL imposes no independent restrictions on vehicle weight. Instead, commercially licensed drivers are simply required to abide by state law. However, an analysis of the controlling provisions of the Pennsylvania Motor Vehicle Code confirm that the basis for the Grievant's insubordinate conduct is meritless.

Initially, the Union submitted that the load restrictions set forth in Section 4941 of the motor vehicle code justified the Grievant's refusal to follow the directive issued to him on March 23, 2001. Section 4941 provides that:

> No vehicle shall, when operated upon a highway, have a gross weight exceeding 73,280 pounds. . . .

75 Pa. C.S.A. §4941(a).

At the arbitration hearing, the Union conceded that Section 4941 was inapplicable on its face because the Grievant was not to operate the vehicle upon a highway, but instead upon a private road. The Union subsequently argued that even if Section 4941 did not apply, Section 4942(a) supported the Grievant's position inasmuch as no highway restriction is set forth in that provision. Section 4942(a) provides:

> No vehicle registered as a truck, a combination or a trailer shall be operated with a gross weight in excess of its registered gross weight.

75 Pa. C.S.A. §4942(a).

However, the Union's argument ignores the fact that Section 4901 clearly indicates that the weight restrictions set forth in Article 49 apply only to the operation of vehicles upon highways and not upon private property. Furthermore, Section 4942 employs the terms "registered" which is defined as "the authority for a vehicle to operate on a highway." 75 Pa. CSA §102. Section 4942 also refers to a vehicle's "registered gross weight." This term is also defined in Section 102 as meaning:

> The maximum gross weight at which a vehicle or combination is registered in this Commonwealth to operate upon a highway . . . .

75 Pa. C.S.A. § 102.

An analysis of Pennsylvania law, then, confirms that it is abundantly clear that the motor vehicle restrictions upon which the Grievant relied apply only to highway operation and not to the operation of vehicles on private roads such as those maintained by AK

Steel's Butler facility. As a result, the Grievant had no legal basis upon which to refuse the directive which his supervisor issued on March 23, 2001.

The Union claimed in the alternative that, even if the Grievant was incorrect, he acted in good faith and on the basis of a genuine belief that operation of the vehicle as directed would pose a safety hazard. The Employer observes that in order to invoke the safety exception to the traditional rule that one must comply with a directive at the time it is issued and avail himself of the grievance procedure to later challenge its propriety, the Union must prove that an objectively verifiable safety hazard is present. However, loads of steel similar to those which the Grievant refused to haul are transported throughout the plant several times a day, a practice which has prevailed for over twenty-five (25) years. Had an objectively verifiable safety hazard been present, the Union would certainly have filed a grievance challenging the Employer's practices. The Grievant's subjective opinions alone are insufficient to warrant his refusal to comply with a mandatory directive that he perform a work assignment. For all of these reasons, the Grievant's conduct must be regarded as insubordinate, certainly a just cause basis for his termination. The grievance must be denied.

UNION POSITION

The credible evidence presented at the arbitration hearing confirms that on March 23, 2001 the Grievant was not guilty of insubordination as the Employer has charged. The Grievant did not disobey or defy a direct order. Instead, as he credibly testified, the Grievant confirmed that he was willing to perform the coil hauling assignment but only if he could do so within the strictures of his commercial driver's license and the requirements of Pennsylvania law. The Employer acknowledges that it cannot compel the Grievant to commit an illegal act. However, on March 23, 2001, the Grievant's supervisor directed him to haul a cargo of electrical steel coils which would exceed the registered gross weight

limitations for the trailer. In the Union's view, on the basis of both safety concerns and legal requirements, the Grievant was privileged to refuse his supervisor's directive.

At the arbitration hearing, the Union freely conceded that the roadways within the Employer's Butler County facility are not public highways but are private roads. On the basis of this stipulation, the Employer has attempted to assert that the Grievant had no legitimate basis for refusing his supervisor's directive on March 23, 2001. The Employer reasons that because Section 4941 of the motor vehicle code which establishes gross weight restrictions is limited to vehicle operation on highways, the Grievant's stated basis for objecting to the supervisor's order was meritless.

However, the Union observes that the Grievant relied upon Section 4942 of the motor vehicle code. That section provides:

> No vehicle registered as a truck, a combination or a trailer shall be operated with a gross weight in excess of its registered gross weight.

The Union emphasizes that contrary to other provisions of the motor vehicle code, Section 4942 and its prohibitions do not concern operation of vehicles upon highways. Of course, where a statute does not contain a qualification found in companion provisions, that omission is presumed to be intentional. Consequently, in construing Section 4942, the Arbitrator is required to conclude that the motor vehicle code weight restrictions set forth in that section apply to all registered vehicles, whether operated on highways or not.

The Employer's own witnesses acknowledged that the vehicle which the Grievant declined to operate on March 23, 2001 was registered under Pennsylvania law. Its registered gross weight was the statutory maximum of 73,280 pounds. Accordingly, under Section 4942, it could not be operated, even on the Employer's own premises, if it exceeded that statutory maximum weight.

Of course, the weight restrictions set forth in the motor vehicle code are intended to insure public safety. Larger vehicles pose greater hazards than smaller ones. Because of this obvious fact, the Grievant repeatedly questioned the Employer concerning its practice of

permitting traffic on its premises by vehicles exceeding the statutory maximum weight. At all times, the Grievant acted in good faith, attempting to ascertain whether or not the statutory restrictions applied to in-plant operations. However, his efforts to obtain appropriate information were repeatedly rebuffed. The Grievant was instructed to do as he was told but was never provided with any definitive answer concerning whether he placed himself in physical or legal jeopardy should he comply with the Employer's directives.

The Grievant's conscientious efforts to insure that he was acting within the law if he performed as the Employer directed is thoroughly documented in the record of these proceedings. The Grievant placed numerous inquiries to company officials and state and federal agencies but could obtain no adequate response. Additionally, having determined the identity of the Employer's insurance carrier, he contacted that entity to determine whether he could be held individually liable if involved in an accident involving an overweight vehicle. The insurance carrier informed the Grievant that the question he had posed involved a gray area and that it might deny coverage unless the Employer agreed to indemnify its personnel for accidents caused by overweight vehicles. This advice was corroborated by a Pennsylvania attorney retained at the Grievant's own expense, who indicated that the Grievant risked potential civil and criminal liability should he operate motor vehicles which exceeded the weight limitations prescribed by the Pennsylvania Motor Vehicle Code.

In fact, the Grievant was so concerned about the safety and legal implications of the Employer's practices that he discussed them extensively with both his wife and father. Both encouraged him to address his concerns with his employer. However, despite the Grievant's attempts to do so, his efforts were continuously rebuffed and he was instructed to do as he was told. The Employer's unresponsiveness confronted the Grievant with a quandary. Should he continue to follow his employer's directives even though they presented safety hazards and could financially ruin his family, or should he confront the issue. Ultimately, the Grievant had no choice but to confront the issue.

Although the Employer characterizes this case as one of insubordination, that characterization is both unfair and inappropriate. On March 23, 2001, the Grievant agreed that he would transport the coils, but only in a manner which would insure that each separate cargo did not exceed the statutory 73,280 pound weight limit. While admittedly this would have required more trips, it would have shielded the Grievant from potential liability and minimized the risks to the safety of himself and his coworkers. In fact, the Employer patently refused a compromise request which the Grievant advanced that the Employer indemnify him and other truck drivers should civil or criminal liability follow their transporting cargoes in excess of weight restrictions. In short, despite the Grievant's valiant efforts to comply both with law and the Employer's requirements, the Employer placed him in an impossible position.

An examination of the entire record in this case provides convincing evidence that at all times the Grievant acted with regard to both safety and legal requirements. Of course, an employee is not insubordinate if he refuses to perform an illegal act or one which poses an immediate safety hazard. In the Union's opinion, the evidence in this case shows both. If either of these conditions is established, of course, the Employer cannot sustain its burden of proof that the Grievant is guilty of insubordination. The grievance should be sustained and an appropriate remedial award entered in the Grievant's favor.

ISSUE

Did the Employer violate the provisions of the parties' collective bargaining agreement when it discharged the Grievant, Joseph Myers, for allegedly refusing a direct order to operate a vehicle within the plant? If so, what shall the appropriate remedy be?

PERTINENT CONTRACT PROVISIONS

ARTICLE IX
DISCHARGE AND DISCIPLINARY SUSPENSION

Section A - Objective

1. In the exercise of its rights, the Company agrees that no employee shall be discharged or disciplined without just cause and due consideration.

. . . .

DISCUSSION

The issue presented for determination in these proceedings is whether the Employer had just cause to discharge the Grievant. The Employer maintains that on March 23, 2001, the Grievant refused to comply with a supervisor's direct order that he haul a load of electrical steel coils, insubordinate conduct clearly warranting the Grievant's termination. The Union initially rejects the Employer's characterization, insisting that the Grievant did not refuse the direct order, but agreed to haul the coils, but only if the individual loads did not exceed 73,280 pounds. Even if the Grievant in fact stated that he would comply with the order subject to the 73,280 pound weight limitation, the Arbitrator must agree with the Employer, that the Grievant's conditional offer of compliance would nonetheless constitute insubordinate conduct. Ordinarily, one must fully comply with a supervisory directive. As has often been stated, the work place is not a debating society and an employee is not free to bargain with an employer concerning the conditions under which he will perform his duties or agree that he will only partially perform the directive. The Employer has established a *prima facie* case by the undisputed evidence that the Grievant refused to perform the specific assignment which his supervisor directed. As both parties are certainly aware, employees are generally prohibited from engaging in self-help by refusing supervisory

directives. Ordinarily, an employee though he may vigorously disagree with an assignment, must perform it and later challenge it through the contractual grievance and arbitration procedure.

The Grievant's conduct would not constitute insubordination, however, if he was able to invoke a privilege which excused him from compliance with the order. Of course, the most common privilege which excuses an employee from the rule that one must comply now and grieve later is the safety exception to that rule. An employee may not be compelled to perform an assignment which is abnormally hazardous to his own safety or the safety of others. The Union has invoked the safety exception in these proceedings, contending that the Grievant held a reasonable, sincere and genuine fear that hauling vehicles exceeding 73,280 pounds which included an improperly secured cargo constituted an unacceptable hazard. The Arbitrator must reject the Union's attempt to invoke the safety exception in this case.

As the Employer correctly observes, in order to justify a refusal to work on the basis of unsafe working conditions, the Union must prove "ascertainable, objective evidence supporting its conclusion that an abnormally dangerous condition for work exists such as to place the employee or other persons at "imminent peril" *Gateway Coal Co. v. UMW*, 414 U.S. 368 (1974); *Custodis-Cottrell, Inc.*, 283 NLRB 585, 589 (1987); and *The United Mine Workers District No. 6*, 217 NLRB 541, 551 (1975). As the evidence presented at the arbitration hearing confirms, the trailers which the Employer uses to haul electrical steel coils have manufacturer's rated capacities of 90,000 and 130,000 pounds. The Grievant's objection to hauling loads exceeding 73,280 pounds was based upon limitations contained in the Motor Vehicle Code and not on any demonstrated safety hazard. Indeed, the Union in its post-hearing brief concedes that the only reason that these vehicles might be limited to 73,280 pounds is that they were registered.

> Had the trailers not been registered, they could exceed the 73,280 pound limit, but because they were registered, they cannot be operated above that weight so registered, either on or off a highway.
>
> Union's Post-Hearing Brief at p.17.

It is apparent that an unregistered vehicle which can be safely operated at 130,000 pounds does not become unsafe to operate at that capacity once a registration plate is attached. Consequently, the Arbitrator must conclude that the Grievant's refusal to operate a vehicle which exceeded 73,280 pounds was based entirely upon legal concerns and not because such operation posed abnormal safety hazards. The Grievant's legal concerns are addressed more fully below.

In its post-hearing brief, the Union has alerted the Arbitrator to a possible inconsistency in the evidence. At the arbitration hearing, the Grievant's supervisor identified the smaller of the two (2) trailers, the 90,000 pound capacity vehicle, as the one which the Grievant was assigned to drive that day. The supervisor also testified that electrical steel coil cargoes typically weigh 96,000 pounds. Thus, although such a cargo might be carried in the larger trailer, it exceeded the capacity of the one which the Grievant's supervisor identified at the hearing. However, as the Union's brief itself acknowledges, the supervisor testified to a typical cargo weight and not the cargo weight that day. More significantly, however, that the actual manufacturer's capacity of the trailer had been exceeded was not the Grievant's stated basis for refusing his supervisor's directive.

The Grievant's objection that he legitimately refused an abnormally hazardous assignment because the vehicle was allegedly overweight must be rejected. The evidence offered to support the Grievant's only other safety concern, that the cargo was improperly secured, is even less substantial. The Grievant objected that the electrical coils were unsafe because they were not chained. As the evidence confirmed, however, electrical coils are transported in specially designed trailers which contain the load, obviating the need for strapping or chaining. The Grievant conceded that he is not an attorney and he is certainly

not an engineer qualified to state that a coil properly placed in such a trailer is nevertheless hazardous unless additionally secured. The evidence confirms that transportation of electrical coils in these trailers occurs approximately sixteen (16) to eighteen (18) times each day, seven (7) days a week and has continued for twenty-five (25) years. The Grievant admitted that he had made these runs himself.

> Q. Now, in 1997, 1998 and/or 1999, there were occasions where you drove a tractor-trailer making these electrical coil runs, weren't there?
>
> A. Yes.
>
> Q. You did that work for a while?
>
> A. Yes. That was under ARMCO.
>
> Q. There were also occasions where you — and I'm just talking about moves that are completely within the plant not outside the plant.
>
> A. Yes.
>
> Q. There were also occasions where you would have hauled heavy, like backup rolls or spindles where the total weight of the vehicle plus the load would have been in excess of 73,000 pounds?
>
> A. Yes.
>
> Q. To be more precise, 73,280 pounds.
>
> A. Yes.

(N.T. at 142-143.)

The Union offered no evidence that electrical coils hauled in CRNO trailers frequently became dislodged if unsecured or that their transportation in the manner which the supervisor directed on March 23, 2001, was abnormally hazardous. For this reason, the Union's invocation of the safety exception must be rejected.

As indicated above, the evidence confirms that the Grievant's refusal to operate a vehicle exceeding 73,280 pounds was not because he believed it would be unsafe but

because he questioned his legal liability should he exceed that weight limitation. The Union predicates its claim of privilege in these proceedings on Section 4942 (a) of the Pennsylvania Motor Vehicle Code which provides:

> No vehicle registered as a truck, a combination or a trailer shall be operated with a gross weight in excess of its registered gross weight.

75 Pa. C.S.A.§ 4942 (a). As the Union construes this provision, because it is not restricted to vehicles operated on highways, it subjects the Employer to the statutory 73,280 pound gross weight limitation. The Union's argument suffers from numerous infirmities.

A careful combing of the evidentiary record in these proceedings confirms that the Grievant himself, neither on March 23, 2001, when he refused his supervisor's directive, nor at any time prior thereto relied on Section 4942 of the motor vehicle code. In conversations with his supervisor, the Grievant referred only to his CDL restrictions. In testimony before this Arbitrator, the Grievant never referred to Section 4942 of the motor vehicle code. More significantly, a March 1, 2001 letter prepared by an attorney retained by the Grievant to address the Grievant's concerns to the Employer's Industrial Relations Department refers only to Section 4941 of the motor vehicle code which specifies 73,280 pounds as the maximum weight permitted by a vehicle when operated on a Pennsylvania highway. Had the Grievant been aware of Section 4942, he would have undoubtedly referred his attorney to that statutory provision. That he did not do so is substantial evidence that he was unaware of the provision at the time he refused the supervisory directive. The invocation of Section 4942 of the motor vehicle code appears to reflect the able legal skills of Union counsel and not the actual basis for the Grievant's refusal to perform his assignment on March 23, 2001.

An employee may certainly refuse to perform a clearly unlawful directive. For example, if a supervisor instructs an employee to lie to state inspectors, he is not insubordinate if he refuses to do so. Yet this case is quite distinctive for the reason that the

Grievant did not base his refusal of his supervisor's directive on a reasonable belief that operating a vehicle exceeding 73,280 pounds was clearly illegal or almost certainly illegal. As the Grievant himself testified, he believed the applicability of the weight limitation to private roadways to be an unresolved legal issue. He repeatedly characterized it as a gray area, reflecting advice he had received from private counsel on March 1, 2001. In short, by the Grievant's own testimony that he regarded the issue as unresolved and not clearly illegal, does not present the imminent peril required to invoke a privilege and insulate him from discipline for insubordinate conduct.

The Union's subsequent introduction of Section 4942 of the motor vehicle code at the time of the arbitration hearing is unavailing. As the Employer correctly observes, because the terms "registered" and "registered gross weight" both refer to restrictions on vehicles when operated on a highway, the fact that the provision itself does not expressly include the words "on a highway" does not indicate that it would apply to private roadways. In the Arbitrator's opinion, the Employer's construction is more likely the correct construction. Criminal penalties can attach to a violation of Section 4942. Because criminal penalties may attach, the statute must be very strictly construed. However, the Arbitrator need not attempt to resolve the parties' competing interpretations of Section 4942 of the motor vehicle code and whether it extends the 73,280 pound weight limitation to registered vehicles operated solely on private roadways. As both parties are aware, although an Arbitrator can render interpretations of the parties' collective bargaining agreement which are binding upon both of them, he generally does not render fully authortative rulings on questions of statutory law. It is unlikely in any event that any interpretation this Arbitrator might offer would be satisfactory to the Grievant.

Furthermore, testimony elicited from the Employer's industrial relations officer established that some months before the March 2001 incident the Grievant had been informed that the Employer's methods of operation had been determined to be safe and,

significantly, that the Grievant had further been informed that he could bid out of the assignment if he was not persuaded that the job presented extraordinary risks of harm:

> Q. Tell us about your meeting with [the Grievant].
>
> A. It lasted for about an hour. [The Grievant indicated to me that he felt as though it was unsafe to operate a truck that was hauling coils within the plant. He felt as though the CDL requirements were applicable and that AK Steel was violating those rules. He also indicated that he felt as though AK was under the guidelines set out by Pennsylvania motor vehicles. I told Mr. Myers that, on both of those issues, that he was wrong. That we felt, number one, it was safe. That AK takes safety extremely serious, it has been investigated more than once, and as far as private property and the applicability of Pennsylvania motor vehicle laws, they were not applicable on private property.
>
> We talked more on that. I indicated to Mr. Myers that he should look elsewhere within the plant, bid out of the department; that that assignment was part of the position that he was on; that he should consider that; that it has been going on for years and years and other drivers have been doing the assignment and it is safe.
>
> At that point in time, I believe I also indicated to Mr. Myers that in any industrial environment, we could not condone self-help; that there were other avenues he could take if he felt strong on the issue, but that we were not going to allow employees to pick and choose what assignment they liked or didn't like.

The assurances given by management in December 2000 did not dissuade the Grievant from his opinion that hauling coils in the manner directed by management was unsafe and illegal. The Grievant, though perhaps misguided, maintained his conviction that he could not safely or legally operate a vehicle weighing more than 73,280 pounds within the plant.

The record provides no substantiation for the Grievant's assertion that the Employer directed him to perform a clearly illegal act or to engage in an activity that posed extraordinary risks beyond those inherent in the job and routinely encountered by similarly situated employees. Furthermore, the Grievant had been counseled that if he continued to feel the job presented risks unacceptable to him, he could bid to another position or invoke other measures ; the Grievant was specifically instructed not to resort to self-help. Despite that counseling, the Grievant remained on the job and filed no grievance. The Grievant could provide no satisfactory explanation for failing to avail himself of those obvious, entirely acceptable options. After describing the risk of complying with management's directive as unacceptable because "you [could go out and hit and kill somebody and then you have to sit in jail for God knows how long ... To me that's not worth it. Now I've lost my family for however many years you're sitting in jail, possibly going to lose everything financially ...", the Grievant weakly explained that he did not bid out of the position and avoid the risk he described because "I like to drive the truck". (N.T. at 140-141; 161)

A sincere, if misinformed, subjective belief that an assignment involves abnormal safety risks does not excuse a refusal to perform the assignment, but certainly may mitigate against extreme discipline. In this instance, however, the confrontation with management on March 23, 2001 was an entirely avoidable event. The directive to drive the haul the backup rolls and electrical coils was not at all unexpected; the Grievant had long anticipated the assignment. As important, the Grievant had been expressly instructed by a multitude of supervisory personnel that the assignment was to be performed by him in the manner the Employer had customarily directed its drivers to do. Just two (2) days before the March 23

confrontation, the Grievant was given explicit warning of the consequences of refusing the assignment. The question presented, therefor, is whether the sincerity of an employee's own conviction that an assignment is unsafe, notwithstanding that there is no valid objective basis for that opinion, and despite the employee's election to forego opportunities to avoid an incident of insubordination should insulate the employee from discipline. Obviously, it should not. An employer cannot function if it must yield to unsubstantiated complaints by employees that the accepted methods of operations are unusually dangerous. If an employee earnestly believes a job to be unsafe, but, over an extended period of time, has repeatedly been advised that management is fully aware of the employee's complaints, has considered those complaints, and disagrees with them, then the employee must either grieve or leave the job. The Grievant here did neither, but instead decided to wait on the opportunity for a direct confrontation on the job, and in effect, insist that the job would be performed, if at all, according to his view of the matter. That is the plainest form of insubordination. The likely consequences of that insubordination were known by the Grievant well in advance of March 23.

AWARD

The grievance is denied.

Dated this 30th day of November, 2001, at Pittsburgh, Pennsylvania.

Irwin J. Dean, Jr., Arbitrator