1-18-1971

United States Steel Corporation Sheet and Tin Operations Geneva Works and United Steelworkers of America Local Union 2701

Sylvester Garrett
Chairman

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Assistant to the Chairman

BOARD OF ARBITRATION

Case USS-7015-S

January 18, 1971

SUPPLEMENTAL AWARD

UNITED STATES STEEL CORPORATION
SHEET AND TIN OPERATIONS
Geneva Works

and

Grievance No. SGe-68-98

UNITED STEELWORKERS OF AMERICA
Local Union No. 2701

Subject: Implementation of Board Award--Incentive Coverage

Statement of the Grievance: "The Company has violated the Seniority rights of Employees in the Rolling Mill and Transportation Departments in the manning of the Scrap Shearing operation transferred from the Rolling Mill to the Transportation Department and by failing to maintain proper incentive coverage of that operation as in compliance with Section 9-c of the Agreement.

"We request that the Company comply with Section 13 of the Agreement in the manning of the Scrap Shear Unit and comply with the Provision of 9-c of the Agreement and make any Employees injured by these violations whole."

Contract Provisions Involved: Section 9-C of the September 1, 1965 Agreement.

Grievance Data:	Date
Original Award Dated:	April 27, 1970
Third Step Meetings on Compliance:	May 15, 1970 June 1, 1970 July 23, 1970
Fourth Step Meeting on Compliance:	September 24, 1970
Reappealed to Arbitration:	October 16, 1970
Case Heard:	October 26, 1970
Transcript Received:	December 11, 1970

Statement of the Award: The cancellation of the Rolling Mills' indirect incentive as it applied to the scrap cutting operation and the installation of an interim rate of 115 percent based on the reference period ending February 10, 1968, constitutes the proper implementation of Section 9-C-2 as required by the original Award up until such time as a replacement incentive was installed. Any employees who were assigned to the two jobs in the Transportation Department and any employees who might later be determined should have been so assigned under Section 13-E shall be made whole for any wages lost.

This grievance from the Geneva Works has been returned to the Board for a determination of the proper application of the original Award to the extent that it required continued incentive coverage of the scrap cutting operation under Section 9-C-2 of the September 1, 1965 Agreement. 1

The basic facts giving rise to the dispute herein and the issues raised at the original hearing were set forth in the Board's original Award, dated April 27, 1970, as follows: 2

> "The evidence shows that at Geneva Works, until about May 1968,* scrap cutting operations historically were maintained both in the Transportation Department and in the Rolling Mills Department. Each of these departments constitutes a separate and distinct seniority unit. Each has its own job structure and promotional sequence with respect to employees assigned and functions performed.
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> "In the two involved Departments, prior to about May 1968, scrap handling operations generally were conducted as follows:
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> "Approximately three-fourths of all scrap - primarily plate scrap - was loaded into railroad cars and shipped to the Transportation Department Scrap Yard to be separated

*It appears that the parties agree that scrap cutting operations in the Rolling Mills Department actually ceased on or about February 10, 1968.

"and to be cut to appropriate charging box sizes. The scrap loading work was performed by Rolling Mills Cranemen, while the unloading work was performed by Cranemen assigned to the Transportation (and Yards) Department. The cutting or burning of this scrap material was performed by Scrap Burners in the Transportation Department.

"The remaining one-fourth of all scrap was handled in the Rolling Mills Department by Scrap Shearman crews each of which included one End Shearman and one Scrapman assigned at that location. This portion of the scrap material initially was stored on the Roll Line at the entry end of the Scrap Shear. There, in cutting scrap, a Crew Shearman, operating an approach table as well as the 'shear,' cut plate and/or other flat pieces to charging box widths. These scrap pieces then were conveyed to a second shear, or chopper, operated by the Crew Scrapman and cut to charging box lengths. At that point the scrap was felled into a scrap pit from which it subsequently was removed by crane and magnet, loaded into railroad cars and shipped directly to the Open Hearth Stock House.

"About May 1968, or immediately prior thereto, Management moved the shear (down-cut and chopper equipment) from the Rolling Mills area to the Transportation Department Scrap Yard and

"thereafter it commenced to process all such scrap material at that location. For this purpose two new jobs, i.e., Scrap Unloader and Scrap Shearman, were created and installed, on May 23, and July 9, 1968, respectively, in the Transportation Department. The new Scrap Unloader and Scrap Shearman jobs were thus placed in the promotional sequence of Transportation Department jobs and manned by employees of that seniority unit and/or from general labor positions. The Rolling Department End Shearman and Plate Scrapman jobs thereupon were eliminated.

"While the Rolling Mills' scrap cutting operation was covered by incentive, the operation in the Transportation Department historically has had no incentive coverage - and it continues at this time without incentive application.

* * * * *

"The controlling issues in this case thus concern (1) whether Management improperly installed and manned the new Scrap Unloader and Scrap Shearman jobs in, and with employees of, the Transportation Department, (2) whether Management properly should have assigned the two jobs to former Scrap Burner and End Shearman job incumbents in the Rolling Mills Department, and, (3) whether in any event incentive coverage as applied to these old jobs properly should have been extended to the new jobs, as claimed by the Union."

In its Award, the Board in effect denied the Union contention that the Company had improperly installed and manned the new Scrap Unloader and Scrap Shearman jobs in the Transportation Department. It did find that the manning of these two jobs raised a seniority question within the meaning of Section 13-E and this issue was returned to the parties for further consideration because they had never sufficiently considered the implications raised under that Section of the Agreement. 3

With respect to the issue concerning incentive coverage, the Board found as follows: 4

> "Now, with respect to the 'incentive' issue remaining, we believe the evidence preponderates in support of the Union claim for continued coverage. The record shows (1) that incentive covered scrap cutting jobs, equipment and functions were transferred from one seniority unit to another, (2) that these jobs, equipment and functions continually have been utilized, though changed, in connection with scrap cutting operations, and (3) that the former incentive covered operation now has been 'merged' with a non-incentive operation in the Transportation Department. Upon these particular facts, application of the agreement, Section 9-F-2, seems mandatory. Notably, 9-F-2 provides:
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> '2. All existing incentive plans in effect on April 22, 1947, including all existing rates incidental to each plan (such

'as hourly, the addition in Paragraph 1 above, base, piecework, tonnage, premium, bonus, stand-by, etc.) and all incentives installed after April 22, 1947, shall remain in effect until replaced by mutual agreement of the grievance committee and the plant Management or until replaced or adjusted by the Company in accordance with Sub-section C of this Section.'

"Under this language there seems no doubt that the 'existing' incentive application covering the Rolling Mills' scrap cutting operation should have 'remain/ed/ in effect until replaced by mutual agreement of the grievance committee and the plant management or until replaced or adjusted by the Company.' This must be so whether or not the previously covered operation has been consolidated in part into a similar operation, as long as the basic nature and function of the operation remains the same. In the instant case, no claim is made (nor does the evidence show) that the former Rolling Mills Operation has lost its character of separability completely, and the parties themselves clearly have not agreed that the remaining merged operation should be without incentive application."

The Board then also returned this issue to the parties "... for proper application of Section 9-C-2, to the operations as now performed..."

5 The instant proceedings were limited to an issue that developed during the discussion between the parties on the manner in which the incentive coverage was to be provided the two new jobs established in the Transportation Department. As noted above, the original Award herein issued on April 27, 1970. When the scrap cutting operations were discontinued in the Rolling Mills Department on February 10, 1968, the two jobs of Scrap Shearman and Plate Scrapman were terminated and shortly thereafter the indirect Rolling Mills incentive Application No. 40.2, covering these two and many other auxiliary and service jobs in the Rolling Mills, was adjusted to reflect the elimination of the two jobs from the incentive. In the meantime, the scrap cutting equipment was dismantled and relocated in the Transportation Department where operations as described in the original Award commenced on September 16, 1968 manned by two newly installed jobs of Scrap Yard Shearman and Scrap Unloader that performed the scrap cutting work in a somewhat different manner than it was performed in the Rolling Mills. No incentive coverage was afforded these two jobs at the outset and this is one of the issues that gave rise to the instant grievance. However, on March 22, 1970, before the issuance of the original Award herein, these two jobs were included in a newly installed incentive covering scrap cutting operations in the Transportation Department. These were the facts as they existed at the time the original Award issued.

6 In attempting to comply with the Award, the Company viewed the changes in operation made in the Rolling Mills on February 10, 1968 as requiring the cancellation of the Rolling

Mills' incentive to the extent that it covered scrap cutting operations in that department. Thus it interpreted the Award as requiring the replacement of that incentive to cover the work at the new location with the establishment of an interim rate until such time as a replacement incentive could be installed. Under this theory, the interim period would have commenced February 10, 1968 when scrap cutting ceased in the Rolling Department and ended March 22, 1970 when incentive coverage was afforded the scrap cutting operations in the Transportation Department with the interim rate, required by Section 9-C-2-c, based on the average incentive earnings received by the scrap cutting jobs under the Rolling Mills' incentive during the three months (7 pay periods under local practice) prior to February 10, 1968, amounting to an average IPP of 115 percent.

In the Union's view any cancellation of incentive coverage under the Rolling Mills' incentive as of February 10, 1968 would be improper under the Board Award. It is contended that the literal language of the Award required that coverage under the Rolling Mills' incentive plan should have to continue until adjusted or replaced which, in the Union's view, did not occur until March 22, 1970. Thus the Union really objects to the establishment of any interim period but rather seeks payment to the new jobs installed at the Transportation Department of the incentive earnings that were actually realized by the employees that continued to be covered by the Rolling Mills' indirect incentive from September 16, 1968, when scrap cutting operations were commenced in the Transportation Department, until March 22, 1970. These earnings averaged an IPP of 127.6 percent. The Union also notes that for the last seven pay periods prior to March 22, 1970, the Rolling Mills' incentive averaged an IPP of 132.6 percent; this amount is said to be the Section 9-C-4 level of earnings 7

required under the new incentive installed in the Transportation Department on that date.

The Union's contention that the actual earnings of the Rolling Mills' indirect incentive should be the basis for the amount of incentive payment due from the period from September 16, 1968 to March 22, 1970 is premised on the language of the Award in Marginal Paragraph 25 referring to the existing incentive application covering the Rolling Mills' scrap cutting operation remaining in effect. It views this language as requiring the continued coverage of the scrap cutting operation in the Transportation Department by the application of the very incentive plan under which that work had always been covered and as barring any cancellation of the plan as to the work in question or the establishment of any interim period. 8

Finally, the Union contends that whatever the amount of incentive payment is required it should be paid retroactively to those employees who actually performed the work in the Transportation Department and also retroactive payment should be made to any employees who did not do the work but who are determined by the parties should have done so under the Section 13-E discussions to the extent that any such employees may have suffered a loss of earnings. The Company objects to this result asserting that only those employees found ultimately to have been entitled to the scrap handling jobs in the Transportation Department should be entitled to any retroactive payment of loss of wages. 9

FINDINGS

This incentive issue arose in the context of the Company's not having afforded any incentive coverage for the scrap cutting operations after such work was transferred from the Rolling Mills to the Transportation Department. Originally the Company held that in light of the changes made in the scrap cutting operations the question of incentive coverage was controlled by Section 9-C-1. The Board clearly rejected this contention, finding that the evidence required continued incentive coverage of the work at the new location. 10

Here the Union would hold that the Board in fact went one step further and found that not only should incentive coverage be continued at the new location but also that such coverage must be continued under the Rolling Mills' indirect incentive plan that had traditionally covered such work when performed in the Rolling Mills. In stating in its original Award that "the 'existing' incentive application covering the Rolling Mills' scrap cutting operations should have 'remain/ed/ in effect...,'" the Board was applying, and, indeed, quoting in part, Section 9-F-2. However, in its final conclusion remanding the case to the parties the Board ordered proper application of Section 9-C-2 to the operations as now performed. Section 9-C-2 contemplates the adjustment or the cancellation and replacement of incentives when required by the types of new or changed conditions specified therein and provides for earnings protection during any interim period should a cancellation of an incentive be required and the replacement incentive not yet ready for installation. Such reference by the Board to Section 9-C-2 was perfectly consistent with its reliance on Section 9-F-2 in requiring continued incentive coverage 11

for the scrap cutting operations but it would have been entirely superfluous for the Board to have referred to Section 9-C-2 or, indeed, to have returned the case to the parties for further consideration under that Section had it intended, as the Union contends, that the Rolling Mills' application continue to cover the work to the exclusion of any other possibility.

Thus it is clear that the Board in its original Award required only that continued incentive coverage be provided the scrap cutting operation but left open the question of whether any changes had been made in the operation that would require the revision or replacement of the incentive plan in question. This issue must now be evaluated under Section 9-C-2. 12

When the Company ceased the scrap cutting operations in the Rolling Mills the two jobs involved were terminated--an action that in and of itself required some revision in the Rolling Mills' incentive plan since the hours of those jobs would no longer be charged against the earnings of that plan. Moreover, scrap cutting operations did not resume at any location until September 16, 1968 after the equipment, formerly located in the Rolling Mills, was moved some 2850 yards away to the Transportation Department. On that date scrap cutting operations did resume but was performed in a somewhat different manner and was not only substantially removed geographically but also functionally from the Rolling Mills Department. For instance, the scrap is now received in railroad cars and, although it continues to be cut to charge box sizes, it is no longer necessary to cut test pieces. Indeed, on the basis of the evidence submitted, it does not appear that the jobs as performed in the Transportation Department perform any duties that can now reasonably be viewed 13

as servicing the Rolling Mills Department. Both because of their location and the changed responsibilities and functions the jobs are now much more independent in nature.

The Rolling Mills' incentive application is restricted by its terms to work of an auxiliary or service nature performed in the Rolling Mills area. It is obvious that, since the transfer of the scrap cutting operation to the Transportation Department, the work is no longer performed in the Rolling Mills area and, with the changes made in the nature of the work, it can no longer be viewed as a service that is at all closely related to the Rolling Mills operation. 14

Therefore, in light of the changes that were made in the scrap cutting operations, none of which in and of themselves violated the Agreement, it must be concluded that a cancellation and replacement of the Rolling Mills' indirect incentive to the extent that it covered the scrap cutting operations was warranted under Section 9-C-2-b and this was required at the time such work was terminated in the Rolling Mills Department on February 10, 1968. Since no replacement incentive was installed when scrap cutting recommenced in the Transportation Department some 7 months later, the jobs performing the work were entitled to coverage under an interim allowance that, under the evidence, can only be based on the 3-month period immediately preceding February 10, 1968. Using this reference period, an allowance of 115 percent would be proper not only for the interim period but also provided the proper base for the application of Section 9-C-4. 15

The parties at the second hearing were also at issue over entitlement to the retroactive loss of wages during the period from September 16, 1968 to March 22, 1970. It is not yet clear whether the employees from the Transportation 16

Department that have actually been assigned to the new scrap cutting operation will be viewed as the proper incumbents of those jobs since the parties have not yet finished their discussion of the Section 13-E issue. It is sufficient to state here that the original grievance specifically raised the issue of incentive coverage and sought recovery of lost wages on behalf of any employee injured by the failure to provide any such coverage to the new jobs established in the Transportation Department. Under the Board's original Award the Company was found to have improperly failed to afford continued incentive coverage to these jobs and clearly this Award applied to any employees assigned to perform that work. Therefore, the employees who were assigned to that work are entitled to be made whole for any wages lost on the basis of the 115 percent interim rate whether or not they are ultimately found to have been properly assigned. Likewise, for the period in question any employees who are finally determined to have been entitled to the jobs under Section 13-E should also be made whole for any loss of wages suffered. Such result is not unusual in determining seniority issues even though it may require the Company to pay not only the employee who actually performed the job his proper rate under Section 9, but also pay any loss of wages that may have been suffered by an employee who had been improperly deprived of the job.

AWARD

The cancellation of the Rolling Mills' indirect incentive as it applied to the scrap cutting operation and the installation of an interim rate of 115 percent based on the reference period ending February 10, 1968, constitutes the proper implementation of Section 9-C-2 as required by the original Award up until such time as a replacement incentive was installed. Any employees who were assigned to the two 17

jobs in the Transportation Department and any employees who might later be determined should have been so assigned under Section 13-E shall be made whole for any wages lost.

Findings and Award recommended pursuant to Section 7-J of the Agreement, by

Alfred C. Dybeck
Assistant to the Chairman

Approved by the Board of Arbitration

Sylvester Garrett, Chairman