3-8-1971

United States Steel Corporation Fairless Works and United Steelworkers of America Local Union 4889

Sylvester Garrett
Chairman

Alexander M. Freund
Arbitrator

BOARD OF ARBITRATION

Case USS-7111-S

March 8, 1971

ARBITRATION AWARD

UNITED STATES STEEL CORPORATION
Fairless Works

and

Grievance No. SFL-68-375; -376

UNITED STEELWORKERS OF AMERICA
Local Union No. 4889

Subject: Overtime and Payroll Week Definition

Statement of the Grievance: SFL-68-375

"Grievant worked 44 hours in a payroll week and was denied premium pay.

"Facts: Same as statement.

"Remedy Requested: Pay earnings lost and cease and desist."

SFL-68-376

"Grievants are being denied there clame for overtime rate.

"Facts: Grievants clamed overtime rate for 8:00 p.m. Sat. night which was the end of the payroll week.

"Remedy Requested: Pay earnings lost & cease & desist."

Contract Provisions Involved: Sections 11-B-1 and 11-C-1-b of the August 1, 1968 Agreement.

Grievance Data:	Date
Grievances Filed:	October 25, 1968
Step 2 Meeting:	November 1, 1968
Appealed to Step 3:	November 8, 1968
Step 3 Meeting:	November 15, 1968
Appealed to Step 4:	December 11, 1968
Step 4 Meeting:	February 13, 1969
Appealed to Arbitration:	July 16, 1969
Scheduled Hearing:	April 21, 1970
Transcript Received:	No transcript

Statement of Award: The grievances are denied.

BACKGROUND

These grievances from Soaking Pit Cranemen at Fairless Works claim that they were denied overtime pay in violation of the Agreement under a schedule such as is illustrated in the example set forth below for the week ending September 14, 1968: 1

	9-8 S	9-9 M	9-10 T	9-11 W	9-12 T	9-13 F	9-14 S	9-15 S
8 a.m. - 4 p.m.	8							
8 p.m. - 4 a.m.			8	8	8	8	8	

The grievants were paid straight time for all hours worked in this period except for the eight beginning 8 p.m. Saturday, September 14, which were paid at the Sunday premium rate of time and one-quarter. The Union's position is that the four hours from 8 p.m. to midnight on Saturday are hours worked in excess of 40 hours in a payroll week, as defined in Section 11-B-1, and should therefore have been paid for at the overtime rate of time and one-half in accordance with Section 11-C-1-b rather than as Sunday premium time. 2

Section 11-B-1 defines the payroll week as consisting of "7 consecutive days beginning at 12:01 a.m. Sunday or at the turn-changing hour nearest to that time." Section 11-C-1-b provides that the overtime rate of time and one-half shall be paid for: "Hours worked in excess of 40 hours in a payroll week." 3

The Company relies on Section 9-L-2, which reads that: "For the purpose of this /Sunday premium pay/ provision, Sunday shall be deemed to be the 24 hours beginning with the turn-changing hour nearest to 12:01 a.m. Sunday." 4

The Union argues that this case presents only one issue, whether or not the grievants worked in excess of 40 hours in a payroll week; that the fact is that they did work 44 hours within the seven-day period beginning 8 a.m. Sunday, September 8; and that therefore, the grievants are entitled to overtime pay for four hours. 5

In further support of its position the Union points out that 6
the Step 2 answer, by the Superintendent, incorrectly states that the night shift differential was paid for the four hours on Saturday as follows: "The hours worked by the grievant starting at 8:00 p.m. on Saturday are considered to be first turn of Sunday for which he was properly paid first turn shift differential as well as Sunday premium for all hours worked on the turn." The Union argues that the grievants were paid the afternoon (third) shift differential, not the night shift differential, for the four Saturday hours; and that the payment of the afternoon shift differential for the hours worked from 8 p.m. to midnight Saturday reflects the fact that the Company has recognized that the four hours in question are Saturday hours for rates of pay purposes and therefore fall within the payroll period beginning the prior Sunday.

The Company points out that it is not disputed that for the 7
17 years or so that Fairless Works has been in operation the practice has been to consider the four hours worked on Saturday from 8 p.m. to midnight as the first four hours of the first turn on Sunday. The Company also refers to the following excerpt from the Step 4 minutes in Grievance No. A-59-99, contending that in withdrawing this grievance in Step 4 (in January 1961) the Union acknowledged that the Saturday hours in question are Sunday hours for rates of pay purposes:

> "Ever since Sunday premium has been provided by the Agreement, the Company has applied it in this manner. That means that in all cases turns beginning at 8:00 p.m. or after on Saturday are recorded as first turn on Sunday and the Sunday premium is paid. Conversely, turns beginning at 8:00 p.m. or after on Sunday are recorded as first turn on Monday and no Sunday premium is paid."

The Company concludes that inasmuch as 8 p.m. Saturday has 8
been consistently applied and recognized as the turn-changing hour nearest to 12:01 a.m. Sunday for the purpose of Section 9-L, it

should also be so interpreted for the purpose of Section 11-B-1.

With respect to the Step 2 answer, the Company agrees that 9
the Superintendent was in error in stating that the grievants were paid the night shift differential. It points out that the application of shift differentials on regularly scheduled shifts which do not begin at the customary times is spelled out in Section 9-K-5; and that it provides for the payment of the afternoon shift differential for "hours worked which would fall in the prevailing afternoon turn of the department," the situation involved here.

The Union responds that the past application of the four 10
hours in question as Sunday hours was wrong, and that according to Section 2-B-2, no past practice shall deprive any employee of rights under the Agreement. As to Grievance A-59-99, the issue involved was shift differentials, not overtime.

FINDINGS

This case turns entirely on whether the "payroll week," 11
applicable to the grievants under Section 11-B-1, commenced at 8 a.m. on Sunday, September 8, or at 8 p.m. on Saturday, September 7, 1968. This is a technical problem which must be decided under the language of Section 11-B-1 and the specific facts of the present case. The definitions of "Day Shift," "Afternoon Shift," and "Night Shift" set forth in Section 9-K-3 of the Agreement on their face are unrelated to, and have no bearing upon, the proper application of Section 11-B-1, as decided many years ago in Case CI-196 by Acting Chairman Donald Crawford.

Thus, the manner in which the Company applied the shift 12
premium provisions to the hours between 8 p.m. and midnight on September 14, 1968 cannot control the outcome of this case, and the Board now expresses no opinion on any issue as to whether these hours

were compensated properly under the provisions and definitions of Section 9-K.

The definition of "Sunday" for purposes of Sunday premium under Section 9-L stands in a quite different relation to Section 11-B-1, as a comparison of the language in these two provisions reveals: 13

Section 9-L-2:

"For the purpose of this provision, Sunday shall be deemed to be the 24 hours beginning with the turn-changing hour nearest to 12:01 a.m. Sunday."

Section 11-B-1:

"The payroll week shall consist of 7 consecutive days beginning at 12:01 a.m. Sunday or at the turn-changing hour nearest to that time."

It is manifest that the identical phrase "turn-changing hour nearest to" 12:01 a.m. Sunday in these two provisions cannot reasonably be given different meanings without doing violence to normal rules of interpretation and creating considerable confusion in payroll calculation. 14

It also seems clear that the phrase "turn-changing hour" as used in these two provisions must refer to a time of general application to appropriate groupings of employees (determined on the basis of their common work schedules or scheduling pattern) rather than to a specific time as of which each given individual first reports for work on any given "day," or at the beginning of any given "week." 15

In the present case, for example, the nature of the grievants' schedules (as well as the operations which they serve) indicate 16

that they work on a rotating shift basis with the specific turn to be worked on given days rotating from week to week. If each Craneman each week were to begin his "payroll" week at the time closest to 12:01 a.m. Sunday at which he--as an individual--started to work, there would be no common payroll week for all of the employees in the given group manning the operation.

A comparison of the definition of "payroll week" with the technique used by the parties to define "workday" is instructive in this connection. The definition of "workday" in Section 11-B-2 specifies that each individual's workday must commence when "the employee begins to work, except that a tardy employee's workday shall begin at the time it would have begun had he not been tardy." These words leave no doubt that each individual's 24-hour workday normally commences on the basis of when he personally reports for work. The language of Section 11-B-1, which immediately precedes the definition of "workday," embodies a quite different approach when it speaks of either "12:01 a.m. Sunday" or the "turn-changing hour nearest to that time." 17

Thus the Company's stated policy of treating 8 p.m. Saturday as the beginning of the 7-day workweek for all employees in the scheduling group which includes these two individual grievants in no sense is inconsistent with Section 11-B-1. It follows that the 4 hours here in dispute were not part of a workweek commencing at 8 a.m. on September 8, but instead constituted the first 4 hours of a new workweek which commenced at 8 p.m. September 14, 1968. 18

AWARD

The grievances are denied.

Findings and Award recommended by

Alexander M. Freund, Arbitrator

This is a decision of the Board of Arbitration, recommended in accordance with Section 7-J of the Agreement.

Sylvester Garrett, Chairman