

2-25-1971

United States Steel Corporation Gary Works and United Steelworkers of America Local Union 1066

Sylvester Garrett
Chairman

Aaron C. Wolff
Arbitrator

Follow this and additional works at: http://knowledge.library.iup.edu/garrett_series



Part of the [Dispute Resolution and Arbitration Commons](#)

Recommended Citation

Garrett, Sylvester and Wolff, Aaron C., "United States Steel Corporation Gary Works and United Steelworkers of America Local Union 1066" (1971). *Arbitration Cases*. 38.

http://knowledge.library.iup.edu/garrett_series/38

This Article is brought to you for free and open access by the Sylvester Garrett Labor Arbitration Collection at Knowledge Repository @ IUP. It has been accepted for inclusion in Arbitration Cases by an authorized administrator of Knowledge Repository @ IUP. For more information, please contact cclouser@iup.edu, sara.parme@iup.edu.

BOARD OF ARBITRATION

Case No. USS-7640-S

January 25, 1971

ARBITRATION AWARD

UNITED STATES STEEL CORPORATION
Gary Works

and

Grievance No. SGa-68-194

UNITED STEELWORKERS OF AMERICA
Local Union No. 1066

Subject: Reemployment rights after Military Service.

Statement of the Grievance: "I, Thomas Morgan, request that I be accorded my full rights under Section 15 of the Basic Labor Agreement.

"Facts: Letter sent to me on September 20, 1966 stated 'upon his honorable discharge from U. S. Armed Forces, would immediately be reinstated.' Signed by J. J. Bucheck, Personnel Services, Gary Sheet & Tin Works.

"Remedy Requested: That I be reinstated and be paid all wages lost."

Contract Provisions Involved: Section 15-A of the September 1, 1965 Basic Agreement.

<u>Grievance Data</u>	<u>Date</u>
Grievance Filed:	March 20, 1968
Step 2 Meeting:	March 26, 1968
Appeal to Step 3:	April 10, 1968
Step 3 Meeting:	May 13, 1968
Appeal to Step 4:	June 6, 1968
Step 4 Meeting:	November 19, 1969
Appealed to Arbitration:	March 3, 1970
Case Heard:	August 5, 1970
<u>Statement of the Award:</u>	The Grievance is denied.

Grievant claims the Company wrongfully refused to re-employ him upon his return from military service. 1

Grievant, Thomas Morgan, was hired on May 29, 1956. On September 22, 1962, he entered military service as an enlistee for three years. While overseas he was confined without pay or privileges from June 12, 1964, through September 8, 1966. Up until the arbitration hearing the parties understood that Grievant was court-martialed and confined in a military stockade but at the hearing Grievant said he was sentenced by a German civil court and confined in a German jail. In any event, upon his release from confinement his commanding officer suggested that in order for him to get a "good" discharge Grievant might extend his enlistment to make up for time lost in jail. Grievant said he knew that if he came out of the Army with a dishonorable discharge he would have no right to his old job. Accordingly, Grievant agreed to extend his enlistment for fifteen months. On December 12, 1967, Grievant was discharged under honorable conditions. On February 12, 1968, he applied for and was denied reemployment by the Company. 2

On September 20, 1966, the Company wrote the following letter, signed by J. J. Bucheck, Personnel Services, Gary Sheet & Tin Works: 3

"To Whom It May Concern:

Mr. Thomas Morgan has been a faithful and reliable employee with United States Steel Corporation - Gary Sheet and Tin Works since his date of hire, May 29, 1956, and upon his Honorable Discharge from the U. S. Armed Forces, would immediately be reinstated to his former position within our Plant providing present business trends continue; and his Plant service seniority would entitle him such re-employment rights under the existing statutes."

The purpose and manner of obtaining this letter were stated as follows: Zan Morgan, Grievant's uncle and an employee of the Company, testified that in September, 1966, at Grievant's request, he spoke with J. J. Bucheck of Personnel Services regarding Grievant's situation in the Army. He advised Bucheck that he was concerned about the length of time Grievant was away and the problem of getting his job back. He claims that he told Bucheck that Grievant would not be back on time and asked Bucheck for a letter that Grievant 4

would need when he got out of the Army. He also testified that he knew Grievant would not be back within the statutory time limits because he had to serve additional time to obtain an honorable discharge. He stated that he told Bucheck that Grievant had to make up additional time in the Army but did not recall if he told him why. Nor did he recall whether he told Bucheck when Grievant would return from service. In obtaining the letter he also mentioned to Bucheck that Grievant had to support his mother and needed a job when he got out of service. He did not recall if he told Bucheck that Grievant needed a letter in order to obtain a discharge.

Grievant testified that he wrote his uncle about his problem of not getting out in time to get his job back, and asked him about getting a letter from the Company so that he would have his job on his return from service. He said he did not mention obtaining an early discharge due to hardship but his uncle may have so interpreted his letters. He thought the Company's letter "had a lot to do with his getting out of service." However, when he was released in December, 1967, it was because he had completed his service time.

Joseph Bucheck testified that Zan Morgan came into his office on September 16, 1966, introduced himself as Grievant's brother and explained the problem that Grievant was having -- that he was in Germany, his mother needed assistance, that he, Zan Morgan, could not solely support her and that if Grievant got out of service he could help support her. Bucheck claimed that Zan Morgan told him that Grievant could get out of service on a hardship release if he had some evidence that a job was available for him. At that time Bucheck knew that Grievant had been in service for about four years and while he was not specifically told by Zan Morgan, he understood that Grievant was ready to come home, and he would then have 90 days left to apply for reinstatement under the federal statutes. He stated that Zan Morgan did not indicate Grievant was having any problems in the Army and did not indicate that Grievant would not return for an extended period of time. Bucheck also testified that he asked Zan Morgan at the time why Grievant needed a letter when his service time was almost up and Zan replied that he didn't know why but he had to have such a letter. In checking with Grievant's past supervisors, Bucheck was advised that Grievant was an average worker and that his supervisors stated they would take him back to work "tomorrow", if he applied. Accordingly, Bucheck wrote the foregoing letter.

When Grievant applied for reinstatement on February 12, 1968, the Company interviewer advised him that his records had been removed from the military roster since he had been in the Army more than the allotted time. The

interviewer told Grievant, therefore, that he had no right to his old job but could file a new application for employment.

Findings

Section 15-A of the September 1, 1965 Agreement provides that "The Company shall accord to each employee who applies for reemployment after conclusion of his military service with the United States such reemployment rights as he shall be entitled to under then existing statutes."

8

Section 9(b) of the Selective Service Act (50 USC Appx §459(b)) provides that, with certain exceptions not here relevant, a veteran is entitled to reemployment if he so applies within 90 days after he is relieved from military service. The Act also imposes certain time limitations on this right and §9(g)(1), in effect at the time Grievant applied for reinstatement, provided as follows (50 USC Appx §459(g)):

9

"Any person who, after entering the employment to which he claims restoration, enlists in the Armed Forces of the United States (other than in a reserve component) shall be entitled upon release from service under honorable conditions to all the re-employment rights and other benefits provided for by this section in the case of persons inducted under the provisions of the title, if the total of his service performed between June 24, 1948, and August 1, 1961, did not exceed four years, and the total of any service, additional or otherwise, performed by him after August 1, 1961, does not exceed four years (plus in each case any period of additional service imposed pursuant to law)." (Emphasis supplied).

On the face of the statute, it appears that Grievant had no mandatory right to reemployment. His military service began on September 22, 1962, and he was not discharged until more than five years later on December 12, 1967. Thus, his period of service exceeded the statutory limit of four years. Grievant does not claim that the "additional service" beyond four years was "imposed pursuant to law" but acknowledges that he volunteered for additional service in order to obtain an honorable discharge. Nevertheless, Grievant asserts that he falls within the statutory limitation by raising the proposition that during the period that he was incarcerated from June 12, 1964 through September 8, 1966, he was not "in military service." If the time served in jail is not counted

10

as time served in the military, Grievant was "in service" for only thirty-six months. In support of his position Grievant points out that while he was incarcerated he received no pay or privileges from the military.

Although Grievant's argument is novel it deserves serious consideration, especially in light of the well-established proposition that the statute here involved is to be liberally construed for the benefit of those who left private life to serve their country. Fishgold v. Sullivan Corp., 328 US 275, 285 (1946); Accardi v. Pennsylvania R. Co., 383 US 225, 228 (1966); Collins v. Weirton Steel Company, 398 F.2d 305, 308 (CA 4 1968).

The Selective Service Training and Service Act of 1940 originally outlined the rights of servicemen to re-employment and contained no period of limitation. A period of limitation was first imposed in the Selective Service Act of 1948. "While one of the purposes of a limitation period * * * might have been to deny re-employment rights to persons who enter the Armed Forces for the purpose of making Military Service a career or to those who deliberately elect not to be separated from the Service and who remain there long after they could have been relieved of their military obligations, it is well settled that the re-employment statutes are to be liberally construed for the benefit of those who left their employment and homes to serve their country * * * . It appears that Congress' intention was not to penalize the patriotic employee, but rather, to relieve the employer of inconvenience and uncertainty." Hall v. Chicago and Eastern Illinois Railroad Company, 240 F. Supp. 797, 800 (ND Ill. 1964).

Regarding the narrow issue of whether Grievant's period of incarceration is to be considered part of his time served in the military, the parties have cited no authority and extensive research by the Arbitrator reveals none. We think that reason and logic compel the conclusion that from the time Grievant entered military service until the time he was formally discharged from military service, he was in fact in military service. Grievant's own record of discharge (Un. Ex. 1) supports this conclusion. That part of the form designated "Service Data" provides in part:

"22. STATEMENT OF SERVICE		YRS.	MONTHS	DAYS
a. CREDITABLE FOR BASIC PAY PURPOSES	(1) NET SERVICE THIS PERIOD	2	11	23
	(2) OTHER SERVICE	0	02	05
	(3) TOTAL (Line (1) plus Line (2))	3	01	28
b. TOTAL ACTIVE SERVICE		3	01	28
c. FOREIGN AND/OR SEA SERVICE		2	03	00"

Another portion of the form recognizes that the time from June 12, 1964, to September 8, 1966, was for "Non-Pay Periods Time Lost." But the fact that Grievant received no pay during certain periods did not mean that such periods were not included in his "Service". On the contrary, his discharge record shows that he had a total of more than five years of "service." While some of his "service" was "Creditable for basic pay purposes," for "active service" and for "foreign service," §9(g)(1) of the statute does not distinguish between types of service. It speaks in terms of "the total of any service."

Grievant's argument has other weaknesses. If he was not "in military service" while he was in jail then presumably he was "out of service." If he was out of service he failed to make application for reinstatement within ninety days and did not then have an honorable discharge, both prerequisites to re-employment.

14

While we would construe the provisions designed to protect Grievant as liberally as possible, we find no basis for the construction advanced by Grievant. It would negate the clear purpose of Congress in adding a period of limitations to the statute designed to relieve the employer of the inconvenience and uncertainty in knowing when former employees would be returning from service.

15

The Union also urges that somehow the letter of September 20, 1966, assured Grievant of his right to re-employment. It urges, in effect, that the letter waived the Company's rights under the statute. In response, the Company says that the letter was obtained by subterfuge, and that it was never advised that Grievant would not return from service for a long period of time. We put to one side the disputed circumstances surrounding the issuance of the letter. It is clear on the face of the letter itself that the Company did not waive its rights under the statute or extend for an indefinite period of time the right of Grievant to assert his rights under the statute. Rather the letter concluded that upon Grievant's discharge he would "immediately be reinstated to his former position * * * providing present business trends continue; and his plant service seniority would entitle him such re-employment rights under the existing statutes." We note further that the letter was written at a time when Grievant still had re-employment rights under the statute and was based on the Company's belief, mistaken or otherwise, that Grievant would soon be discharged. Certainly, it may not reasonably be inferred from the letter that Grievant could apply for reinstatement almost a year-and-a-half after the letter was written.

16

Accordingly, the Company did not deny Grievant his re-employment rights under the contract or the relevant statutes and the grievance must be denied.

17

Award

The grievance is denied.

18

Findings and Award recommended
by



Aaron S. Wolff, Arbitrator

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



Sylvester Garrett, Chairman