

September 1970

United States Steel Corporation Eastern Steel Operations Fairless Works and United Steelworkers of America Local 5092

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BOARD OF ARBITRATION

Case No. USS-7649-S

March 3, 1971

ARBITRATION AWARD

UNITED STATES STEEL CORPORATION
EASTERN STEEL OPERATIONS
Fairless Works

and

Grievance No. SFL-69S-67

UNITED STEELWORKERS OF AMERICA
Local Union No. 5092

Subject: Authorized Absences

Statement of the Grievance: "I the undersigned feel that my contractual rights have been violated under the basic labor agreement where as:

"Facts: My son was due back at the William Penn College Oskaloosa, Iowa and it was pertinent that my son be there at 2 P.M. Sunday the 24th of Aug. and I returned immediately for home 12 o'clock noon and drove 1200 miles.

"Remedy Requested: I feel this is just cause especially when I discussed this previously with my foreman M. Straka."

Contract Provision Involved: Sections 2-B-3 and 9-B-2 of the August 1, 1968 Salaried Employees Agreement.

Grievance Data:Date

Grievance filed:	September 2, 1969
Step 2 Meeting:	September 4, 1969
Appealed to Step 3:	September 18, 1969
Step 3 Meeting:	September 23, 1969
Appealed to Step 4:	October 16, 1969
Step 4 Meeting:	October 29, 1969
Appealed to Arbitration:	March 3, 1970
Case Heard:	September 10, 1970
Transcript Received:	No transcript

Statement of Award:

The grievance is sustained in part. The Company shall pay Harold Heilman for Monday, August 25, 1969 in accordance with Section 9-B-2-b.

BACKGROUND

USS-7649-S

This grievance from the Metallurgical and Inspection Department at Fairless Works protests the Company's refusal to pay Harold Heilman for two days he was absent in August 1969 as a violation of the Salaried Employees Agreement.

1

The Union's position is that Heilman was authorized by his supervisor, Chief Metallurgist Edward Straka, to take the two days off and should therefore be paid for them in accordance with Section 9-B-2-b, which provides in part that: "The Company may authorize absence from work within a biweekly pay period without reduction of the biweekly salary rate." The Union contends also that Section 2-B-3 perfects the grievant's claim in that it has been the practice to grant employees permission to be absent without loss of pay for similar good reasons.

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The Company's position is that the grievant was not authorized, expressly or by implication, to take the two days off and that the situation here is therefore covered by Section 9-B-2-c(4), which states that nothing in this Agreement shall require payment for time not worked to an employee who is voluntarily absent from work. The Company argues further that inasmuch as Section 9-B-2-c(4) provides that an employee who is voluntarily absent is not entitled to payment for that time, a practice contrary to this express language may not be held to exist.

3

The events preceding Heilman's absence on August 25 and 26, 1969 (a Monday and Tuesday) begin in June of that year, when his son received a letter from the football coach at William Penn College in Oskaloosa, Iowa, where he has a scholarship, directing him to report Sunday, August 24 at 2 p.m. The grievant notified Supervisor Straka that he would need time off in August to drive his son to college. Straka said that he could probably arrange to give Heilman time off, if it did not put him in a bind.

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In July, Straka testified, Heilman advised him as to the days he would need off, Friday, August 22 and Monday, August 25. Straka suggested that Heilman try to swap vacation periods with one of the other employees. He agreed and was able to rearrange his vacation schedule to take off the week ending Saturday, August 23. Heilman told Straka he might still need Monday off because he did not know whether the dorms would be open before Sunday or when his son would quit his summer employment at

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Fairless. Straka responded that if Heilman could not arrange to leave early enough from the college to be back in time for work Monday, maybe something could be arranged.

Continuing, Straka testified that Heilman never came back to tell him that he would need time off for the return trip; he accordingly assumed that the grievant had arranged to leave early enough to report for work on Monday. Straka asked Heilman upon his return to work where he had been; he answered that he had been driving back from the college. Straka said that he had not authorized the time off and that Heilman would not be paid for the two days. Straka adds that in the absence of Heilman, who is employed as a Product Specification Analyst, orders were processed by employees with similar jobs in the same area.

Heilman agreed on cross-examination that he did not go back to Straka to tell him that he was taking time off for the return trip but added that Straka would have known from the prior discussions that if he could not leave early enough with his son for school, he would have to take time off for the trip back. The grievant explains that he discussed his problem with Straka on four or five occasions between June and August; that Straka kept saying that something could be worked out; that the vacation change he had made at Straka's suggestion took care of only Friday, and he understood Straka to be giving him one or two days for the trip back, since the drive back from school is 1200 miles; that he expected that supervision would make arrangements to cover his absence on Monday and Tuesday; that there was no doubt in his mind that he had been excused; that the order flow is greater from the middle of the week through Friday, and no overtime was incurred by his absence.

The grievant testified further that prior to the last year or so he has had very few absences in his 17 years of employment with the Company. In February 1969 he was allowed 80 hours because of illness. He claims that supervision has always observed a policy of authorizing time off for employees who needed it, particularly, if family considerations were involved; and that recently an employee was granted permission to take time off to attend his son's high school graduation.

FINDINGS

USS-7649-S

It appears from Heilman's testimony that he acted in some part on the basis that he was entitled to time off in accordance with what he believes to be a practice by supervision of absences for good reason, particularly family reasons. As he says at one point in his testimony, he expected the Company to cover for his absence if he could not arrange to leave early enough with his son for college to return in time for work on Monday. However, the Union does not establish the existence of the protected local working condition it alleges. Accordingly, the grievant erred in not continuing the discussions with Straka as a matter for decision by him based on the particular facts involved instead of presuming to have a right to the time off. Indeed, payment for the absences under the circumstances could have had the appearance of confirming the existence of the practice the Union claims.

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It does not follow, however, that Section 9-B-2-c(4) covers the situation here. Straka's testimony, as well as the grievant's, reveals that he was giving favorable consideration to the grievant's request for allowed time. For while it may well be that Straka would have much preferred to avoid any further loss of working time on Heilman's part in view of the fact that he had been allowed 80 hours for sickness not too many months earlier, at no time did he say to the grievant that he would not authorize his absence. Even after the grievant could not arrange a vacation swap that would have made unnecessary any loss of working time, he was encouraged by Straka to believe that something could be worked out. In fact, at no point in the hearing did Straka say that the grievant did not merit time off for the purpose he requested it. Accordingly, Straka's conduct did strongly imply that he would authorize time off for the grievant's trip back, if he could not leave for school in time to return to work by Monday. Therefore, the situation here is more fittingly covered by Section 9-B-2-b, authorized time off, rather than by Section 9-b-2-c(4), a voluntary absence.

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However, it cannot be found that Straka had led Heilman to understand that he was excused from work on Tuesday in addition to Monday. According to Straka, Heilman requested only Friday and Monday off to drive his son to college and return home. The grievant's recall of this phase of the discussions is vague and inconsistent; he appears to be saying that he had to have


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both days off in order to drive the 1200 miles home. But since Straka would have had no reason to understand that Heilman wanted more time off than he requested, he could not have implied that the grievant had Tuesday off also. Therefore, the grievant's absence on Tuesday was voluntary and no payment to the grievant is required for that day.

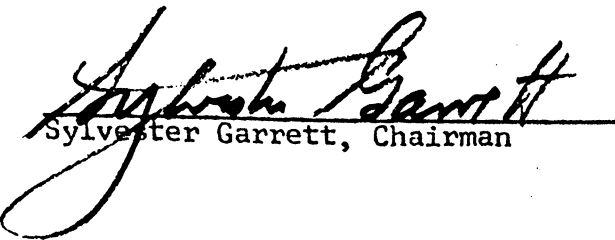
AWARD

The grievance is sustained in part. The Company shall pay Harold Heilman for Monday, August 25, 1969 in accordance with Section 9-B-2-b. 12

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