

2-19-1971

# United States Steel Corporation Fairless Works and United Steelworkers of America Local Union 5092

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BOARD OF ARBITRATION

Case No. USS-7689-S

February 19, 1971

ARBITRATION AWARD

UNITED STATES STEEL CORPORATION  
Fairless Works

and

Grievance No. SFL-69S-98

UNITED STEELWORKERS OF AMERICA  
Local Union No. 5092

Subject: Seniority - Implementation of Grievance Settlement

Statement of the Grievance: "WE THE UNDERSIGNED FEEL THAT  
OUR CONTRACTURAL RIGHTS HAVE BEEN VIOLATED UNDER THE  
BASIC LABOR AGREEMENT WHERE AS:

"Facts: THE COMPANY FAILED TO  
RESOLVE GRIEVANCE #68S-32 PROPERLY. THE UNION POSI-  
TION UNDER THE GRIEVANCE WAS SECTION 2A3. IT HAS  
BEEN BROUGHT TO THE UNION'S ATTENTION THAT THE ISSUE  
UNDER THAT GRIEVANCE IS STILL EXISTING. THE CO. IS  
TO SATISFY THIS GRIEVANCE UNDER 2A3 IN THAT MR. JOHN  
GRIVOVICH IS TO BE REMOVED FROM SAID POSITION AND  
AWARDED TO HERBIE HALE."

Contract Provisions Involved: Sections 2-A, 9-G and 13-A of  
the Salaried Agreement, dated August 1, 1968.

Grievance DataDate

Grievance Filed:	November 11, 1969
Appealed to Step 3:	December 19, 1969
Step 3 Meeting:	December 23, 1969
Appealed to Step 4:	January 9, 1970
Step 4 Meeting:	February 4, 1970
Appealed to Arbitration:	April 2, 1970
Case Heard:	December 15, 1970

Statement of the Award:

The grievance is dismissed.

BACKGROUND

USS-7689-S

In this grievance the Union asserts that Management did not properly implement the settlement of a prior grievance.

In April, 1968, the Company hired a new man, John Gribowich, as Layout Draftsman in the Rolling Division Roll Shop (J.C. 10) after rejecting the application of an employee, Herbert Hale, who was in Job Class 7. Mr. Hale grieved, seeking to be placed in the position and asking for all monies lost.

In March, 1969, while the grievance was pending, Mr. Hale bid for a Layout Draftsman position and was awarded it. Nevertheless, the grievance proceeded to arbitration. In its brief to the Board, the Union stated:

The position that was under question became vacant some months ago because the incumbent who was placed on that job either quit or was promoted. The Union has no knowledge of exactly why the incumbent moved off the job. That is not essential.

However, the matter was settled on July 22, 1969, just prior to its being heard in arbitration. The settlement memorandum stated:

(Roll)-USS-6973-S (SFL-68S-32) The grievance is granted (Layout Draftsman.)

In August the Company implemented the settlement by paying Mr. Hale the monies he had lost and awarding him a seniority date as Layout Draftsman of April 21, 1968. Mr. Gribowich's seniority date as Layout Draftsman was April 25, 1968.

Although the Union's brief in that arbitration noted that Mr. Gribowich had vacated the job, he actually had not. He was in it throughout, and worked side by side with Grievant

Hale from March, 1969, on. It appears that there had been two incumbent Layout Draftsmen, and Mr. Hale's promotion in March, 1969, was the result of the one other than Gribowich leaving the position. The Union mistakenly believed that the grievant had filled the position formerly occupied by Mr. Gribowich. Nothing in the record indicates the original source of a Union committeeman's misinformation or misunderstanding.

When the Union filed its original grievance, it assumed that if Mr. Hale were successful he would replace Mr. Gribowich in the Layout Draftsman position. According to the Union, had it known that Mr. Gribowich still held the position at the time of the grievance settlement, it never would have agreed to his retention of the position, but would have insisted that the job be posted and made available for bid, despite Mr. Hale's promotion. That is what the Union seeks as the remedy in this case, its brief requesting a direction that the Company "post the job...so employees with proper seniority and ability have an opportunity to bid on this job."

The Company has a two-pronged defense. One is that the present grievance is untimely and the other is that the settlement of the Hale grievance was completely implemented by the Company as sought by the Union.

The present grievance was filed on November 11, 1969. Settlement of the previous grievance had been reached in July, 1969, and it was implemented during the following month. There is no dispute that the Company effectuated the settlement precisely in accordance with the Union's request at the time, and that no question had then been raised about posting the Gribowich position.

#### FINDINGS

There is no doubt that the Union was unaware at the time of the July, 1969, grievance settlement that Gribowich was still employed as a Layout Draftsman. Had the Union known of this, it certainly would not have assented simply to Mr. Hale being made whole while Mr. Gribowich retained the other

position. The issue is whether the Union's failure to know this meant that implementation of the settlement could not be considered final and dispositive, requiring it now to be overhauled; Mr. Gribowich's employment was unconcealed. That is the substantive problem.

Initially, however, the issue of timeliness raised by the Company must be decided. The Local Seniority Agreement provides in Section F-6, as follows:

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Any grievance pertaining to the application of seniority factors shall be initiated in accordance with the provisions of the grievance machinery of the Basic Labor Agreement, but in all cases shall be filed in writing within thirty (30) days after the cause thereof arose.

The settlement of the first grievance was implemented in August, 1969. If implementation was not proper for any reason and provided the basis for another grievance, that subsequent grievance, which concerns seniority, is governed by the Local Seniority Agreement. Section F-6 bars consideration of the merits of grievances which arose more than 30 days before.

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Since the grievance was filed on November 11, 1969, and the prior grievance had been implemented in August, there is no contractual basis upon which it can now be granted. The language of Section F-6 is clear and simple. It is designed to shut off stale grievances involving seniority.

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While the Union claims that it acted as soon as it learned that Mr. Gribowich was still on the job, it is obvious that he had been on the job for months before the grievance was filed. Other employees, whose seniority might have been affected, could not have been unaware of this key fact. Since (1) Gribowich had been employed for more than a year at the time of the grievance settlement, (2) the settlement

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itself in no way purported to displace him, and (3) the settlement was fully implemented about three months prior to the filing of the new grievance, it seems quite clear that the new grievance was untimely under Section F-6 of the Local Seniority Agreement.

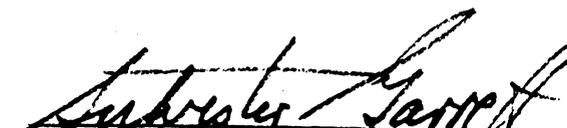
AWARD

The grievance is dismissed.

Findings and Award recommended  
by

  
Milton Friedman, Arbitrator

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

  
Sylvester Garrett, Chairman