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

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BOARD OF ARBITRATION

Case USS-7816-S

March 17, 1971

ARBITRATION AWARD

UNITED STATES STEEL CORPORATION
SHEET AND TIN OPERATIONS
Fairless Works

and

Grievance No. SFL-69-453

UNITED STEELWORKERS OF AMERICA
Local Union No. 4889

Subject: Assignment to Temporary Vacancies - Safety

Statement of the Grievance: "I THE UNDERSIGNED CLAIM THE
COMPANY DEMOTED ME IN VIOLATION OF MY RIGHTS UNDER
THE B.L.A.

"Facts: I WAS DEMOTED FROM THE
JOBS OF TRACTOR, TRUCK AND HOOKER TO THE LABORER
POSITION WITHOUT JUST CAUSE. THIS WAS DONE DUE TO
MY BEING SICK OVER THREE YEARS AGO. WHEN I RETURNED
FROM SICK LEAVE AFTER A BRIEF PERIOD I WAS ABLE AND
DID PERFORM THE ABOVE JOBS, FOR OVER TWO YEARS AND
THEN I WAS DEMOTED TO LABOR. "

Contract Provisions Involved: Sections 13-F and 14 of the
August 1, 1968 Agreement.

Grievance Data:Date

Grievance Filed:	March 1, 1969
Step 2 Meeting:	September 15, 1969
Appealed to Step 3:	October 6, 1969
Step 3 Meeting:	October 21, 1969
Appealed to Step 4:	December 2, 1969
Step 4 Meeting:	January 28, 1970
Appealed to Arbitration:	May 14, 1970
Case Heard:	November 11, 1970
Transcript Received:	None

Statement of the Award:

The grievance is denied.

BACKGROUND

USS-7816-S

In this grievance from Cold Strip Finishing, Fairless Works, the Union protests the failure of the Company to promote grievant to temporary vacancies involving his operating mobile equipment such as tractors and trucks, promotions to which he is said to be entitled under Section 13-F of the August 1, 1968 Agreement. 1

Grievant has continuous service at Fairless Works dating from January 1953 and has a Hooker job service date in Seniority Unit 16 of April 13, 1959. As a Hooker grievant's seniority entitles him to upgrade from time to time in cases of temporary vacancies to higher rated jobs including those involving tractor operation and driving a truck in the Cold Strip Finishing area. 2

In mid-December 1965 grievant suffered a "heart attack" that the Company doctor diagnosed as a myocardial infarction and was absent from work until April 4, 1966. Upon his return to active employment he was given a medical rating of 2L meaning he was physically qualified for limited placement but with no heavy lifting. Grievant returned to his usual job of Hooker and was permitted to upgrade to Tractor Operator and Truck Driver when temporary vacancies occurred in those jobs. By arrangement with the General Foreman, it was agreed that grievant would not upgrade to jobs on certain minor units such as the shears where the work involved heavy lifting. 3

This situation prevailed until the Fall of 1968 when on a day in October an Acting General Foreman assigned grievant to work on one of the shears as a Helper. Grievant protested this assignment asserting that it had been agreed that he would not be assigned to that job. The Foreman involved instructed grievant to go to the dispensary where he was given a physical examination including an electrocardiogram. Although the EKG taken at that time when compared with one dated April 21, 1966 showed no significant change in grievant's condition, it was concluded that a high risk existed of grievant's suffering a fainting spell while at the controls of a 4

tractor or truck and, therefore, his medical rating was changed to 2LM (physically qualified for limited placement but no heavy lifting and no operation of hazardous machinery, e.g., power trucks). Subsequently the Company made arrangements to have grievant examined in the Ergocardiographic Unit, Lankenau Hospital where on November 28, 1968 another EKG was taken with the following result:

"The resting electrocardiogram appears comparable with the one dated 10-25-68 showing the residue of an old posterior wall infarction and an anterolateral wall damage. Exercise was carried out at 300, and 450 KPM/min. for two minutes each. The maximum heart rate achieved was 130. The only change with exercise was that the resting T wave in V4 tended to become upright with exercise. There was no further ST depression in V6 with exercise. The pulse rate of 130 with a work load of 450 KPM is relatively high. The patient stopped exercise because of dyspnea.

"Impression: Abnormal resting electrocardiogram. No definite evidence of active ischemia at the relatively low work load of 450 KPM/min. The patient stopped work because of subjective dyspnea. The high pulse rate at this work load suggests a poor level of cardiovascular conditioning."

Following this electrocardiogram grievant's physical rating was again changed to 2GLM-45# (physically qualified for

limited placement but ground level work only, no heavy lifting--limit 45 pounds--and operation of no hazardous machinery e.g., power trucks).

On February 5, 1969 another EKG was taken with similar results although on this occasion grievant apparently did finish his exercises. Again on August 19, 1969 the findings after another EKG were stated as follows:

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"...Comparison with tracing dated 10-23-68 shows similar findings at that time plus suggestion of possible ischemia having developed in the anteroseptal area."

Finally on September 23, 1969 grievant was examined by Dr. David Gelfand, a recognized specialist in cardiovascular diseases, who reported as follows:

"Diagnosis: Arteriosclerotic heart disease; coronary sclerosis with occlusion; extensive myocardial infarction.

"Comment: Despite the good clinical recovery, the persistence of electrocardiographic changes showing extension of the myocardial infarction, it is my opinion that such individuals are prone to tachyarrhythmia complicated by syncope. Such arrhythmias are common where there has been an infarction of the apex of the heart which is predominantly composed of trabeculae. In view of this, it is my opinion that he should not be permitted to operate a tractor."

Dr. Gelfand also testified at the hearing stressing the August 19, 1969 EKG suggestion of the development of possible ischemia (a localized anemia) since the EKG taken October 23, 1968. Dr. Gelfand testified further that due to the location of the ischemia grievant would be subject to frequent weakness and to fainting and in his opinion grievant reacted poorly to physical exertion. He testified further that the driving of the tractor involved here, which requires manipulating floor pedals while in a standing position, would be difficult and undue exertion on grievant and in his condition likely to produce fainting spells.

The Union stresses the fact that since grievant's heart attack in 1965 he continued to be permitted to upgrade to Tractor Operator and Truck Driver catching temporary vacancies up to October 1968 when an Acting General Foreman pressured by other employees, contending grievant was "picking his jobs," insisted that grievant perform a job contrary to an agreement between departmental supervision and the Union. When grievant objected to this assignment he was told to report to the dispensary for a physical examination. Thus the Union sees grievant's disqualification for mobile operation as stemming from the improper action of a Foreman contrary to a local agreement.

The Union also submitted in evidence at the hearing for the first time the following written statement from grievant's physician, a heart specialist in Trenton, New Jersey dated November 5, 1970:

"To whom it may concern:

"I have seen John Solan periodically since his myocardial infarction of Dec. 1965. When I last saw him on Nov. 4, 1970, he denied all chest pain or dyspnea upon exertion. His EKG's have not changed since the healing phase of his 1965 attack. From the information I have, the work involved driving the tractor truck is not strenuous, so that I would have no objection to his performing these duties."

Based on this evidence and the reports from the EKG's taken October 23, 1969 and November 29, 1969 indicating no real change in grievant's condition since his last attack, the Union would hold that grievant can safely operate mobile equipment. It is noted that the tractor operated by grievant has a brake and acceleration pedal on the floor both of which the Operator must keep depressed in order for the tractor to move. This is viewed as an effective "dead man" control preventing any movement of the tractor should the Operator become incapacitated.

The Company notes that its obligation to promote employees to temporary vacancies is limited under Section 13-F by considerations for the safety of its employees and by its right to consider "physical fitness" in the case of any promotions. The Company also notes that under Section 14 both parties have a continuing obligation to eliminate accidents and health hazards and the Company must make reasonable provisions for the safety and health of its employees.

In light of these obligations, the Company stresses the medical evidence indicating that grievant's health condition renders him subject to periodic weakness and fainting spells which would render his continued operation of mobile equipment a hazard to himself and his fellow employees. It is noted that the grievant must operate the tractor from a standing position with the two pedals on the floor depressed and it is asserted that should grievant suffer a syncopal attack, i.e., pass out, these foot pedals could be kept in an operating position solely through the weight of his body and therefore the tractor would remain under power but uncontrolled.

FINDINGS

Although the grievance and the Union's brief claim that grievant was not only refused tractor operating and truck driving opportunities but also improperly reduced from the job of Hooker after October 23, 1968, it appears that any demotion from Hooker was not due to any claimed lack of physical fitness but solely because of a reduction in force. It is true, however, that grievant has been denied, since October 23, 1968, all temporary promotions to Tractor Operator and Truck Driver, jobs to which his continued length of service would entitle him. These temporary vacancies have been denied grievant because on October 23, 1968 his medical rating was changed so that thereafter he was barred from operating mobile equipment on the grounds that it would be unsafe for him to do so in light of his physical condition. Thus the sole question presented here is whether grievant's heart condition is such that it would be hazardous to himself and other employees to permit him to operate mobile equipment in the plant.

It can be safely concluded that the strip finishing area where grievant would operate the tractor or the truck is not isolated but rather congested in nature, requiring a high degree of care to prevent injury to others. While it may be said that if grievant became subject to a dizziness or fainting spell while the tractor was in motion the foot pedals might be released and the vehicle stopped, it is just as likely that his entire body could fall on the pedals keeping the vehicle moving but uncontrolled in light of grievant's standing position while operating the tractor. Thus it must be concluded that a hazard would exist should something happen to the operator of the tractor or the truck involved here.

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The evidence presented by the Company, particularly through Dr. Gelfand, establishes that the nature of grievant's heart disease is a myocardial infarction. In layman's terms this means that significant portions of grievant's heart has formed into scar tissue limiting the blood flow through such areas. This condition, according to Dr. Gelfand, renders grievant prone to syncope or fainting because of cerebral anemia. This testimony plus the indication on the August 19, 1969 EKG that ischemia or local anemia may have developed in grievant's case is sufficient evidence for Management to conclude that it would be unsafe for grievant to operate mobile equipment within the plant.

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The evidence presented by the Union, if credited, would establish that grievant has not suffered any fainting spells since his 1965 heart attack. This, of course, does not refute the expert medical opinion that such an occurrence might not happen now. The only medical evidence presented by the Union to the contrary consisted of a bare statement from

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grievant's doctor presented for the first time at the hearing and lacking the substantial degree of specificity contained in Dr. Gelfand's testimony. For instance the conclusion of grievant's doctor that he would have no objection to grievant's driving a tractor really does not meet the problem presented here which involves the safety of other employees.

Thus on the basis of all the evidence presented here, it must be concluded that the Company was justified in placing the medical restriction on grievant barring him from operation of mobile equipment. Accordingly the grievance will be denied.

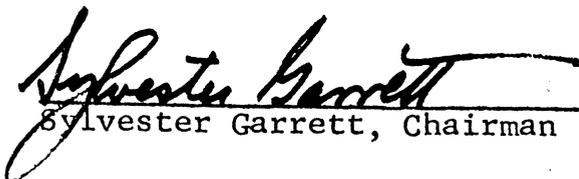
AWARD

The grievance is denied.

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