3-10-1971

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

Sylvester Garrett
Chairman

Alfred C. Dybeck
Assistant to the Chairman

BOARD OF ARBITRATION

Case No. USS-7817; -7819-S

March 10, 1971

ARBITRATION AWARD

UNITED STATES STEEL CORPORATION
SHEET AND TIN OPERATIONS
Fairless Works

and

Grievance Nos. SFL-69-503
SFL-69-542

UNITED STEELWORKERS OF AMERICA
Local Union No. 4889

Subject: Seniority - Job (Light Work) Assignment

Statement of the Grievances: SFL-69-503 (USS-7817-S)

"I, the undersigned, request difference of pay from JC 2 to JC 16.

"Facts: On July 23, 1969 on 1st turn, grievant was injured and went to hospital and returned to work on July 25, 1969, 2nd turn. He was paid the rate of JC 2 for both days and from July 28 to August 1, he was paid JC 16 and on August 5, the company started to pay grievant JC 2 again."

"Remedy Requested: Pay all monies lost."

SFL-69-542 (USS-7819-S)

"I, the undersigned grieve for all monies lost.

"Facts: Management arbitraraly demoted me to a lower paying job.

"Remedy Requested: Pay all monies lost."

Contract Provisions Involved: Sections 9 and 13 of the August 1, 1968 Agreement.

Grievance Data:

	Date	
	SFL-69-503	SFL-69-542
Grievance Filed:	8-20-69	6-30-69
Step 2 Meeting:	9- 2-69	10-22-69
Appealed to Step 3:	11- 5-69	11- 5-69
Step 3 Meetings:	11-11-69	11-11-69
	11-14-69	11-14-69
Appealed to Step 4:	12-22-69	12-22-69
Step 4 Meeting:	1-29-70	1-29-70
Appealed to Arbitration:	5-14-70	5-14-70
Case Heard:	11-11-70	11-10-70
Transcript Received:	None	None

Statement of the Award: Both grievances are sustained.

In these two grievances from Fairless Works, the Union protests the assignment of the grievants to a Job Class 2 rate of pay during the period of time worked by each grievant after having suffered an injury in the plant. Violations of Sections 9 and 13 of the August 1, 1968 Agreement are alleged. 1

The Grievance in USS-7817-S

At about 1:30 a.m. on Wednesday, July 23, this grievant was working at his regular job of Millwright along with a Motor Inspector on the No. 1 Quencher Locomotive Cab in the Coke Works. As they were in the process of taking the car to the work rack with the Motor Inspector at the controls, the car hit a bumping block at the end of a spur track and the impact threw grievant off balance. He bumped against the side of the cab and fell to the floor causing contusions on the left side of his abdomen and upper left leg and a small abrasion on one arm. Apparently he also suffered some injury to his kidneys and back. 2

Grievant was sent to the dispensary and then to Lower Bucks Hospital where he was treated for his injury. At first he was told that he would stay in the hospital for a few days but later released on the morning of July 24. Later that afternoon grievant was called at home by his Foreman who told him to report for work the following day at 8 a.m. stating that he (grievant) would not have to do any work (grievant was actually scheduled that week for the first turn). Grievant states that although at the time he still had blood in his urine he reported for work as instructed on both the 25th and 26th of July. On the first of these two days grievant's Foreman told him to just lie down on a bench located in the 3

Maintenance Shop and on neither day was he instructed to perform any work whatsoever. For these two days grievant was paid at a J.C. 2 rate of pay.

Grievant also reported for work on the five days scheduled in the following week, that beginning July 27. During this week grievant was assigned such duties as straightening out and filing blueprints and sorting bolts and paid at his regular rate of Millwright, J.C. 16. Thereafter through the week ending September 6, grievant worked all but two of his scheduled days but was paid at a J.C. 2 rate of pay based on a job entitled Maintenance Laborer. During this time grievant spent his working hours answering the telephone in the Maintenance Shop and performing cleanup work such as sweeping the floor and moving boxes and equipment around in the Shop. It appears to be agreed that he also spent a good deal of time just sitting around. On September 8 grievant was returned to his regular Millwright rate of pay.

In objecting to the rate of pay received by grievant, the Union contends that there existed an agreement between the area Grievance Committeeman and supervision to the effect that grievant would receive a Millwright's rate of pay during the period he was at work but physically unable to perform the full scope of the Millwright job. It is said that grievant complained to his Grievanceman when he discovered that he was receiving only a J.C. 2 rate stating he would rather not work at all but "go off on compensation." The Superintendent of the Coke Works is said to have stated he would take care of this matter but later told the Grievanceman that his hands were tied and he could pay only the Laborer's rate. The Company witness involved denies any such agreement with the Union concerning grievant's rate of pay during the period in question.

The Grievance in USS-7819-S

This grievant is an incumbent of the job of Shear Piler (J.C. 5) in the Tin Temper Mill. At about 1 a.m. on the morning of June 18, 1969, grievant suffered an injury while attempting to remove a damaged sheet from the pile of prime product. The sheet struck his left arm just below the elbow causing a deep 3" laceration requiring 20 inside stitches and 15 outside sutures in order to close the wound and the arm was placed in a cast. This treatment was provided at the Bucks General Hospital where the doctor, according to grievant, first stated that he would remain in the hospital for a few days but later on the morning of the 18th grievant was told he would be discharged that day. It appears that the Company sent a member of Plant Protection to the hospital to transport grievant to the plant but grievant chose to return to the plant with his father. At any rate, on the 18th grievant reported to the plant doctor who told him to report for work at 8 a.m. the following day when he would be placed on a light work assignment. 6

Grievant reported as instructed on the 19th and from that time to July 19 when he returned to his regular Piler job, he was paid at a J.C. 2 rate of pay allegedly based on the job of Tin Temper Mill Laborer. During this period of time grievant admittedly was unable to work as a Shear Piler. 7

According to the grievant, he answered the telephone in the Tin Mill office, performed some duties of a clerical nature, stamped time cards and did some inventory work in the Coil Warehouse. Grievant's General Foreman testified that on the first day after grievant's injury, he recognized that he was not well and let him sit in the office until he could decide what to have him do. On the next day he assigned 8

grievant to do some rough painting but after grievant complained about discomfort caused by his sweating under the cast, the Foreman reassigned grievant to the office where apparently he did nothing for the rest of that turn. Thereafter, according to the Foreman, grievant did very little work, apparently sat around in the office where he would fall asleep at times and finally did not bother to change his clothes. The gathering of some statistics was assigned to grievant, allegedly to give him something to do and, toward the end of the period in question, he was assigned to assist the accounting personnel in the counting of coils.

In each of these two cases the Union protests the Company's requiring the grievants to work after having suffered the above injuries at the plant and paying them only a J.C. 2 rate of pay. The Union relies on USS-6728-S and USS-7185-S contending that in each case herein the "light work assignment" did not really involve either grievant performing Laborer's work and therefore any alleged assignment to a Laborer's job was fictitious in nature. In the case of the grievant in USS-7817-S the Union stresses that to the extent that grievant per formed any work it was within the scope of Millwright's work in the Maintenance Shop. It is said that through the years no Laborer has been assigned at that location and any cleanup work or other occasional duties are performed by Millwrights and Motor Inspectors at their regular rate of pay and this has been particularly true since they became trade or craft jobs and no Helpers have been assigned to the area. Thus the Union would contend that as in USS-7185-S the grievant in USS-7817-S is entitled to a Millwright rate of pay because the duties he did perform during the "light work" period are normally within the scope of the Millwright job.

With respect to the grievant in USS-7819-S, the Union notes that this grievant performed no Laborer's work whatsoever and, to the extent he performed any work at all, it was of a clerical nature for which no job has been established in the Tin Temper Mill and therefore no contractual basis existed for limiting him to a J.C. 2 rate of pay. 10

With respect to both cases the Union would contend that, if the Company wants to require an employee to remain at work although clearly unable to perform his regular job or, indeed, the work of any particular established job, the Company should be required by Section 13-B (Marginal Paragraph 209.1) to seek agreement from the Union to the assignment of employees to such light work duties at a lower rate of pay. Absent such agreement, the Union contends, the Company can not properly require an injured employee to remain at work at a rate of pay lower than that of his regular job. 11

The Company would distinguish each of the instant cases from that of USS-6728-S and USS-7185-S on the grounds that none of the duties required of the grievants during the periods in question could be reasonably viewed as within the scope of their regular jobs of Millwright or Shear Piler respectively. It is said that nevertheless each grievant was able to come to the plant and perform some work. In the case of the Millwright he was able after the first two days to file blueprints and sort bolts and, as required by USS-6728-S, this grievant was paid a Millwright rate of pay for the week during which he performed these duties. In the other weeks, however, this grievant's assignments were restricted to clean-up work and the answering of the telephone in the Maintenance Shop, work that in the Company's view falls within the scope of the existing Maintenance Laborer's job. It is said that, although this latter job is normally not filled and cleanup 12

work and the answering of the telephone is then performed by the Millwrights or Motor Inspectors, there have been occasions in the past when the Laborer's job has been filled and on these occasions it was a light work assignment similar to that involved here. The only specific incident referred to in testimony, however, is one cited by the Union when some unidentified employee was assigned as a Laborer to the Maintenance Shop after having undergone brain surgery. No further details were presented in evidence.

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With respect to the grievant in USS-7819-S the Company notes that clearly he was unable to work as a Piler during the period in question and, therefore, under Section 9-B-4 was not entitled to Piler's wages. It is stressed that supervision attempted to assign this grievant to work of a Laborer's nature such as a rough painting but because of the discomfort experienced by grievant he was unable to continue this assignment.

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At the Arbitrator's request, a Company witness explained that when an employee comes to work and is paid at a J.C. 2 rate of pay he enjoys a higher biweekly total income than he would had he stayed at home and received only Workmen's Compensation payments. It is noted that the Pennsylvania Workmen's Compensation Act encourages light work assignment in that, when an employee works at less than his regular rate of pay after being injured, he receives the rate of pay of the job worked plus 2/3 of the amount of pay lost. In the case of the grievant in USS-7819-S, this resulted in his receiving twice the amount of weekly income that he could have received had he remained at home receiving Workmen's Compensation payments only.

FINDINGS

While it is true that neither grievant refused to report for work as instructed by the Company, the total evidence reveals a decided effort on the part of the Company to assure that the grievants report for work even though it was clear that neither employee was capable of performing any useful work at least at the outset. 15

Indeed, the grievant in USS-7817-S, at Management's invitation, lay on a bench in the Maintenance Shop performing no work whatsoever for two days after his return. While this is not Millwright work, it is just as clearly not Laborer's work. Thereafter, after a week of sorting blueprints and bolts for which he received the Millwright rate of pay, this grievant did odd jobs such as answering the telephone and cleaning up. It is also apparent that he spent a great deal of time just sitting around. 16

While it is true that, in the past in the Coke Works there appears to have been at least one instance where a handicapped employee was assigned to the Maintenance Laborer's job, this job is normally not filled and, as in USS-7185-S no Laborer was displaced when grievant was assigned the work of cleaning up the Shop and answering the telephone. Usually their work is performed by Millwrights or Motor Inspectors as part of their regular duties. Thus on this basis alone the grievance in USS-7817-S would have to be sustained because grievant was in fact given a limited light work assignment within the scope of the Millwright job as was the case in USS-7185-S. 17

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It is admitted that the grievant in USS-7819-S could perform no work that could in any way be associated with his regular job of Shear Piler. However, although he was physically unable to perform that job, it is just as apparent under the evidence that he was unable to work as a Tin Mill Laborer the job to which he was ostensibly assigned. To the extent that this grievant performed any work at all during the period in question, it is clear that it was not work commonly associated with a Laborer. The only attempt to assign such work, the rough painting assignment, was frustrated by the discomfort suffered by grievant while performing that duty. All the other work assigned was clerical and of a somewhat "make work" nature and it is clear that grievant spent a great deal of time doing nothing particularly during the early part of the period in question. Thus the claim that this grievant worked as a Laborer during the period in question is not supported by the evidence. It is apparent that this claimed assignment was made merely as an attempt to establish a J.C. 2 rate of pay without consideration of grievant's seniority or any attempt to seek an established job that reflected the duties actually performed.

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It has been clearly established in USS-6728-S that at Fairless Works no clear practice has developed relative to the payment of wages to employees who continue to work after sustaining an injury at the plant but who are unable to perform the full scope of their regular job. In both USS-6728-S and USS-7185-S the employees involved were regularly employed as Motor Inspectors and during the entire work periods in question performed duties that, although menial in nature, were clearly within the scope of the work normally performed by Motor Inspectors. As noted above the grievant in USS-7817-S can be said to fall directly within the scope of the

reasoning of the above cases particularly USS-7185. Clearly, however, the Millwright involved here could not perform the full scope of the Millwright duties and the Piler in USS-7819-S definitely performed no work that could be reasonably viewed as associated with his regular job and it is on this basis that the Company would distinguish these cases from USS-6728-S and USS-7185-S.

However, this argument ignores other relative comments made by the Board particularly in USS-6728-S as follows:

> "Under Sections 3 and 13-A of the Basic Agreement an employee may be relieved from his regular job if in fact he becomes physically unable to meet its basic requirements. In a case of disabling illness or industrial injury, therefore, the Company is entitled to remove the employee from his regular job if as a result he becomes disabled and cannot perform substantially the duties of the job. This is not to say that the disabled employee may be denied work if there is work available for which he is basically fit and qualified to perform in his disabled condition, and to which he is otherwise entitled by virtue of his seniority. It follows then that when Management determines that a disabled employee can only perform light work, it must apply the pay rate of the particular established job under which the specific duties assigned to such employee are

"covered. When an employee is thus demoted to any such job (in accordance with his seniority), he is entitled to the pay rate for that job, and not the pay rate of his regular job. Moreover, Management may only assign employees to properly established jobs, and it may only apply the specific pay rates applicable to such jobs under, and in accordance with, the Agreement.

"In the instant case, we believe that the 'administrative assignment' of grievant to (J.C. 2) Tin Mill Laborer 'light work' pay level was not proper because no reasonable relationship existed between the duties actually assigned to and performed by grievant in his disabled condition and the normal duties of that job. We think it is crucial here that Management alone determined (1) that grievant was able to perform work; (2) that grievant would work; (3) that grievant would perform certain specified tasks; and (4) that grievant would be assigned a special rate. Here, Management purported to 'demote' grievant to Laborer because of lack of physical fitness to perform his regular job, or any intervening lower rated job. But the demotion was, in this instance, a purely fictitious one. Clearly, if as Management argues, grievant was found unable to perform the scope of duties of any established job, Management had the right, if not the duty, to refuse to schedule grievant to perform any work during the period of his disability...."

This language would seem to require that, if the Company chooses to retain an employee at work after a disabling injury, that employee must be assigned to an established job reflecting the duties performed and the assignment must be in accord with the employee's seniority. No basis exists in the Agreement for merely assigning an employee to a rate of pay regardless of the duties assigned. 21

No agreement with the Union exists at either department involved here relative to the assignment of disabled employees to jobs of a "light work" nature. Nor was any agreement made with the Union providing for the particular assignment made to either grievant at a lower rate of pay. Such types of agreements are contemplated by the following language contained in Section 13-A (Marginal Paragraph 209.1): 22

> "Nothing in this Subsection A shall prevent plant management and the grievance committee from mutually agreeing to fill an equal or lower job in a promotional sequence with a senior employee. Nor shall anything in this Subsection A prevent plant management and the grievance committee from executing an agreement in writing to provide an opportunity to any employee displaced in the course of a reduction of forces to exercise his seniority to the extent appropriate to obtain a job paying higher earnings; provided, such employee is otherwise qualified with respect to relative ability to perform the work and relative physical fitness as provided above. Plant management and the

"grievance committee may mutually agree to provide training for employees disabled in the plant and to assign them to vacancies for which they are qualified on the basis of such seniority arrangements as they may determine."

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The instant situations must be distinguished from instances where an employee might be demoted in a line of progression after having lost the ability to perform at a higher rated job in that line. Here both employees were retained at work despite the fact that they could perform only the most minimal of tasks and therefore, demoted to the lowest possible rate of pay without any consideration of seniority under Section 13-A or the job assigned under Section 9. If sought, agreement with the Union to such assignment probably could have been attained since the only truly legitimate alternative in grievants' cases would be to release them from work. Since this would have the practical effect of depriving the employee involved of a higher total compensation than received solely from Workmen's Compensation alone, it is unlikely that the Union would be unwilling to enter into an agreement providing for some practical arrangement for "light work" cases.

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On the question of remedy, it is not clear what would have been the rate of pay to which the grievant in USS-7819-S would have been entitled had he been assigned to a job that had been established and classified in accordance with the Agreement. Although he clearly could not have performed as a Piler during the period in question, this was his regular job and, in light of the virtual impossibility of determining a more accurate basis for a remedy (caused by the improper

action of the Company), this grievant will be made whole on the basis of the J.C. 5 Shear Piler job deducting therefrom the actual wages received and the Workmen's Compensation payments made. As in USS-7185, the grievant in USS-7817-S will likewise be made whole on the basis of the Millwright rate of pay.

AWARD

Both grievances are sustained.

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