

3-11-1971

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

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BOARD OF ARBITRATION

Case No. USS-7841-S

March 11, 1971

ARBITRATION AWARD

UNITED STATES STEEL CORPORATION
EASTERN STEEL OPERATIONS
Fairless Works

and

Grievance Nos. SFL-69-325 A & B

UNITED STEELWORKERS OF AMERICA
Local Union No. 4889

SUBJECT: WAIVER OF SENIORITY RIGHTS TO TEMPORARY VACANCIES

Statement of the Grievances: SFL-69-325 A

"We, the undersigned, claim management is violating Section E-7 of Local seniority agreement.

"Management is not abiding by seniority agreement. Waiver procedure is not being operated properly as it is through out blast furnace division.

"Cease and desist and abide by E-7 of local seniority agreement and Section 13 of basic labor agreement."

SFL-69-325 B

"We, the undersigned, claim management is violating section 13 of basic labor agreement.

"Senior men are not being moved properly due to the improper operation of the waiver procedure, section E-7 of local seniority agreement.

"Cease and desist and abide by section 13 of basic labor agreement and section E-7 of local seniority agreement. Pay all monies due."

Earl Bartley
A. Pastore
D. L. HOpe

H. L. Brachman
N. J. Thompson
G. Alonso
Jerry D. Heaster

Contract Provisions Involved: Section 13-F and Section 2 B-2 of the Basic Labor Agreement of August 1, 1968, and Paragraph E-7 of the Local Seniority Agreement.

Grievance Nos. SFL-69-325 A & B

Grievance Data:

Date:

Date filed:	June 13, 1969
Step 2 Decision	June 13, 1969
Appeal to Step 3	October 6, 1969
Step 3 Meeting	October 21, 1969
Appeal to Step 4	December 2, 1969
Step 4 Meeting	January 29, 1970
Appeal to Arbitration	May 20, 1970
Case Heard:	January 12, 1971

Statement of the Award: Nos. SFL-69-325 A & B

The grievances are sustained. The Company is directed to cease and desist its present practice of filling temporary job vacancies in the Sintering Department regarding seniority right waiver, and to conform to the provisions of Paragraph E-7 of the Local Agreement as interpreted in the foregoing findings. As to Grievance SFL-69-325 B, the eight listed junior Grievants whose temporary promotional opportunities were adversely affected, are to receive back pay appropriate under said findings.

BACKGROUND

These grievances, from the Sintering Plant, Fairless Works, claim Management wrongfully fills temporary vacancies by compelling lower-rated senior men to move up to higher-rated jobs despite the fact that such men have executed written waivers of such rights, pursuant to a provision of the Local Seniority Agreement. The unwilling senior men complain their waivers to temporary promotion rights are not being honored; the willing junior men complain that they are being deprived of the chance to move up to fill the available vacancies. 1

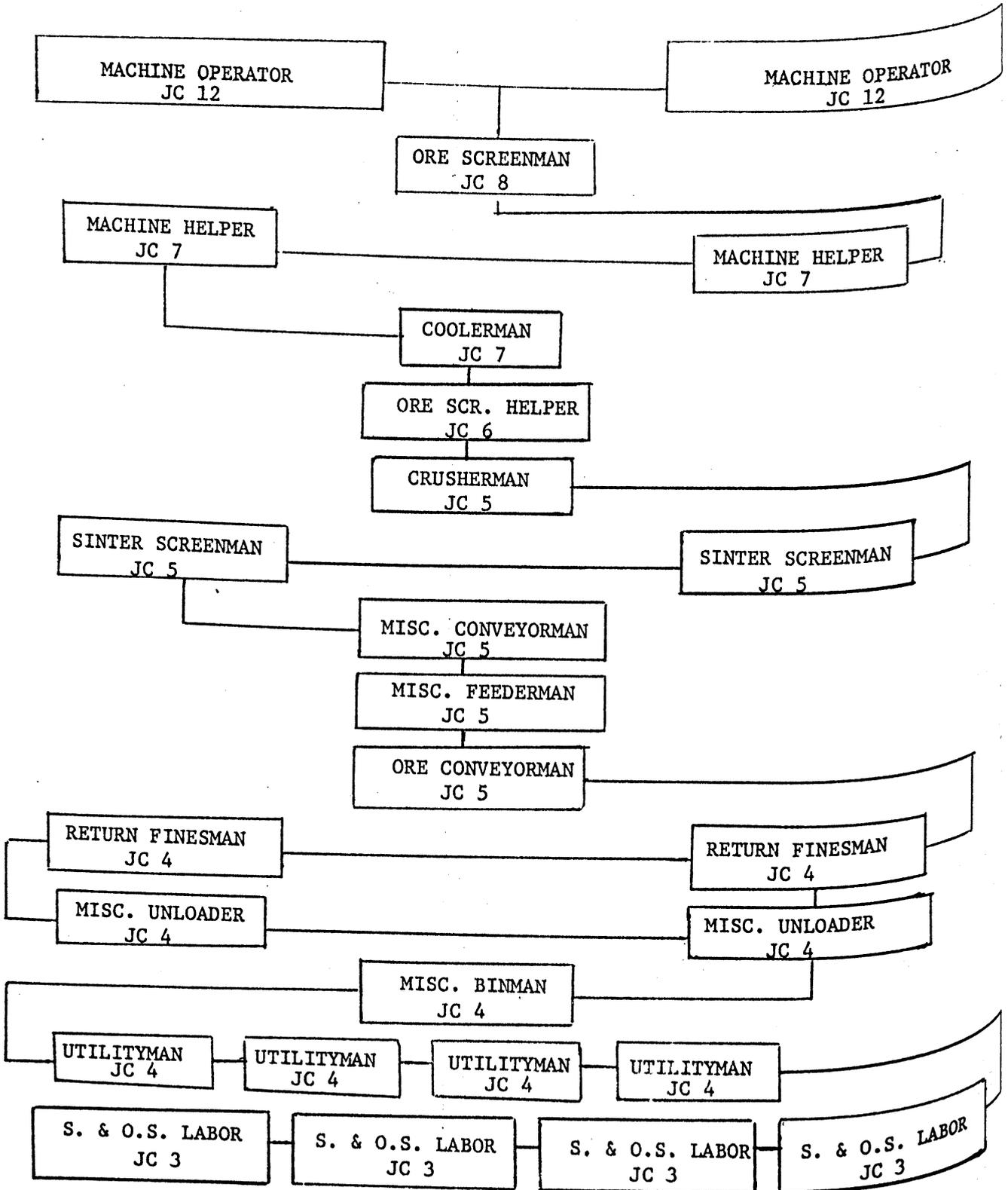
Subsection E-7 of the Local Seniority Agreement, which has been in effect continuously since October 8, 1962, provides: 2

"An employee who is eligible to fill a temporary vacancy who chooses not to fill such job vacancy shall sign a waiver form provided by Management. He shall not be considered for future temporary vacancies on that job or job level or higher jobs in the seniority unit until he has signed the form revoking the waiver. This shall not be construed as an understanding that any employee has the right to refuse assignment to any job at the direction of Management. The waiver form shall not be revoked for a minimum of fifteen (15) calendar days following the signing of the waiver form. The signed waiver form shall not be effective until the day following the signing of the form."

There are approximately 110 men assigned to the various jobs and turns within the Sintering Plant. The promotional sequence contains 15 separate job classifications for 26 job occupants, from Laborer (job class 3) to Machine Operator (job class 12). Some positions have more than one occupant. The job class 4 positions are subdivided into four separate rungs on the promotional ladder; the job class 5 positions are subdivided into five separate rungs. The situation is best illustrated by setting forth the actual promotional sequence as follows: 3

SINTER & SCREENING DEPARTMENT

PROMOTIONAL SEQUENCE



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Since 1961, the same General Foreman has administered the Sintering Plant. When a temporary vacancy occurs, the General Foreman's practice has been to approach the job occupants in the next lower rung to fill the vacancy. If there is only one occupant of the lower job, that occupant is directed to step up temporarily. If there is more than one occupant, waivers are honored so long as one of the occupants was willing to fill the vacancy; otherwise, the General Foreman directs someone to occupy the higher position. As an example, if a temporary vacancy occurred in the position of Coolerman, the single next lower job occupant, Ore Screen Helper, would be directed to fill the Coolerman's job, regardless of whether he did or did not file a waiver. On the other hand, if the vacancy were in the Ore Conveyorman's job, either of the Return Finesmen, the next lower job, could fill the vacancy so that a waiver by the senior of these men would be observed. In either event, the remainder of the crew, in musical chairs fashion, then moves up one notch to fill the vacancies created by the original move.

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In connection with local Fairless negotiations subsequent to the execution of the August 1, 1968 Basic Labor Agreement, this problem was discussed. It was the Company's contention that, in the Sintering Plant, there were no written temporary waiver forms being ignored. As a result, the five Grievants in SFL-69-325-A submitted such forms. When Management continued its temporary vacancy procedures, this grievance was filed by the men who submitted the forms, as was SFL-69-325-B filed by the eight junior Grievants whose temporary promotional opportunities were allegedly adversely affected.

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The Union emphasizes it is seeking redress only for those junior employees in the Sintering Plant who have the ability and the physical fitness to temporarily perform the higher promotional sequence jobs they seek, in view of the waivers. It claims that Sintering Supervision's application of Section E-7 of the Local Seniority Agreement is unique at Fairless; all the other Departments are willing to go down more than one rung in promotional sequences in order to honor temporary waiver forms. The Union concedes Management's right to direct an employee to accept a job assignment; however, the Union contends Sintering Supervision ought to accord its more senior employees the same right to waive temporary promotions as do the other Departments, so that the plant-wide agreement might be uniformly applied. In the Union's judgment, the application of Section E-7 for which it argues would not in any way affect the orderly operation of the Sintering Department. The Union maintains that the original waiver system was installed at Fairless in 1953; until 1961 the system was unfirmly applied; it was only in 1961, when the present General Foreman assumed his duties, that the change took place in the Sintering Department. The Union asserts the Sintering Department is improperly applying the plain terms of the waiver

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procedure spelled out in Section E-7. The Union takes the position that no practice exists which prevents these grievances from being granted. Even should such a practice be assumed, the Union contends, Section 2-B-2 of the Basic Labor Agreement prevents the enforceability of such a practice because it would wrongfully deprive the Sintering Department employees of a benefit provided to them by Paragraph E-7 of the Local Agreement. According to the Union, Supervision must first offer a temporary vacancy to all jobs below the position to be filled before any employee is forced to fill that vacancy.

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It is the Company's position that Section E-7 of the Local Agreement specifically gives it the right to assign an employee to any job despite any waiver. The Company maintains that its practice in filling temporary job vacancies conforms to the provisions of Section 13-F of the Basic Labor Agreement. The Company feels that because the grievances as filed do not contain specific information concerning dates of alleged violations, turns, jobs or other relevant circumstances, they are fatally defective, since there is no basis upon which to grant relief. The Company asserts that when employees reject the chance to train on higher jobs, Management is forced to reach far down the sequence and occasionally even to the labor gang to fill temporary vacancies, which places an undue burden on the Company in the daily conduct of operations. The Company sees an inconsistency in the Union position which, on the one hand seeks under Section E-7 of the local agreement to assert that an employee is under no obligation to fill temporary vacancies, while on the other, invoking Section 13-F of the Basic Labor Agreement to insist that he does have established rights to such vacancies. The Company emphasizes it has exercised its rights under Section E-7 in the same fashion at the Sintering Department at least since 1961. The Company challenges the Union's assertion that the uniform policy throughout the rest of Fairless Works is different from that in the Sintering Plant, maintaining that appropriate proof of this was never produced. The Company relies heavily on its reserved right to direct an employee to fill a given job, despite any waiver as spelled out in Section E-7, which it has asserted for the past ten years.

FINDINGS

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There is no inconsistency between the provisions of 13-F of the Basic Labor Agreement and E-7 of the Local Seniority Agreement. 13-F gives an employee the opportunity to fill a temporary vacancy on the basis of his unit seniority as used for promotional purposes. Under E-7, the same employee

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acquires the option to waive this opportunity, if he elects to do so, and a qualified replacement is available. Nothing in the facts of this case prevents these two provisions from being compatibly enforced.

Section E-7 has been available to employees since 1962. The Sintering Department has been following its contested practice since 1961. However, the Union has satisfactorily explained how the grievances in question came to be filed in 1969. The mere fact that the Union has not sought to question the Sintering Department's practice for all of the past years does not prevent the enforcement of the language of Section E-7 now. An improper past practice cannot override a contract provision to the contrary.

There is no challenge to the Company's right to direct an employee to any job assignment. The Grievants who were assigned to the jobs involved performed them as directed. The question raised by these grievances is whether, in view of Section E-7 of the Local Seniority Agreement and the waivers filed pursuant to that section, those assignments were correct.

Under the plain language of Section E-7, waivers to temporary vacancies by eligible employees are proper. Nothing in that language permits the Company to limit the application of those waivers as it did. So long as lower-rated employees have the ability and physical fitness to perform the work, there is no reason why the Company should not fill temporary vacancies by looking down the promotional ladder more than one rung. This is particularly true in the instant case, where many of the jobs are in the same job class, though in different promotional sequence slots.

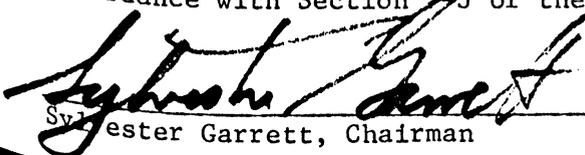
AWARD

The grievances are sustained. The Company is directed to cease and desist its present practice of filling temporary job vacancies in the Sintering Department regarding seniority right waiver, and to conform to the provisions of Paragraph E-7 of the Local Agreement as interpreted in the foregoing findings. As to Grievance SFL-69-325 B, the eight listed junior Grievants whose temporary promotional opportunities were adversely affected, are to receive back pay appropriate under said findings.

Findings and Award recommended by


Hillard Kreimer, Arbitrator

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


Lester Garrett, Chairman