1-6-1971

United States Steel Corporation Western Steel Operations South Works and United Steelworkers of America Local Union 65

Sylvester Garrett

BOARD OF ARBITRATION

Case No. USS-8007-H

January 6, 1971

ARBITRATION AWARD

UNITED STATES STEEL CORPORATION
WESTERN STEEL OPERATIONS
South Works

and

Grievance No. HS-70-2

UNITED STEELWORKERS OF AMERICA
Local Union No. 65

Subject: Incentive Administration

Statement of the Grievance: "Union on behalf of all effected employees in # 1 BOP SHOP requests Management to pay an incentive earnings to preserve its integrity in compliance with Section 9 of the Basic Labor Agreement of August 1, 1968.

"Facts: On June 29, 1969 Management installed an incentive application # 742 in the # 1 BOP SHOP. Union requests Management to pay an incentive earnings to preserve its integrity.

"Remedy Requested: Management to pay an incentive earnings to preserve its integrity in application # 742 to pay whole all effected employees all monies lost."

Contract Provisions Involved: Sections 9-C-1, 2 and 3 of the Basic Labor Agreement dated August 1, 1968.

Grievance Data:	Date
Grievance Filed in Step 2:	August 22, 1969
Appealed to Step 3:	January 5, 1970
Step 3 Meeting:	February 3, 1970
Appealed to Step 4:	March 23, 1970
Step 4 Meeting:	April 16, 1970
Appealed to Arbitration:	August 28, 1970
Case Heard:	November 3, 1970
Transcript Received:	November 16, 1970

Statement of the Award: The grievance is sustained to the extent that (1) Incentive Application No. 742 forthwith will be adjusted so as to provide increased earnings opportunity by not less than five (5) percentage points and (2) grievant affected employees promptly will be paid earnings losses retroactive to June 29, 1969, pursuant to these Findings.

BACKGROUND USS-8007-H

As filed, this grievance from South Works' BOP Shop presents claims (1) that Incentive Application No. 742 fails to provide "equitable incentive compensation," and (2) that Management, otherwise, improperly has failed "to maintain the integrity of this plan," in violation of Section 9-C of the Basic Labor Agreement. 1

Relevant "Background Information and Facts" appear in the Company brief, as follows: 2

> "Incentive Application #742 is a direct, Alternate Type 2 plan which covers all ladle lining work in the BOP Department; it includes all work done by the crew to prepare teeming ladle brick work for re-lining, to prepare and supply refractory brick and clay; to trim-off old brick work; to cut, clay and lay brick; to put up and dismantle scaffolding; to obtain and return equipment; to clean the areas; to measure, plan, inspect and instruct; and to perform certain other miscellaneous tasks as required. The maximum crew consists of 1-2 First Ladle Liners per turn (J.C. 9), 1-2 Second Ladle Liners per turn (J.C. 7) and 1-2 Ladle Liner Helpers per turn (J.C. 3).
>
> "This incentive Application was installed pursuant to Section 9-C-1 on June 29, 1969. On July 18, 1969, the employees covered by this incentive pointed out to Management that this plan did not cover work spent in spreading a refractory material called Lo-Kast over the bottom of the ladle before

"relining. The omission of such standards was a pure error on the part of Management; upon having this error called to its attention, Management time studied the employees doing this work and installed standards for such work effective July 29, 1969. This was Change No. 1. Change No. 2 became effective retroactively on August 24, 1969; it recognized the effect on the incentive produced by an operating decision to thicken the working wall and working bottom brick sections of the ladle by having each ladle relined with more bricks than previously. In September, 1969 Management tried spraying ladle lining with a semi-liquid adhesive refractory material applied by means of a pressure gun in an effort to increase the life of the ladle. Employees performing such operations were time studied on September 11, 1969. Shortly afterwards, such operation was discontinued because of the ineffectiveness of the original materials. A new supplier was contacted and several weeks later the operation was resumed. This time, the experiment was successful; the employees were again time studied and standards were installed effective November 16, 1969.

"During the first pay period in which this incentive was installed, the employees made 117%. For the next five pay periods, however, their earnings fell off sharply before returning to their original high level."

Grievants' record of incentive earnings for one year, i.e., 26 pay periods, following installation of Application No. 742 herein reflects the following: 3

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Pay Period Ending	Measured	Pay
7-12-69	117%	117%
7-26-69	105	105
8-8-69	98	100
8-23-69	98	100
9-6-69	99*	100*
9-20-69	103	103
10-4-69	116	116
10-18-69	115	112
11-1-69	118	116
11-15-69	124	116
11-29-69	121	121
12-13-69	125	124
12-27-69	122	121
1-10-70	120	118
1-24-70	121	120
2-7-70	120	120
2-21-70	114	114
3-7-70	121	121
3-21-70	114	114
4-4-70	108	108
4-18-70	120	120
5-2-70	120	120
5-16-70	121	121
5-30-70	119	119
6-13-70	114	114
6-27-70	108	108

*Reflects retroactive application of Change No. 2"

Despite some lack of specificity with respect to its complaints during the grievance procedure, the Union at the hearing asserted and pursued a claim that Incentive Application No. 742, since its inception, has failed to provide "equitable incentive compensation" within the meaning of Section 9-C-3-d of the Basic Labor Agreement. Thus, the issue here centers solely upon whether the disputed incentive should be adjusted to provide increased earnings opportunity to affected employees.

Position of the Union

Under questioning by Company counsel at the hearing, the Union position succinctly was set forth by its principal witness, Grievance Committee Chairman Tomasik, as follows:

> "Q Now, Mr. Tomasik, do you agree that this incentive application 742 was properly installed under Section 9-C-1 as an incentive covering new equipment, a new installation, which could or could not be installed at the discretion of the Company?
>
> "A We had a reservation to start with, and you will find our objection to the reservation in a third step minutes that for sometime the Union was under the opinion that instead of management developing a new incentive under Section 9-C-1, should have developed a replacement of the incentive under Section 9-C-2. But after management pointed to the Union a number of decisions from the other plants, /Duquesne/, Torrence,

"and after reading the decisions that the management had a right, then, we fully concurred that installation under Section 9-C-1 is proper, and that is /why/ we only grieved on the equitability of the incentive and nothing else.

"Q Your contention now is that this particular incentive plan should have been designed to pay a higher level of earnings either because ... other plans paid a higher level of earnings, or because the incentive award of August 1, 1969, said plans installed after that day should pay 135 if they are a direct plan?

"A That is absolutely correct, sir.../t/hat we contend that this incentive should pay more than what it's paying right now. And the contention is based on many direct incentives which are in existence in the South Works...the Union always took the position that a direct incentive should offer 130 percent earnings opportunity. And I quoted the incentive from the car repair shop, machine shop, and we could quote many more."

The Union, through its witnesses at the hearing, thus urged that the disputed incentive always has failed to provide equitable incentive compensation. Additionally, though not directly attacking the reported changes thereto, i.e., Nos. 1, 2 and 3, the Union denied that such changes themselves had any real affect upon, nor did they improve upon "equitability" of earnings opportunity under the plan. Essentially, the entire Union position may be summed up in the testimony of a principal witness as follows: 6

"In line with the incentive program in the South Works, most of the direct incentives were developed to give the opportunity to the employees to earn in excess of 130 percent. We have direct incentives in machine shop, every one of them pays over 130. We have a direct incentive in the car repair shop, and that incentive pays 137 percent. So, we felt that /under/ incentive application...742, standards were too tight, and...can be proved by the average earnings."

Position of Management

It is essentially the position of the Company that equitable incentive compensation is provided grievants under the disputed incentive application. And, this position, notably, was stated and summarized at the hearing as follows:

"This, like other plans of /its/ nature, is designed to provide an earnings opportunity of around 119 percent. Now, when we look at actual earnings under this plan, to see whether this earnings opportunity has materialized, we find that except for a brief period in the beginning of the plan, the earnings opportunities have been realized."

The Company, moreover, denies any obligation to have provided earnings opportunity at any level higher than the 119 per cent level projected for the disputed plan.

"It is the position of the Company that in placing incentive plans into effect /prior to August 1, 1969/ under Section 9-C-1 /it was/ under no obligation to provide /for/ any /particular/ level of earnings /opportunity/....

"The fact that other plans installed at the plant /offer/ higher or lower levels of earnings opportunity is of no relevance."

The general thrust of Company evidence in this case centers upon claims (1) that the disputed incentive does provide equitable incentive compensation; (2) that grievants failed during the first few pay periods of its existence to exploit earnings opportunity; and (3) that recent earnings records show that earnings have reached an "equitable" level. On these points, its total evidence and argument was summarized at the hearing as follows: 9

"...it is the contention of the Company under 9-C-3, the incentive involved in this case does provide equitable compensation. We would like to point out that in determining whether or not an incentive provides equitable compensation, there are no handy dandy standards available.

"...the Board had held going back to the 1950's that the fact that /one/ incentive...affords a better earnings opportunity is not evidence

"/that/ /another which/ provides less of an earnings opportunity...is /not/ equitable. Therefore, I don't think we get any place in this case by looking at the earnings of the crew at the Gary BOP Shop, or by looking at the earnings of the crew --looking at the earnings of other incentives elsewhere.

"It is certainly significant to note that in the first pay period this plan earned 117 percent. /Then/, for the next five pay periods, it dropped off.

"...the earnings of the crew went down because the number of hours which they were spending on a ladle went up to continue to produce about the same number of ladles or a slightly higher number of ladles, and management was forced to put more and more people on the crew. And this certainly resulted in a dilution of the earnings and the production of the crew.

"...the reason management had to put on these additional hours, the additional personnel, was due to the failure of the crew to turn out ladles as quickly as they did and with as little time as they did in the first pay period the plan was in operation, and as they did after the seventh pay period.

"Now, this does not mean that management is accusing the crew of a deliberate work stoppage or sabbotage. It simply means that for a number of reasons...the crew was not producing as efficiently as it did before, and as it did later."

"So, thus, I think we can explain the one drop in earnings realized under this plan, and come up once again to the fact that this is a plan capable of earnings opportunities of 119 percent, and earnings opportunity which can be realized and has been realized by people under this plan, and that this provides equitable earnings opportunity."

The issue here remains whether Incentive Application No. 742, as installed under 9-C-1 on June 29, 1969, provides equitable incentive compensation within the meaning of the Agreement. 10

FINDINGS

With respect to "new incentives established pursuant to Section 9-C-1 and 9-C-2-b," and with respect to grievances properly filed thereunder, Section 9-C-3-d expressly provides: "The Board shall decide the question of equitable incentive compensation and the decision of the Board shall be effective as of the date when the incentive was put in effect." And, this duty is imposed, we hasten to add, without any clear objective guidelines otherwise to determine either whether "equity" requires a given percentage level for earnings opportunity or whether, if so, how that percentage level properly should be ascertained. Here, the Board consistently has followed a "case-by-case" approach, deciding the issue of equitable incentive compensation solely within the confines of the particular application under attack and, in light of specific conditions relevant to it. 11

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The record in this case shows that during the first six weeks following installation of Incentive Application No. 742 on June 29, 1969, grievants' earnings thereunder averaged about 104 per cent; during the first six months they averaged 111 per cent; and, during the second six months, their incentive earnings average climbed a fraction above 116 per cent--for an overall average of about 114 per cent for the entire year ending June 27, 1970. Since June 27, 1970, grievants' incentive earnings further have not increased significantly--notwithstanding the claim by Management herein that grievants' incentive earnings recently have reached its "projected" 119 per cent level.

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Having adopted a case-by-case approach to deciding issues of equitable incentive compensation, the Board never has accepted anticipated or "projected" earnings levels as real or even "presumptive" evidence of equitability. Nor has the Board relied upon the earnings levels under other different incentives in any given plant or operation. Thus, at least, in the case of any incentive application installed prior to August 1, 1969, the Board has discharged its responsibility reasonably to determine the "equity" of earnings thereunder without embracing any particular theory of incentive administration or specific levels of earnings under the various types of incentives in existence throughout the plants.

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In the instant case it appears clear that early in the life of Incentive No. 742 grievants' earnings adversely were affected by engineering error and/or by unanticipated operating difficulty. And, contrary to claims of Management, it does not appear that grievants actually were "reticent" in their efforts fully to exploit earnings opportunity under the plan. Moreover, in this particular situation, we do not view grievants' actual or "projected" earnings thereunder as providing reasonable incentive earnings opportunity.

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Upon the entire evidence presented in this record we conclude and find, therefore, that Incentive Application No. 742 falls, at least, some five percentage points short of providing equitable incentive compensation--using the Boards established case-by-case approach to such determinations--under the Agreement.

This incentive, thus, properly should be liberalized, with retroactive payment of earnings losses to affected employees since its original installation on June 29, 1969.

AWARD

The grievance is sustained to the extent that (1) Incentive Application No. 742 forthwith will be adjusted so as to provide increased earnings opportunity by not less than five (5) percentage points and (2) grievant affected employees promptly will be paid earnings losses retroactive to June 29, 1969, pursuant to these Findings. 16

Findings and Award recommended pursuant to Section 7-J of the Agreement, by

Edward E. McDaniel
Assistant to the Chairman

Approved by the Board of Arbitration

Sylvester Garrett, Chairman