3-12-1971

United States Steel Corporation Geneva Works and United Steelworkers of America Local Union 2701

Sylvester Garrett
Chairman

Edward E. McDaniel
Assistant to the Chairman

BOARD OF ARBITRATION

Case No. USS-8033-S

March 12, 1971

ARBITRATION AWARD

UNITED STATES STEEL CORPORATION
WESTERN STEEL OPERATIONS
Geneva Works

and

Grievance No. SGe-68-62

UNITED STEELWORKERS OF AMERICA
Local Union No. 2701

Subject: Seniority - Temporary Vacancies

Statement of the Grievance: "I. L. V. Wilkins #47063, charge Management with violation of my seniority when they allowed, on April 24, 1968 a younger man to fill a higher paying job.

"Therefore I request all monies lost, and this practice stopped."

Contract Provision Involved: Section 13 of the Basic Labor Agreement dated September 1, 1965 and Local Seniority Supplement.

Grievance Data:	Dates
Grievance Filed:	May 23, 1968
Step 2 Meetings:	September 24, 1968
	November 5, 1969
Appealed to Step 3:	October 8, 1968
Step 3 Meeting:	November 6, 1968
Appealed to Step 4:	February 4, 1969
Step 4 Meetings:	March 18, 1969
	March 20, 1970
	July 10, 1970
Appealed to Arbitration:	September 11, 1970
Case Heard:	January 19, 1971
Transcript Received:	None

Statement of the Award: The grievance is denied.

BACKGROUND USS-8033-S

This grievance from Geneva Works' Transportation and Yards Department presents a claim that grievant improperly was denied a temporary vacancy to Switchman (Job Class 9) and improperly was assigned instead to a Locomotive Crane Fireman (Job Class 6) vacancy on day turn April 24, 1968. Specifically, it is alleged that grievant, thus, was denied seniority rights guaranteed him under the Basic Labor Agreement and Local Seniority Supplement. 1

The relevant facts substantially are not in dispute. It appears that on day turn (8:00 a.m. - 4:00 p.m.) April 24, 1968, there were six temporary vacancies (all are in the Transportation and Yards Department at Geneva Works) to be filled from labor: one (1) Locomotive Engineer (Job Class 13); three (3) Switchman (Job Class 9); and two (2) Locomotive Crane Fireman (Job Class 6) vacancies. On that day, apparently, grievant (based on his departmental continuous service) was entitled to a Switchman (Job Class 9) vacancy and (based on his occupational or unit service) also was entitled to a Locomotive Crane Fireman (Job Class 6) vacancy. He formally requested, but was refused, a Switchman vacancy and thereupon was assigned by Management to a Locomotive Crane Fireman vacancy. The instant grievance, thus, arose. 2

The respective positions of the Union and Company appear in lower step Grievance Procedure Minutes as follows: 3

"STATEMENT OF UNION POSITION:

The Union contends that when a man is at labor he has a right for the highest paying job stemming from the labor pool.

"STATEMENT OF COMPANY POSITION:

The grievant, L. Wilkins, has no continuous service as a switchman. He has established occupational continuous service on the job of Crawler Crane Helper (5-4-64) in the crane line of progression. Mr. Wilkins was scheduled at labor and on day turn April 24, 1968, there were two temporary vacancies in the crane unit.

The Transportation Agreement dated May 10, 1963, details the methods to be followed in filling temporary vacancies. The assignment of Mr. Wilkins to one of the temporary vacancies in the crane unit (crane fireman) on the day turn April 24, 1968, was consistent with the language of this Agreement and was consistent with the findings in the Board's Award on Case USS-5336-S (TR-2-5-64 and TR-4-20-64)."

The position of the Union, essentially, is that grievant "who had an occupational date as a Locomotive Crane Fireman was not compelled to fill a temporary vacancy on that job" and that grievant, as "the oldest Laborer on turn" was entitled and, thus, should have been assigned to the Switchman temporary vacancy as requested by him. The position of Management is twofold: (1) that grievant had no right under the Agreement to be assigned to the Switchman job rather than to the Locomotive Crane Fireman position here, and (2) that action taken by Management in this instance is consistent with an established past practice of assigning employees to vacancies based on their unit or occupational seniority when at the same time their departmental seniority

otherwise would have entitled them to requested temporary vacancies on higher paying jobs. Notably, in this situation the employee assigned to the Switchman vacancy requested by grievant was an employee with less departmental service, and who, like grievant, had no actual unit or occupational service on the Switchman job, or on any other job in its particular line of progression.

A principal Company witness testified that on the day in question, grievant was one of "only two qualified crane employees" for the two Craneman vacancies to be filled. The witness added that grievant and the other "qualified" employee, thus, were the only two employees "with occupational dates on the crane." This witness, however, reported, "If we had three employees with occupational dates on the crane, we would have given them all a chance to decline the vacancy before actually assigning two which we needed. Had the grievant been the oldest of the three in such case and had he declined and had both the others accepted, then, grievant would have been free to take the vacancy in the higher paying Switchman job." The Company witness, moreover, urged that grievant had not signed such a "waiver" and since he, then, had a <u>right</u> to first consideration for the Craneman vacancy, he had a concomitant <u>obligation</u> to accept such vacancies even when such vacancy occurs at the very same time when another vacancy in a higher paying position, and to which he otherwise might be assigned, becomes available to be filled. 5

Management at the hearing offered undisputed documentary evidence demonstrating a consistent past practice (followed over the past four or five years) whereby, as here, a senior departmental service employee was assigned to a temporary job vacancy based upon his unit or occupational service but which, in fact, was a lower paying job vacancy than that which (at the same time) was assigned to another employee with less <u>departmental</u> service, and the former employee had the same or less <u>unit</u> service in the line of progression of the higher paying job vacancy. The Union yet maintains, however, that an employee in grievant's 6

shoes, properly may not be compelled to fill the lower paying job vacancy. The Union, moreover, asserts, "There is no provision in the Local Seniority Agreement which requires employees to accept assignments to fill temporary vacancies on jobs on which they hold 'incumbency rights' nor does the Company rely on any claimed practice to this effect." Significantly, neither the Company nor the Union questions that in cases of permanent vacancies, an employee in grievant's shoes, indeed, could select the higher rated job vacancy.

The Local Seniority Agreement, cited for support by both Parties, in relevant part provides:

> "It is hereby mutually agreed and understood that:
>
> 4. In case of a reduction in force, an employee demoted from any line of progression to the occupation of Laborer shall, for purposes of subsequent temporary or permanent vacancies, fill such vacancies in accordance with Section E--Promotions - of the June 9, 1949, Seniority Agreement."

And, Section E of that Agreement reportedly provides:

> "E. Promotion
>
> 1. In the case of promotion to fill a permanent vacancy (where ability and physical fitness have been determined as relatively equal) continuous service shall be considered in the following order among the employees within that department.

"a. Occupational continuous service on the vacant position.

b. Occupational continuous service on the position immediately below that on which the vacancy occurs in the established promotional sequence.

c. Unit continuous service.

d. Departmental continuous service.

e. Plant continuous service."

The issue herein, thus, remains whether grievant improperly was denied a temporary vacancy to the Switchman (Job Class 9) vacancy occurring on day turn, April 24, 1968, as alleged. 8

FINDINGS

The Basic Labor Agreement, under Section 13-F provides, in effect, that "existing local agreements or practices applicable to temporary vacancies of less than three weeks duration shall be retained, except as they may hereafter be modified by local agreement." Local agreements with respect to temporary vacancies (and/or established local practices related thereto) thus, prevail. And, the established practices prevail only when such practices are not in direct conflict with otherwise expressed intentions of the local parties. 9

As the Union amply points out, "There is no provision in the Local Seniority Agreement which requires employees to accept assignments to fill temporary vacancies on jobs in which they hold 'incumbency rights'...." But then, the Local Seniority Agreement likewise expressly does not provide for any option--as between a job on which an employee holds "incumbency" rights and one to which he otherwise may be entitled based upon his departmental rather than upon his unit or occupational service. Indeed, the Local Seniority Agreement, as written, is silent on the question of whether an employee actually is entitled to make any choice with respect to a temporary day-to-day vacancy. Here then, in order to determine the intent and, thus, the rights of all concerned at the local level, established past practices surely may not be ignored.

Two basic questions reasonably emerge from the total facts presented on this record. The first question appears as whether an employee reasonably may be required to accept a temporary job vacancy on a job to which he is qualified, and the second appears as whether that employee may "opt" for a higher job vacancy which occurs at the exact same time, based upon his departmental service.

In the usual situation, an employee, as here, has no expressed right under the Agreement to refuse a temporary assignment to any job based upon his eligibility for consideration to another job vacancy which pays more money than does the job to which he actually has been directed to fill. And normally, except by local agreement and/or established practices, such employee has no contractual right to be assigned to any particular temporary job vacancy. Thus, under Section 13-F of the Basic Agreement the manner of filling temporary vacancies, of less than three weeks duration, is left solely to the local parties to be determined by "existing local agreements or practices."

13 In this case there is no genuine issue under Section 13-F of the September 1, 1965 Agreement. Here grievant Wilkins had continuous service rights in the Crane Seniority Unit and no effective seniority rights in the Train and Engine Service Unit. When this grievance arose he was working in the Labor Pool, which feeds into these two separate lines of progression. He yet seeks, in effect, to have the Company follow the requirements of Section 13-F in making day-to-day assignments of Pool employees to fill day-to-day vacancies in any one of the various seniority units from which employees may demote into the Pool in force reduction. Prior to September 1, 1965, Section 13-F read:

> "Temporary Vacancies
>
> In cases of temporary vacancies involving temporary assignments within a seniority unit, the Company shall, to the greatest degree consistent with efficiency of the operation and the safety of employees, assign the employee with longest continuous service in the unit, provided such employee desires the assignment. Such temporary assignments shall be regarded as training by which the Company may assist employees older in service to become qualified for permanent promotion as promotion may be available."

14 This was modified to read as follows in the September 1, 1965 Agreement:

> "When it is necessary to fill a temporary vacancy known to be of three or more weeks duration, such vacancy shall, to the greatest degree consistent with efficiency of

> "the operation and the safety of employees, be filled on the basis of the unit and the unit seniority used for promotional purposes, and shall be so filled no later than on the second weekly schedule following the date when the duration of the vacancy, as aforesaid, becomes known to management, provided however, that for purposes of this provision the parties may hereafter agree locally upon a period other than the three weeks specified above. Existing local agreements or practices applicable to temporary vacancies of less than three weeks duration shall be retained, except as they may hereafter be modified by local agreement."

The old language of Section 13-F left no doubt at all that it applied only within seniority units. The same result follows under Section 13-F as changed in 1965. The new Section 13-F, it is true, does not specifically provide rules for filling of day-to-day vacancies (or vacancies of less than three weeks duration) but it does require that "existing local agreements or practices applicable" to filling of such temporary vacancies shall be retained, except as modified by local agreement. Since any local agreements or practices prior to September 1, 1965 presumably represented implementation of the earlier Section 13-F, it cannot be inferred that existing practices on September 1, 1965 were broader in scope than 13-F itself had been up to that time.

Thus, if grievant is to succeed in his claim that his departmental seniority entitles him to fill a one-turn vacancy in a seniority unit other than his own, the Union would have to show some local agreement or practice conferring this unusual privilege upon Pool employees. This it has not done. And, indeed, the effective local agreement itself (in its direct reference back to Section E) seems, expressly, to dictate the contrary.

AWARD

The grievance is denied.

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