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United States Steel Corporation Sheet and Tin Operations Fairless Works and United Steelworkers of America Local Union 7246

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BOARD OF ARBITRATION

Case USS-8091-S

March 17, 1971

ARBITRATION AWARD

UNITED STATES STEEL CORPORATION
SHEET AND TIN OPERATIONS
Fairless Works

and

Grievance No. WFL-70-16

UNITED STEELWORKERS OF AMERICA
Local Union No. 7246

Subject: Discipline

Statement of the Grievance: "Management is in violation of the basic agreement, section 2, 8, 9.

"Facts: On Friday January 16, 1970 employee A. Pampanin (3027) asked Foreman John Rogers if he could waive the Feeders job. Employee felt that he could not do both jobs efficiently. In turn John Rogers sent him home with a one day suspension. On the following Sunday night, 11-7 turn, same employee came out to work, asked again to waive the Feeders job and stay on the Chargers job. Foreman, John Rogers again sent him home with two days suspension.

"Remedy Requested: Union feels that the employee should have the right to stay on his job without advancing if he so desires. This has been a past practice in the local. Also tear up the suspension slips and pay the employee the three days he lost."

Contract Provisions Involved: Sections 3 and 8 of the August 1, 1968 Agreement.

Grievance Data:

Date

Grievance Filed:	February 4, 1970
Step 2 Meeting:	Not Available
Appealed to Step 3:	February 13, 1970
Step 3 Meeting:	March 10, 1970
Appealed to Step 4:	March 17, 1970
Step 4 Meeting:	June 25, 1970
Appealed to Arbitration:	October 9, 1970
Case Heard:	January 18, 1971
Transcript Received:	None

Statement of the Award:

The grievance is denied.

BACKGROUND

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This grievance from the Rod Rolling Department, Trenton Division of Fairless Works, protests disciplinary action imposed on grievant in January 1970, alleging violations of Sections 2, 8 and 9 of the August 1, 1968 Agreement.

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At the time in question, grievant's regular job was that of Charger (J.C. 6) on the new Rod Mill that commenced operations in early 1969. As such grievant was entitled to catch temporary vacancies on the job of Feeder (J.C. 9) that has the primary responsibility of feeding the heated billets into the mill. It is also relevant in this case that, from the time the mill commenced operations up to January 1970, a salaried job of Recorder (J.C. 4) had been assigned to the mill primarily to record every delay by minutes, giving the reason therefor and noting what happened to the steel during such delays. In January 1970 the Company decided that such recording of delays no longer was necessary and the Recorder's job was terminated in February 1970. Certain other recording functions that had also been performed by the Recorder were then assigned to the Feeder job. These involved the recording of the time in which a sequence of billets was rolled, the number of billets in a sequence and whether there were any cobbles. This information was to be recorded in addition to some other data that had always been maintained by the Feeder.

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Apparently the first time that the Feeder was required to maintain this information occurred on the day turn, January 16, 1970. Grievant was scheduled as a Charger on the 3-11 turn that week but had been upgrading to Feeder because of the absence of the scheduled incumbent of that job. On January 16, as he was about to relieve the Feeder from the 7-3 turn, grievant was told by that individual and also the Turn Foreman about the additional recording duties and an attempt was made to show him what was involved. According to grievant,

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his immediate response was to the effect that he did not even want to see it; that he had enough problems just trying to be a Feeder. The General Foreman was contacted who testified that grievant stated he could not do both jobs at the same time. Grievant was told, according to the General Foreman, that this recording had been done on the day shift with no problem and, according to grievant, he was then told to do the job including the additional recording or go home. Grievant elected to go home. He admits that at this point he did not even know what there was to be recorded.

Before grievant left he was told by the General Foreman to meet with him along with grievant's Committeeman who had been contacted but grievant refused to do this stating he had to get a ride home. In any event grievant did not work the turn in question and, in order to fill the Feeder vacancy, supervision found it necessary to keep the Charger from the 7-3 turn over for one hour and call out the Feeder scheduled for the 11-7 turn early.

Grievant was next scheduled for work on the 11-7 turn commencing Sunday night, January 18. Again the scheduled Feeder was absent and grievant instructed to upgrade to Feeder. Grievant states that he told his General Foreman that he did not want to go on the Feeder job and would "waive" the job. He was again instructed to take the assignment and, upon his refusal, told to accompany the General Foreman to a conference room where the latter urged grievant to take the assignment under protest. Upon grievant's continued refusal to accept the assignment he was told to go home. On that occasion the Feeder vacancy was filled by holding over the Feeder from the 3-11 turn until another Feeder could be obtained from the employees scheduled for the 7-3 turn.

Subsequently grievant was handed a disciplinary slip dated January 16, 1970 suspending him for two days commencing 11 p.m., January 18, 1970 for the following reason:

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"Failure to follow instructions of the General Foreman."

The Union contends that grievant's release from work on January 16 was not for a legitimate reason and the ultimate two-day suspension improper because it is said grievant sought on each day to waive any entitlement he might have had to the Feeder job. It is said that a practice exists at the plant of permitting employees to waive such upgrading to temporary vacancies. More specifically it is noted that two employees on the Rod Mill have elected to stay on their Speed Operator positions waiving any temporary promotions to higher rated jobs. When temporary vacancies do occur on the latter jobs less senior employees are upgraded bypassing the two Speed Operators. Thus here the Union feels that grievant's requested waiver of the promotion to Feeder should be granted and the disciplinary action imposed because of his refusal to take that job was improper. It is said further that had the Company afforded grievant his right to advice from his Grievance Committeeman the entire matter may never have occurred.

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The Company asserts that prior to the day in question grievant had worked at least 25 turns as a Feeder without protest and, indeed, had worked that job on turns earlier in the very week in question. It is said that therefore it is evident that the sole reason grievant refused the assignment

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on the two days in question was because he objected to the recording duties that had been added to the job. It is suggested that if grievant felt the addition of these duties was improper, he should have complied with the instructions given him by supervision and then filed a grievance protesting the Company's alleged improper action. The Company notes that on the 16th grievant, by his own testimony, never sought to waive the Feeder assignment; he simply refused to perform the job. On the 18th, according to his testimony, he did request such waiver but the Company contends it still had the right to require grievant to perform that job particularly under the circumstances prevailing then with no employee on the turn capable of working as a Feeder.

FINDINGS

No question exists here that on both the 16th and 18th of January grievant refused to accept a temporary assignment to Feeder as instructed by his Foreman. This assignment was one to which he was entitled in accordance with his seniority. In light of grievant's past acceptance of such assignment and in view of the tenor of his comments on the days in question, it is also clear that grievant's refusal to accept the job was based on his dissatisfaction with the addition of some recording duties to the Feeder job that were assigned for the first time on January 16. Whatever may have been the sincerity of grievant's objection to performing the duties in question, it does not justify his refusal to perform the work assigned.

It does appear that certain employees at the plant have been permitted to waive temporary promotions to higher rated jobs. There does not appear to be any written procedure regarding such waivers; nor is it clear that the waiver

must be in writing. Whatever may be the practice, however, it is clear that grievant never voiced any desire to waive the opportunity to upgrade to the Feeder job prior to January 16. Nor did he request to waive promotion when he refused to perform the work on the Feeder assignment on the 16th and therefore he cannot justify his refusal to work as assigned on the basis that he sought a waiver on that day.

Grievant asserts that on the 18th he did seek to waive the temporary promotion at the time he was requested to accept the Feeder assignment. Whatever may be grievant's right under the practice to waive promotion to Feeder on a permanent basis, it cannot be viewed as required of the Company, under any practice suggested by the evidence, to grant such a waiver when the request is made at the very time a vacancy exists that must be filled in order to keep the mill in operation. This is particularly true where, as here, the honoring of the waiver request by the Company would have resulted in the requirement that it hold over other employees or call employees out early at overtime rates in order to fill the vacancy. Even in situations where written waiver procedures exist the Company retains the right to require an employee to perform the work as a last resort.

With respect to the procedural problem suggested by the Union for the first time at the hearing, alleging an improper failure of the Company to have a Grievance Committeeman present during the discussions between the General Foreman and grievant, it should be noted that on the 16th the General Foreman attempted to have a Grievance Committeeman meet with grievant and the General Foreman in the conference room but grievant refused to attend the meeting. Apparently on the 18th when grievant and the General Foreman did have a discussion in

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the conference room no such arrangement was made, but it should be noted grievant made no request for such representation at that or any other time. The conversation between the General Foreman and grievant in the conference room on January 18 appears to have been restricted to the former continuing to urge grievant to accept the Feeder assignment under protest with grievant continuing to remain adamant in the position taken earlier out in the mill that he would not accept the assignment. On the basis of these facts it cannot be concluded that the Company improperly failed to afford grievant Union representation under Section 8-B (Marginal Paragraph 101.2). Such Board decisions as USS-7562-T and USS-7735 are clearly distinguishable on their facts.

Thus on the basis of grievant's refusal to comply with his Foreman's instructions that he work as a Feeder on the two turns in issue--a refusal not justified by grievant's claimed attempts to waive such temporary assignment, it must be concluded that the protested disciplinary action was for proper cause and the grievance will be denied.

AWARD

The grievance is denied.

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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