

2-26-1971

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

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Recommended Citation

Garrett, Sylvester and McDaniel, Edward E., "United States Steel Corporation Western Steel Operations Geneva Works and United Steelworkers of America Local Union 2701" (1971). *Arbitration Cases*. 96.
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BOARD OF ARBITRATION

Case No. USS-8222

February 26, 1971

ARBITRATION AWARD

UNITED STATES STEEL CORPORATION
WESTERN STEEL OPERATIONS
Geneva Works

and

Grievance No. SGe-70-15

UNITED STEELWORKERS OF AMERICA
Local Union No. 2701

Subject: Work Assignment - Application of Pay Rates

Statement of the Grievance: "I, KENNETH GASSER #43096 - feel I was unjustly dealt with and improperly paid for the hours worked on 2-5-70.

"I request this violation be corrected and I be paid all monies lost, I further request that all such assignment in the future be paid at the proper rate."

Contract Provision Involved: Section 9 of the Basic Labor Agreement dated August 1, 1968.

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Grievance Data:

Dates

Grievance Filed:	February 12, 1970
Step 2 Meeting:	April 17, 1970
Appealed to Step 3:	May 22, 1970
Step 3 Meeting:	May 27, 1970
Appealed to Step 4:	August 21, 1970
Step 4 Meeting:	September 24, 1970
Appealed to Arbitration:	December 7, 1970
Case Heard:	January 19, 1971
Transcript Received:	None

Statement of the Award:

The grievance is sustained.

BACKGROUND

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This grievance from Geneva Works' Utilities (Maintenance) Department presents a claim that Management improperly paid grievant at the rate of Laborer, Code 7016 (Job Class 2) rather than at the rate of (Special) Laborer, Code 7043 (Job Class 3) for labor work performed by him on February 5, 1970. Specifically, violation of Section 9 is alleged. 1

Historically, in the Utilities (Maintenance) Department at Geneva Works, there has existed two (2) Laborer jobs. Laborer, Code 7016 (Job Class 2) Utilities Department, first was described and classified on or about April 20, 1953, as follows: 2

"PRIMARY FUNCTION

To perform any unskilled type of work included within the responsibilities of this department.

TOOLS AND EQUIPMENT:

Shovel, pick, broom, crowbar, tamping equipment, sprinklers, hoses, valves, garden tools, fertilizer spreader.

MATERIALS:

Fertilizer, sand, cinder, scrap, lumber, brick, debris, etc.

SOURCE OF SUPERVISION:

Foreman, Maintenance

"DIRECTION EXERCISED:

None

WORKING PROCEDURE:

Loads and unloads railroad cars and trucks.
Make excavations for pipe lines and conduit.
Excavate and backfill construction.
Excavate and set guard rail posts.
Removes snow from cat walks, sidewalks,
steps and roads.
Picks up and loads debris on trucks and
railroad cars.
General plant clean up of weeds, cleans
canals of weeds and debris.
Picks up and destroys plant trash.
Sets sprinklers, moves hose, operates water
valves to water lawns and shrubs.
Applies fertilizer with spreader to lawns
and shrubs.
Assists gardener in caring for lawns and
shrubs.
Removes oil from settling basins.
Removes and replaces manhole covers.
Cleans trenches, sumps and Dorr thickener."

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Laborer, Code 7043 (Job Class 3) Utilities Department,
first was described and classified on or about September 22, 1955,
as follows:

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"PRIMARY FUNCTION

To unload precipitator lime cars and perform all general clean-up work inside and outside of equipment at Open Hearth and Sintering Plant precipitators.

TOOLS AND EQUIPMENT:

Shovels, picks, broom, crowbar, wheelbarrows, water hoses, air hoses, brooms, mops, buckets, vacuum hose, hoe, respirators, bo'sun chair, pneumatic tools and other miscellaneous hand tools, etc.

MATERIALS:

Sand, cinder, scrap, lumber, brick, debris, lime, flue dust, precipitator rejects, etc.

SOURCE OF SUPERVISION:

Turn Foreman, Waste Heat Boilers and Auxiliary Services.

DIRECTION EXERCISED:

None

"WORKING PROCEDURE:

Unload railroad cars of caked and powdered lime by manipulating lime into spout of vacuum unloading system. Uses care to reduce lime dust as much as possible.

Cleans inside precipitators, flues, waste gas risers, collector mains, lime filter receiver and hair pin risers at precipitators.

Cleans precipitator collecting hopper of dust.

Sweeps and cleans all stairways, platforms, beams and equipment.

Performs miscellaneous labor tasks as directed.

Cleans trenches, sumps and drains.

Excavates and backfills trenches for pipe lines and conduit installed at precipitators."

The JC-3 Laborer job here was created and installed by Management as a "Special Laborer job established for work in the Open Hearth and Sintering Plant Precipitators." Thus, according to Management:

"There /is/ a certain overlapping of the two jobs as /is/ indicated in the Job Description/s/; but, there are also certain significant functions of the Special Laborer job

"which are not a part of the regular Laborer job and which provided the basis for the difference in job classification for the two jobs. Those activities are set forth in the Working Procedure as well as the primary function of the higher rated job...such as the unloading of railroad cars of precipitator lime and all activities involving cleaning inside precipitators and the precipitator collecting hopper. The above described functions constitute the basis for differentiating between the two jobs as to both the description and the classification."

The respective positions of the Union and Company, notably, appear in minutes of lower step Grievance Procedure Meetings as follows:

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"STATEMENT OF UNION POSITION:

The Grievant was performing work which is properly described as a Job Class 3 Labor job and should be paid as such as it has been paid in the past.

"STATEMENT OF COMPANY POSITION:

The work that was performed in this instance was Job Class 2 labor work and was correctly paid for as such and as it

"has been in the past. Any reference to Job Class 3 special labor deals with work involving the handling of lime which was not a factor in the work assignment."

The instant grievance arose when on February 5, 1970, the grievant and another employee were assigned, and they performed, clean-up work on and around the Open Hearth Precipitators, and they were paid at the rate of the Job Class 2 rather than the Job Class 3 Laborer job.

The evidence shows that on February 5, 1970, "Grievant and employee E. Keetch were assigned to wash down and remove dirt from the precipitator hopper landings. Most of this dirt had been washed from the stockyard roof after the Bloom had been cleaned from No. 5 to No. 8 washers. They used a fire hose and nozzle with high pressure water to wash landing after shoveling the heavy dirt to the ground level. No work was done in the precipitator, scrubbers or hoppers on this shift. The work involved considerable climbing though they came in contact with little or no lime." That this, substantially, describes the work actually performed by grievant on the day in question, it is not disputed.

DISCUSSION

With respect to factor ratings for the two Laborer jobs, all numerical levels are identical except for Factor 11 Surroundings and Factor 12 Hazard. The JC-2 Laborer job is shown under Surroundings to be rated B.4, and that the incumbent "works inside and outside. Does considerable dirty work." Under

Factor 12 - Hazard, it is rated B.4 for the reason that the incumbent is "exposed to possibility of strained back, mashed fingers; also exposed to cuts, bruises, sprains, scratches and falls."

The JC-3 Laborer job is rated at C.8 in Factor 11 upon a requirement "to perform special Laborer work involving exposure to lime dust, extreme heat for intervals, extreme conditions of dust and dirt." The Job Class 3 Laborer position is rated C.8 in Factor 12 for the reason that the incumbent is "exposed to falls from roofs, ladders and other high places. Exposed to skin burns, lime dust and hot flue dust." Management, thus, asserts:

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"It is clear that the C.8 codings accorded to Factors 11 and 12 of the Special Precipitator Labor job were predicated on the work associated with the lime unloading, the lime and flue dust, and the work inside the precipitators. The other functions are characteristic of regular Labor jobs which are coded at B.4 for those two factors."

It appears that during about 1966 certain automatic "scrubber" equipment was installed upon the precipitators, resulting in the discontinuance of a practice of "feeding lime" therein. This innovation in turn improved and reduced the "surroundings" and "hazard" conditions of the JC-3 Laborer job as originally described and classified. The job itself, however, was not disturbed; it was not changed, i.e., reclassified, to reflect improved conditions--nor eliminated. Over the years Management, moreover, has continued to pay the Job Class 3 rate for labor work performed at the precipitator locations. There is some dispute in the evidence as to whether, prior to the instant grievance, Management also paid the Laborer JC-2 rate for work performed at such locations. Here, notably, a principal Company witness, in effect, testified as follows:

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"After the scrubbers were installed, we discontinued feeding lime into the precipitators. We also had no more need to dump dust from the precipitators onto the ground for clean-up as before.

"Most of our inside precipitator work was performed at the Sintering Plant Precipitators rather than at those located in the Open Hearth.

"When we had lime we always paid the JC-3 rate for all labor work at the precipitators. We stopped paying this rate for all labor work about two or three years prior to the instant grievance.

"There could have been times in 1969 when we paid the JC-3 rate for work at precipitators. We may not have chopped this off as early as we should have."

The total evidence does not reveal any real consistent practice of paying either the JC-3 rate or the JC-2 rate for all labor work performed at the precipitators. It appears rather that, while the JC-3 rate generally continued to be paid after installation of the new precipitator equipment, Management may also have paid employees at the JC-2 Laborer rate at those locations. At the hearing, Management asserted that the Job Class 3 rate continued to be paid only when labor work actually was performed inside the precipitators, and that, for work performed outside the Open Hearth and Sintering Plant Precipitators the Job Class 2 rate was paid. The evidence as to what the "practice" actually was for payment for labor work performed at the precipitators is in sharp dispute.

The issue in this case remains whether grievant improperly was paid at the Job Class 2 Laborer rate rather than at the Job Class 3 "special" Laborer rate for work performed on February 5, 1970 at the precipitator location.

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FINDINGS

Though the Parties spent a considerable amount of time and offered a considerable amount of conflicting evidence on the question of how Laborer employees actually were paid for work at the Sintering and Open Hearth Precipitators over the past few years, we believe the controlling question here involves whether grievant actually was assigned to and performed the specific labor job described and classified at the JC-3 level. Indeed, if the grievant actually performed the JC-3 Laborer job, his entitlement to pay at that job class level in no way could be affected by the fact (if it is a fact) that others performing similar such work in the past were paid at the Job Class 2 level. No such "practices" ever will control (under existing Section 9 language) in the determination of disputes involving the application of proper pay rates.

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The Laborer, Job Class 3, position undisputably does still exist. It has not been changed and it has not been eliminated by Management. This, we think, is crucial, though Management apparently believes that since both Laborer jobs exist and since the duties actually performed by grievant were the same or similar to those specific duties expressly set forth in the Job Class 2 Laborer description, grievant was not entitled to payment at the Job Class 3 Laborer job rate.

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Under existing classification structures, it is not uncommon for different jobs to include substantially the same or similar work tasks. It is likewise not uncommon that a particular employee will not be required actually to perform all the duties and functions of a given job. And, moreover, Management always has the right (indeed, a duty) under the Agreement properly to maintain up-to-date job descriptions and classifications.

In the instant case, it is significant that the Job Class 3 Laborer position existed only at the Open Hearth and Sintering Plant Precipitator locations, while the Job Class 2 Laborer job actually did not exist--in terms of its intended performance--at those locations. The Job Class 2 Laborer generally was not assigned to the precipitator locations, while the Job Class 3 Laborer always was assigned at such locations.

Management's position herein that grievant properly was paid based upon the actual duties performed by him, simply cannot be supported. The primary function of the Job Class 3 Laborer position, notably, includes the performance of all general clean-up work "inside and outside of equipment of the Open Hearth and Sintering Plant Precipitators." The disputed work here unquestionably was performed at the very location contemplated by the description of the JC-3 job as it existed at Geneva Works. The mere fact that grievant here did not perform all of the duties of the JC-3 position as described and classified--for any reason--clearly is not sufficient to establish that he, in fact, did not work on that job. And, the fact that he performed certain duties generally included in the Job Class 2 Laborer job likewise does not establish that he actually performed on the Job Class 2 job.

Management really seems to be saying, in this case, (1) that grievant could not have been assigned to, nor could he have performed, the Job Class 3 Laborer job since there have been conditions changes in that job, and (2) that such conditions changes then preclude his entitlement to pay at the higher Job Class 3 level. This perhaps is an argument in support of a need to revise the Job Class 3 Laborer Job Description and classification. However, as long as a given job actually exists and is described and classified at a particular pay level, Management unilaterally, cannot reduce the pay of employees working in that job. Thus, despite whether the conditions upon which a given job originally was described and classified have changed, Management reasonably cannot pay such employee the rate of any other job when it assigns an employee thereto.

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While it well may be argued that Management here simply did not fill one of two existing Laborer job positions, i.e., the Job Class 3 Laborer job, but that it rather filled the other Job Class 2 job, that argument, we believe, is not supported by the particular facts involved in this situation. While surely it may be discretionary on the part of Management to fill or not to fill a given job, we are not persuaded, on evidence of this record, that the Job Class 2 Laborer position actually was filled at the precipitator location on February 5, 1970.

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In this case, therefore, it reasonably must be concluded that it was a Job Class 3 Laborer position assigned to and worked by grievant on the particular day and at the specific location herein involved. Thus, it appears that grievant improperly was paid at the JC-2 rate for that job.

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Accordingly, the grievance in this case must be sustained.

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AWARD

The grievance is sustained.

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

Edward E. McDaniel

Edward E. McDaniel
Assistant to the Chairman

Approved by the Board of Arbitration

Sylvester Garrett
Sylvester Garrett, Chairman