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United States Steel Corporation Western Steel Operations Pittsburg Works and United Steelworkers of America Local Union 2571

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BOARD OF ARBITRATION

Case No. USS-8228

February 26, 1971

ARBITRATION AWARD

UNITED STATES STEEL CORPORATION
WESTERN STEEL OPERATIONS
Pittsburg Works

and

Grievance No. SP-70S-7

UNITED STEELWORKERS OF AMERICA
Local Union No. 2571

Subject: Local Working Condition

Statement of the Grievance: "We the members charge Management with unwarranted violation of our contractual rights under the basic labor agreement 8/1/68. Managements intent to deprive us of our long standing policy of receiving 1/2 day off prior to the holiday at Christmas time.

"Settlement requested:
That the members be given their half day off prior to the holiday on December 23rd 1970 and there after on December 23rd."

Contract Provision Involved: Section 2-B of the Basic Labor
(Salaried) Agreement dated August 1, 1968.

Grievance Data:

Dates

Grievance Filed:	November 10, 1970
Step 2 Meeting:	Not Applicable
Appealed to Step 3:	Not Applicable
Step 3 Meeting:	November 17, 1970
Appealed to Step 4:	November 23, 1970
Step 4 Meeting:	November 25, 1970
Appealed to Arbitration:	December 9, 1970
Case Heard:	January 25, 1971
Transcript Received:	None

Statement of the Award:

The instant grievance is denied.

BACKGROUND

USS-8228

This grievance from Pittsburg Works presents a claim filed "on behalf of all the salaried clerical and technical employees of Pittsburg" that Management improperly has discontinued the practice of granting a half day with pay to each such employees prior to the Christmas holiday. 1

It appears that prior to the year 1970, grievant salaried bargaining unit employees regularly and consistently were given a half day off from work without loss of pay, on the day before the Christmas holiday, usually on Christmas Eve. In 1970, under terms of the Basic Labor Agreement dated August 1, 1968 all salaried bargaining unit employees were granted "the day before Christmas day" as an additional holiday. Grievants now seek a continuation of the "past practice" of allowing them an additional one-half day without loss of pay at Christmas time. These facts basically are not in dispute. 2

According to the Union and grievants, the practice herein involved always has been followed in prior years, to the extent and effect that the four hours off with pay was granted "on the last working day prior to the Christmas holiday." 3

At the hearing the Union offered undisputed evidence showing that in prior years the past practice operated as follows: that when the Christmas Day holiday fell on a Tuesday, Wednesday, Thursday, Friday, or Saturday, the half day without loss of pay was granted on the day before Christmas; but, when the Christmas Day holiday fell on Sunday and/or Monday, the half day without loss of pay was granted affected employees the preceding Friday. Grievants, thus, urge that the refusal by Management here to grant such additional time off, on Wednesday, December 23, 1970, was a violation of that practice--inasmuch as the new holiday fell on Thursday, December 24 and, thus, December 23 was the last working day prior to the Christmas holiday. 4

5
It is the position of the Company that "the inclusion of the entire day before Christmas Day as a holiday in the year 1970 (Section 11 of the Basic Labor Agreement) was approved in writing by an International Officer of the Union and the Personnel Services Executive of the Company, thus, procedurally changing the provisions of Section 2-B-3 applicable to Pittsburg Works Salaried employees under the terms of the September 1, 1965 Basic Labor Agreement."

6
The Company does concede, however, that "There appears to be no dispute that for some unspecified period of years prior to 1970 many of the salaried clerical and technical employees at the Pittsburg Works were given a part of a day off without loss of pay on the day before Christmas where Christmas fell on a Tuesday, Wednesday, Thursday, Friday or Saturday."

7
Essentially, the Company believes that the establishment of the new "day before Christmas Day holiday" effectively "submerged" the past practice here in dispute. The Union, however, believes that the past practice, as established over prior years, was not limited by its operation to the day before Christmas and, moreover, that the denial of benefits provided thereby violates Section 2-B-3 of the Basic Labor Agreement.

8
The issue herein remains whether Management improperly has deprived affected salaried bargaining unit employees of rights and/or benefits enjoyed under the prior established practice.

FINDINGS

9
The specific Agreement language relevant to this case appears in Sections 11-C-2 and 2-B-3,4 of the Basic Labor Agreement. Section 11-C, thus, provides:

"The Holidays specified are January 1, Good Friday, Memorial Day (by local agreement another day may be chosen provided such agreement is reached prior to April 1 of each year), July 4, Labor Day, Thanksgiving Day, Christmas Day, and, beginning with the year 1970, the Day before Christmas Day. The Holiday shall be the 24-hour period beginning at the turn-changing hour nearest to 12:01 a.m. of the Holiday. If the calendar Holiday is on Sunday, for the purposes of this Agreement, the Holiday shall be the following Monday."

And, under Section 2-B it is provided:

- "3. Should there be any local working conditions in effect which provide benefits that are in excess of or in addition to the benefits established by this Agreement, they shall remain in effect for the term of this Agreement, except as they are changed or eliminated by mutual agreement or in accordance with paragraph 4 below.
- "4. The Company shall have the right to change or eliminate any local working condition if, as the result of action taken by Management under Section 3-- Management, the basis for the existence of the local working condition is

"changed or eliminated, thereby making it unnecessary to continue such local working condition; provided, however, that when such a change or elimination is made by the Company any affected employee shall have recourse to the grievance procedure and arbitration, if necessary, to have the Company justify its action."

There can be no doubt that in the years prior to 1970 and the establishment of "the day before Christmas Day" as a Company-wide paid holiday, grievant salaried bargaining unit employees, at Pittsburg Works, enjoyed a one-half day holiday benefit over and above that enjoyed by employees throughout the Company. When the new holiday was established for the first time at Christmas, 1970, grievants, thus, realized (as did all other Company employees) an additional benefit; but, in fact, only that of one-half day holiday, over and above that which they already enjoyed.

In this situation, however, as in any such case involving the claim of improper termination or denial of an established local working condition, (and benefits accruing therefrom) it need clearly be determined exactly what the relevant "past practice" is, in terms of its true nature and scope, under all relevant circumstances. Though it seems clear that the herein disputed practice, as it existed prior to 1970, indeed, did apply to the "last working day" prior to the Christmas Day holiday, it seems equally clear that, except when the Christmas Day holiday actually fell on a Sunday or Monday, that "last working day" always was "the day before Christmas day." Moreover, under all relevant circumstances, it does not appear that the past practice itself could have evolved at all but for the fact that the day before the established Christmas Day holiday usually was a working day.

The true "basis for the existence of the local working condition" then, we believe, reasonably, was that the day before Christmas Day usually was a working day. 12

The fact that the "practice" here usually did operate on, and apply to, the day before the existing Christmas Day holiday, we believe, in and of itself demonstrates the real nature and scope of the involved "local working condition" benefit. That benefit, thus, properly cannot be defined solely within the confines of the last working day before Christmas Day, but rather in broader terms. It reasonably must be seen in light of its true relationship to the established Christmas Day holiday, and in light of a now changed condition directly relating to the very day upon which such benefit usually was enjoyed. 13

Furthermore, the fact that grievants may have been granted time off on a Friday before a Sunday and/or Monday Christmas Day holiday actually does not affect the true relationship between the local working condition and that established holiday. And, such fact in any event may not alone determine (or alter) the real "basis for the existence of the local working condition" here in dispute. That basis, as we have said, reasonably appears to have been that the day before Christmas Day in the past usually was a scheduled working day. 14

That a local working condition effectively may become "submerged" plainly is recognized by the Company and Union--witness, above cited Section 2-B-4 language under the Basic Agreement. In the instant situation, moreover, it appears equally plain that the new "day before Christmas Day" holiday provides, substantially the same and/or greater benefit (in its true nature and scope) as has been enjoyed by grievants under the herein disputed "practice." The Basic Agreement, we believe, clearly dictates a policy of "submerging" local working condition benefits (otherwise protected under 2-B-3) upon the creation of substantially the same or greater benefit under that Agreement. 15

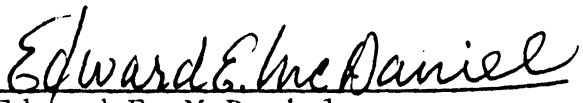
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It does not appear upon the entire evidence presented that grievants improperly were denied a "local working condition" benefit as claimed. It appears rather that Management here exercised a discretionary right under Section 2-B-4 to change or eliminate any local working condition where, as here, the basis for the local working condition is changed or eliminated. Accordingly, the instant grievance may not be sustained.


AWARD

The instant grievance is denied.

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, Chairman